

.* **HIGH COURT OF DELHI : NEW DELHI**

+ **WP (C) No. 9013 of 2008**

% Judgment pronounced on : 21.10.2010

SHRI RAM PAL Petitioner

Through: Petitioner in person.

Versus

DELHI TRANSPORT CORPORATION & ORS. Respondents

Through: Ms. Nav Ratan Chaudhary, Adv.

Coram:

HON'BLE MR. JUSTICE MANMOHAN SINGH

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

MANMOHAN SINGH, J.

1. The present writ petition has been filed by the petitioner under Article 226 and 227 of the Constitution of India seeking direction for quashing the Award dated 18.04.2002 passed by the Labour Court in I.D. No. 26/95.

2. Brief facts of the case leading to the present writ petition are that the petitioner's services were terminated by the respondent no.1 on 07.03.1995 in view of an order dated 06.03.1995 passed by the Depot Manager, Rohini Terminal No. II.

3. The allegation against the petitioner was that he had issued ticket punched from both the sides and has thus cheated the respondent no.1/management. In the written statement a specific statement was made that the petitioner was found selling used tickets again to the passengers and caused financial loss.

4. The case of the petitioner is that he had not committed any misconduct and he has been removed from the services on

fabricated charges. According to him, no opportunity was given to him during the course of inquiry and even punishment given to him was very severe. In support of his case he wishes to take benefit of policy decision of allowing three chances before taking an action of removal from service which, according to him, was not extended to him. Hence he was entitled to lesser punishment as this was his first case of misconduct. It is admitted by him that his only mistake was that he had punched some tickets on both the sides since he is semi literate person. He could not understand the implication of the same and as a matter of fact it was only a case of wrong punching of the tickets. The punishment of removal from service was extremely harsh. The prayer made in the present writ petition is to re-instate him in service with full back wages.

5. I have heard learned counsel for the parties and have carefully and meticulously gone through the record. The petitioner, as a matter of fact, appear in person during the course of hearing. The Labour Court while affirming the punishment of dismissal imposed upon the petitioner by respondent no.1 in his order dated 18.04.2002 gave the following finding:

“In the present case, the management had a right to impose the punishment of dismissal and the same is also clear from circular dated 8.4.68 bearing No. ADLI-3(18)/68. Perusal of the said circular reveals that dishonesty, fraud, forgery of misappropriation including cheating and non issue of tickets after collecting fare defined as case of major misconduct. The said circular dated 8.4.68 is later in time thus the circular produced by the workman which is dated 3.1.66 and will thus prevail over the latter from the later circular filed by the DTC, it is clear that management could pass the order of dismissal against a delinquent employee in case of fraud or misappropriation.

The next question to be considered is whether the punishment imposed by the workman commensurate with the misconduct committed by him. The workman in the present case was selling those

tickets which were already used and sold. Thus, by the said act of dishonestly, he was depriving the management from its revenue and misappropriating the same for his own use. In y opinion, no management would like to continue wit the employment of such at employee. Such act of gross misconduct results in total loss of confidence. In this regard, I am supported as Janatha Bazar V/s. The SEcy. Sahakari Noukarera Sangha etc. 2000 (87) FLR 483 where the Hon'ble Supreme Court has held as under:-
"As stated above, the learned single judge and the Division Bench in Writ appeals confirmed the findings given by the Labour Court that charges against the workmen for breach of trust and mis-appropriation of funds entrusted to them for the value mentioned I the charge sheet had been established. After giving the said findings, in our view, the Labour Court materially the management removing the workman from the service and reinstating them with 25% back wages. Once act of mis-appropriation is proved, may be for a small or large amount, there is no question of showing uncalled for sympathy and reinstating the employee in service. Law on this point is well settled. (Re-Municipal Committee, Bahadurgarh V. Corporation V.Basudeo Chaudhary, this court set aside the judgement passed by the High Court in a case where a conductor serving with the U.P. State Road Transport Corpn. Was removed from service on the ground that alleged mis-conduct of the Conductor was attempt to cause loss of Rs. 65/- to the Corporation by issuing tickets to 23 passengers for a sum of RS. 2.35, which figure was subsequently altered to Rs. 2.85. The Court held that it was not possible to say that Corporation removing the Conductor from service has imposed a punishment which is dis-proportionate to his misconduct. Similarly, in Punjab Dairy Development Corporation Ltd. V. Kala Singh, this court considered the case of a workman who was working as a Dairy Helper-cum-Cleaner for collecting the milk from various centres and was charged for the misconduct that he inflated the quantum of milk supplies in milk centres and also inflated the quality of fat contents where there were less fat contents. The court held that in view of proof of misconduct, a necessary consequences will be that Management has lost confidence that the workman would truthfully and faithfully carry on his duties and consequently the Labour Court rightly declined to exercise the power under Sec. 11-A of the I.D. Act to grant relief with minor penalty."

6. In the present case it is an undisputed fact that the petitioner has admitted the case of cheating as appears from para 9.4 of the writ petition. The relevant portion of the same reads as

under: "That only mistake that the petitioner had done was he punched some tickets on both sides." As per practice the ticket has dates on both the sides i.e. for going and coming routes which is purchased only once on a route.

7. As a matter of fact, his admission made in the writ petition itself shows his misconduct. The petitioner even otherwise was not able to establish his case in the writ petition that the order passed by the Labour Court is illegal and perverse or suffer from any legal infirmity.

8. It cannot be denied that the inquiry officer held the inquiry and at that time the petitioner was asked by the inquiry Officer if he wanted any type of help of co-worker or otherwise but the workman denied the same. On receipt of the report of the Checking Team, he was issued a Charge sheet. The seven punched tickets bears nos. 000-40032 to 000-40035 and 000-40666, 000-40667 and 000-40669. As regards the punishment imposed upon the petitioner is concerned, the respondent no.1 relied upon the Circular dated 08.04.1966 bearing no. ADM I-3 (18)/68. In the said Circular there are Clauses for penalty on the employees for misconduct which is just like the guidelines laid down by the respondent no.1. In the said Circular, certain offences are defined as minor and others as major. The minor offences are defined in Annexure 'A' whereas major offences are defined in Annexure 'B' and 'C'. A perusal of Annexure 'C' indicates that Clause 4 of the same defines the major misconduct which reads as under:

"Theft, dishonesty, fraud, forgery or mis-appropriation including cheating and non-issuance of tickets after collecting fare, in connection with cash, property or business of the undertaking."

9. As per the said major offences, the penalty is stoppage of increment with cumulative effort, reducing to lower post in time-scale or lower stage in time-scale, removal or dismissal.

10. In the present case, respondent no.1 dismissed the services of the petitioner in accordance with the guidelines/circular of the respondent no.1 as the respondent no.1 felt that it is a case of cheating as the petitioner was re-selling the already sold tickets which covers Clause 4 of the guidelines of the respondent no.1 in this regard.

11. Admittedly, the workman was earlier also given a censure for not complying his trip on 05.06.1991. in view of the above-said facts and circumstances, this court does not wish to exercise its discretion by interfering with the order passed by the Labour Court which was on the basis of the finding of fact arrived by him. I find no merit in the writ petition. The same is hereby dismissed.

12. No order as to cost.

MANMOHAN SINGH, J.

OCTOBER 21, 2010
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