

IN THE HIGH COURT OF DELHI AT NEW DELHI

W. P. (C) 6063/2003

Reserved on: 27th July 2011
Decision on: 23rd August 2011

SAVITRI DEVI & ORS. Petitioners
Through: Mr. C.S. Parashar, Advocate.

versus

DELHI TRANSPORT CORPORATION Respondent
Through: Mr. Jitendra Kumar, Advocate for
Ms. Mini Pushkarna, Advocate.

AND

W. P. (C) 7925/2003

DELHI TRANSPORT CORPORATION Petitioner
Through: Mr. Jitendra Kumar, Advocate for
Ms. Mini Pushkarna, Advocate.

versus

SAVITRI DEVI & ORS. Respondents
Through: Mr. C.S. Parashar, Advocate.

CORAM: JUSTICE S. MURALIDHAR

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

JUDGMENT
23.08.2011

1. Writ Petition (Civil) No. 6063 of 2003 is by the legal representatives of the deceased workman and challenges an Award dated 22nd January 2003 of the Industrial Tribunal ('Tribunal'). By the said Award, the reference regarding the legality of the action of the management of the Delhi Transport Corporation ('DTC') in removing the workman from service was decided in favour of the management.

2. DTC has filed Writ Petition (Civil) No. 7925 of 2003 challenging an earlier order dated 3rd August 2000 of the Tribunal rejecting its application being OP No. 27 of

1991 under Section 33(2)(b) of the Industrial Disputes Act, 1947 ('ID Act'). The Tribunal by the said order declined to grant approval to the action of the DTC in removing the workman from service.

3. At one stage, with the DTC not reinstating the workman consequent upon the aforementioned order dated 3rd August 2000, the Petitioner filed Writ Petition (Civil) No. 1571 of 2003 in this Court praying that on the strength of the decision of the Supreme Court in ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v. Ram Gopal Sharma AIR 2002 SC 643*** he should be reinstated in service. Since by that date the DTC had not challenged the aforementioned order dated 3rd August 2000, the said writ petition was allowed by this Court on 17th October 2003. However, soon thereafter on 24th November 2003, the DTC filed Writ Petition (Civil) No. 7925 of 2003 challenging the Tribunal's order dated 3rd August 2000. While directing notice to issue in the said writ petition on 28th November 2003, this Court stayed the impugned order dated 3rd August 2000 in O.P. No. 27 of 1991 and also its order dated 17th October 2003 in Writ Petition (Civil) No. 1571 of 2003.

4. The workman died on 26th March 2003. His LRs thereafter filed Writ Petition (Civil) No. 6063 of 2003 on 13th August 2003 challenging the Award dated 22nd January 2003 passed by the Tribunal holding the removal of the Respondent to be just and proper. By an order dated 9th March 2004 both the writ petitions were directed to be heard together.

5. At one stage Writ Petition (Civil) No. 6063 of 2003 was dismissed in default and this in turn led to Writ Petition (Civil) No. 7925 of 2003 being rendered infructuous. However, by an order dated 22nd March 2010 Writ Petition (Civil) No. 6063 of 2003 was restored to file. This led to Writ Petition (Civil) No. 7925 of 2003 also being restored to file by the order dated 28th August 2010.

6. The facts are that the workman was appointed as a conductor in the DTC on 26th November 1977. He was placed under suspension by an order dated 4th April 1991 and served a chargesheet dated 24th April 1991. The charge was that while on duty on bus No. 6441 *en route* from Delhi to Shimla on 29th March 1991, checking was carried out by the checking staff at Pinjore bus stand at about 12:15 pm, wherein one passenger was found without a ticket while alighting from the bus. According to this passenger,

he had paid Rs.5 to the conductor but was not issued any ticket. One other person who was found travelling without ticket from Chandigarh to Kalka alleged that he too had paid Rs. 5 to the conductor but no ticket had been issued to him. A group of three persons was also found travelling without tickets. They alleged that the conductor had taken the full fare of Rs. 25.50 but had not issued them tickets. The fourth charge was that one other passenger who was found travelling without a ticket stated that he had paid Rs. 12 as fare to the conductor but had not been issued any ticket. This passenger had boarded the bus from Chandigarh to Dharamapur. A group of four passengers who had boarded the bus from Chandigarh to Parvanu had paid Rs. 14/- but they were also not issued tickets. Another person who had boarded the bus from Chandigarh to Parvanu had paid Rs. 7/- but the conductor had not issued any ticket to him. The inspecting team alleged that the conductor refused to give them the unpunched tickets and snatched away the way bill and the way vouchers from the checking staff. It also alleged that he refused to give the complaint book, refused to sign the challan and misbehaved with the checking staff. It was alleged that when the bus was stopped the conductor was sitting idle on the bonnet.

7. A reply was submitted by the workman on 6th May 1991 denying the charges. According to the DTC, in the enquiry held between 7th June 1991 and 17th June 1991, the workman declined to produce any evidence in support of his defence. He is alleged to have admitted to the charges. By a report dated 17th June 1991, the inquiry officer ('IO') held the charges proved. A show cause notice for removal from service was prepared and issued to the workman. After receiving his reply on 3rd July 1991, the workman was removed from service by an order dated 16th July 1991. This order took note of the past record in terms of which the workman had been warned twice, censured once, and awarded the punishment of stoppage of increments on three occasions. Simultaneously, an application was filed in the Tribunal under Section 33(2)(b) of the ID Act by the DTC seeking approval for the action of removal of the workman. This was done after remitting one month's wages to the workman by way of a money order.

8. A preliminary issue was framed by the Tribunal about legality of the inquiry. However, the DTC despite being given opportunities to lead evidence failed to do so. Consequently, by an order dated 25th October 1996 the Tribunal closed the evidence of the DTC. The preliminary issue was answered by the Tribunal against the DTC by an

order dated 3rd July 1998. The DTC was then permitted to prove the workman's misconduct in the application filed under Section 33(2)(b) ID Act in OP No. 27 of 1991. The record of the Tribunal reveals that one Shri Vajinder Trivedi tendered his affidavit of evidence by way of examination-in-chief on behalf of the DTC. In his cross-examination on 31st January 2000, he admitted that issue of fairness of the inquiry already stood answered against the DTC by the Tribunal by the order dated 3rd July 1998.

9. In I.D. No. 290 of 1996 Shri Hari Singh, Traffic Supervisor tendered his affidavit dated 4th July 2000 which was Ex. MW1/A. In the order dated 3rd August 2000 passed by the Tribunal rejecting OP No. 27 of 1991 a reference was made to the fact that the DTC examined Shri Hari Singh as MW-1 and the workman examined himself as RW1 and both witnesses were cross-examined. Their evidence was discussed in detail by the Tribunal. The workman admitted that the bus was checked at Pinjore on 29th March 1991 but denied the rest of the allegations. His case was that the checking staff had taken away all the papers from him and he could not issue tickets to the passengers. MW-1 Shri Hari Singh produced a photocopy of the challan, unpunched tickets taken from the workman, the statement of Shri Munshi Ram and Shri Awadesh Kumar (passengers), the report submitted to the authority regarding the incident and the inspection report dated 29th March 1991. MW-1 admitted that the payment by the passengers to the conductor was not in his presence. The co-passengers were not questioned and the statement of the defaulting passengers did not bear the signatures of the conductor or other co-passengers. MW-1 stated that the conductor had refused to counter-sign the statement of the passengers. He however added that this fact was not mentioned in the body of the statement. He had mentioned in his report that the conductor had refused to sign the statement of the passengers. However, that report was not prepared in the presence of the conductor nor did it bear the signature of the conductor.

10. The Tribunal referred to the DTC Circular dated 12th December 1952 in terms of which if a passenger alleged that he has paid the fare to the conductor and no ticket had been issued to him, then the checking officials should as far as possible, note the address of the said passenger and the witness seated near the said passenger. In the present case, the statement of the passengers did not bear the signature of the conductor or any passenger seated near the defaulting passengers who claimed that

they had paid the fare but had not been issued tickets. None of the defaulting passengers were examined. According to MW-1 the conductor gave the checking staff the unpunched tickets of eight passengers but did not hand over the unpunched ticket for one remaining passenger and snatched away the way bill and voucher. The Tribunal held that it was not understandable why the conductor would hand over eight unpunched tickets but not the ninth. There was also no independent evidence to corroborate the evidence of MW-1 about the workman's misbehavior with the checking staff. The Tribunal then considered the fact that the point at which the bus was checked, i.e., at the Pinjore bus stand, was not far away from the boarding point, i.e., Chandigarh. It seemed unlikely that within such a short period the conductor would be able to collect the fare from so many passengers and issue them tickets, misbehave with the checking staff and yet the other passengers who were found without tickets would not complain against the conductor. The case of the DTC depended on the evidence of MW-1 which was not corroborated by any independent evidence. In the circumstances the Tribunal held that the misconduct of the conductor was not established. Accordingly, by the order dated 3rd August 2000, approval for removal sought under Section 33(2)(b) ID Act was refused by the Tribunal .

11. The DTC which participated in the proceedings before the Tribunal in OP No. 26 of 1991 did not choose to challenge the said order till November 2003. It did so only after the workman filed a writ petition in this Court seeking his reinstatement on the strength of the order dated 3rd August 2000. The delay of over three years in challenging the said order has not been satisfactorily explained by the DTC.

12. The records of the Tribunal further reveal that the workman filed his affidavit by way of evidence in ID No. 290 of 1996 on 11th August 1999 and again on 9th November 2001. Shri Hari Singh, MW-1, was cross-examined on 9th November 2001. What is significant in this cross-examination is that he reiterated that he did not record the statement of the co-passengers who were travelling with the ticketless passengers. He was unable to tell the number of passengers in the bus. Importantly, he did not check the cash of the conductor. He volunteered that "the conductor had quarreled with us." He added: "Initially the conductor had admitted his fault therefore he had given us 8 unpunched tickets. I mean to say that initially the workman cooperated with us and later on he quarreled with us. It is correct that conductor had not signed the statement of passenger. He refused to sign." As regards the challan, MW-1 admitted

that he had not noted thereon that the conductor had refused to sign the same. MW-1 volunteered that “the fact of refusal has been noted by me.” As regards the report he added that “the report was not prepared in presence of the workman.” When the workman was cross-examined on 28th March 2002, he stated that he had been unemployed since 1998 but sometimes earned Rs. 300/- to Rs. 400/- per month by doing casual work.

13. The Presiding Officer of the Tribunal who decided ID No. 290 of 1996 was different from the Presiding Officer who decided OP No. 27 of 1991. This despite the fact that both the matters were clubbed so that they could be heard by the same court. On discussing the very same evidence that was discussed by the Tribunal in OP No. 27 of 1991 the Tribunal hearing ID No. 290 of 1996 came to a different conclusion. It was now stated that “although, the passengers have not been examined before the Tribunal, but there is sufficient reliable evidence on the record like copy of daily diary of the Police Station, Parwana, unsigned copy of the challan and the statement of passengers.” The statements of the passengers referred to were the ones recorded on the reverse of the challan which was refused to be signed by the conductor. The Tribunal now held that “even if the passengers have not paid fare to the workman, passengers were travelling from far distances and it was the duty of the conductor to issue them ticket and charge the fare. If the conductor has not collected money from them, even then he has not performed his duty.” It was further held that “it is immaterial, if the cash is not checked. There is no need of further independent witness, when documentary evidence is already on record.” On the question of findings already recorded by the Tribunal in OP No. 27 of 1991 the Tribunal deciding the ID No. 290 of 1996 held that, “it is immaterial if the OP petition has been rejected. This Tribunal has to answer the reference on its own merits on the material brought before this Tribunal.”

14. This Court finds it difficult to appreciate the above statement in the impugned order dated 22nd January 2003 where the Tribunal examined the very same evidence and by an order dated 3rd August 2000 rejected OP No. 27 of 1991 filed by the DTC. The answer given in cross-examination by AW1 Hari Singh, recorded in the Tribunal’s order dated 3rd August 2000, is virtually the same as the cross-examination of that very witness in ID No. 290 of 1996 on 9th November 2001. MW-1 categorically stated that the cash of the conductor was not checked. The Tribunal

appears to have overlooked that in a majority of the cases where the charges are that after collecting cash from the passengers the conductor has not issued them tickets, the checking of the cash with the conductor is absolutely essential to determine if the passengers who were allegedly travelling without tickets were telling the truth. The other important factor was the distance from Chandigarh to Pinjore where the bus was checked. Chandigarh was the boarding point and the passengers were travelling long distances from Chandigarh. If the bus had 30 passengers then it would seem unlikely that the conductor could issue all of them tickets by the time the bus was stopped near Pinjore. While this factor weighed with the tribunal that gave the order dated 3rd August 2000, the Tribunal which decided ID No. 290 of 1996 on 22nd January 2003 did not consider this to be important. The danger of having inconsistent views of the Tribunal are apparent in the present case where on the same evidence two different conclusions have been arrived at. In any event, given the nature of the charges, the checking of the cash with the conductor was imperative. The explanation of MW-1 regarding this failure to check the cash was that the conductor quarreled with the checking staff and refused to cooperate. This statement does not inspire confidence. As rightly noted by the Tribunal in the order dated 3rd August 2000, the conductor gave the checking staff eight unpunched tickets. There was no reason for him to suddenly quarrel with them or snatch away the way bill, vouchers etc. The entire evidence of the DTC is based on the version of MW-1. The answer given by MW-1 in his cross-examination on 9th November 2000 shows his shifting stand does not present a very convincing picture. The two orders dated 3rd August 2000 and 22nd January 2003 of the Tribunal in OP No. 27 of 1991 and ID No. 290 of 1996 respectively reached opposite conclusions on the same evidence. This by itself is a ground to give the benefit of doubt to the workman. It also points to the unreliability of the sole evidence of MW-1 in both cases.

15. In the considered view of this Court the appreciation of evidence by the Tribunal which rejected OP No. 22 of 1991 by its order dated 3rd August 2000 appears to be the more balanced one on a preponderance of probabilities. With the DTC not challenging the order holding the inquiry to be unfair or illegal, misconduct of the workman had to be proved by the DTC by leading evidence before the Tribunal. On the other hand, the Award dated 22nd January 2003 seems to have accepted the finding in the domestic inquiry *in toto*. That was impermissible to be done after the order dated 3rd July 1998

answered the issue concerning the inquiry in favour of the workman and against the DTC.

16. For the aforementioned reasons, this Court confirms the order dated 3rd August 2000 passed by the Tribunal in OP No. 27 of 1991 and sets aside the order dated 22nd January 2003 of the Tribunal in ID No. 290 of 1996. As a consequence the order dated 17th October 2003 passed by this Court in CWP No. 1571 of 2003 stands revived. Consequential orders will now be issued by the DTC and all retiral benefits and other dues owing to the workman will be calculated. The DTC will calculate the full back wages that the workman was entitled to, from 16th July 1991 till the date of his superannuation or the date of his death, i.e., 26th March 2003 whichever is earlier, calculate his pension and other benefits on that basis within a period of eight weeks from today and make payment to the LRs of the deceased workman accordingly.

17. The case of Petitioner No. 1 Savitri Devi in Writ Petition (Civil) No. 6063 of 2003 or any other eligible legal representatives of the deceased workman for compassionate appointment will be considered in accordance with the policy of the DTC on merits. If a representation is made in this behalf within two weeks from today, the said representation will be disposed of on merits within a further period of eight weeks.

18. With the above directions, Writ Petition (Civil) No. 6063 of 2003 filed by the LRs of the deceased workman is allowed and Writ Petition (Civil) No. 7925 of 2003 filed by the DTC is dismissed. The DTC will pay to the Petitioners in Writ Petition (Civil) No. 6063 of 2003 a sum of Rs. 5,000/- as costs within a period of four weeks.

S. MURALIDHAR, J.

AUGUST 23, 2011

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