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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 6404/2011**

Decided on 11th October, 2013

DELHI TRANSPORT CORPORATION

..... Petitioner

Through: Mr. J.S. Bhasin and Mr. Gurpreet
Singh, Advs.

versus

RAJBIR SINGH

..... Respondent

Through: Mr. Anuj Aggarwal, Adv.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

A.K. PATHAK, J. (ORAL)

1. By this writ petition under Article 226 of the Constitution of India petitioner-management has challenged the Award dated 5th April, 2010 passed by the Labour Court, XVII whereby petitioner has been directed to reinstate the respondent-workman with continuity of service on the same post without back wages and to pay ₹30,000/- as compensation.

2. Factual matrix, as emerges from the record, is that respondent was working with the petitioner as a Conductor. He was on duty on bus number 9674 on 26th August, 1992 when checking squad found two passengers travelling without ticket. On enquiry they informed the checking squad that conductor had charged Rs.2/- from them towards fare from Bhogal to Ashram but had not issued the tickets. When respondent was confronted

with the above statement he gave two unpunched tickets bearing nos. 90289 and 90290 of Rs.4/- each. Shri Ramesh Chand, one of the members of checking squad recorded statements of passengers. Respondent refused to sign the statement though he signed the challan. He quarreled with one of the members of the checking squad. The said bus was a green line bus and the fair between Bhogal to Ashram was Rs.4/- per passenger; whereas normal fare of DTC buses was Rs.1/- for the same route. The passengers paid the balance payment before unpunched tickets were issued by the respondent in presence of the members of the checking squad. Charge-sheet Ex. WW1/1 was issued to respondent who denied the charges. Thereafter, a domestic enquiry was held. Initially respondent did participate in the enquiry but subsequently on 26th April, 1993 he declined to co-operate and left the enquiry proceedings, accordingly, enquiry was conducted in his absence. Enquiry Officer gave his report and concluded that charges were proved.

3. Disciplinary Authority issued show cause notice to respondent which was not replied. Disciplinary Authority examined the material on record and passed the order of removal of petitioner from service on 27th October, 1994.

4. Petitioner raised Industrial Dispute which was referred to Labour Court by the Secretary (Labour) in the following terms:-

“Whether the removal of Sh. Rajbir Singh, from service by the management is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?

5. In the statement of claim respondent alleged that he was falsely implicated, inasmuch as, was beaten up by the checking squad and a complaint was filed by him in this regard on 26th August, 1992 with the Depot Manager but to no effect. Respondent alleged that along with the charge-sheet neither list of witnesses nor documents were supplied to him. Enquiry was conducted ex-parte by the Enquiry Officer who was biased against him. He was not given any opportunity to defend himself. Passengers were not examined during the enquiry. Punishment was shockingly disproportionate to the misconduct alleged. He prayed that he be reinstated with back wages.

6. In written statement, petitioner alleged that enquiry was conducted in a fair and proper manner. Passengers were called but did not attend the enquiry proceedings. All the documents were supplied to respondent. It was alleged that respondent did not cooperate during the enquiry. He

himself left the enquiry midway. In rejoinder, respondent denied the averments made in the written statement and reiterated the contents of his statement of claim.

7. Industrial Adjudicator framed issues as per the terms of reference. Thereafter, parties were afforded opportunity to adduce evidence. Upon scrutiny of evidence adduced by the parties Industrial Adjudicator, vide order dated 31st July, 2009, held that enquiry was not conducted in a fair and proper manner, thus, was vitiated. Thereafter, Industrial Adjudicator proceeded to enquire about the misconduct himself. Parties were afforded opportunity to lead evidence on the point of misconduct. Industrial Adjudicator scrutinized the evidence adduced by the parties and concluded that petitioner had failed to prove that respondent had not issued the tickets after collecting fare from the passengers. It was further held that charge of misbehaving with Traffic Inspector Sukh Ram was also not proved in view of non-production of said witness in the witness box. It was concluded that misconduct of respondent remained unproved, consequently, petitioner has been directed to reinstate the respondent without back wages. A careful reading of award makes it clear that Industrial Adjudicator was mainly influenced by the fact that passengers were not produced in the witness box

to prove that respondent had not issued the tickets after charging the fare from them. It is only the passengers who could have proved that they had paid fare to the respondent but were not issued tickets.

8. Learned counsel for the respondent has vehemently contended that findings of fact returned by the Industrial Adjudicator cannot be interfered with by this Court in exercise of its power of judicial review under Article 226 of the Constitution of India upon re-appreciation of evidence. It is contended that there is no perversity in the view taken by the Industrial Adjudicator. Reliance has been placed on *Municipal Corporation of Delhi vs. Asha Ram and Anr.* 117 (2005) DLT 63. As regards legal proposition as propounded by the respondent's counsel, the same cannot be disputed. It is well settled that power of judicial review of High Court under Article 226 of the Constitution of India is limited in the sense that re-appreciation of evidence to take an independent view than what has been taken by the Industrial Adjudicator upon appreciation of evidence is not permissible. However, that would not mean that this Court will not interfere with the findings of fact returned by the Industrial Adjudicator if the same on the face of it are perverse. If the Award suffers from manifest error of law or jurisdiction the High Court would step in and correct such error. In this case,

the view taken by the Industrial Adjudicator that in absence of passengers petitioner had failed to prove that respondent did not issue tickets to two passengers after collecting fare from them, is contrary to the well established principles of law and is perverse. One of the members of checking squad was produced in the witness box and had supported the petitioner's version. Thus, it cannot be said that no evidence was available before the Industrial Adjudicator to prove the allegations. Mere non production of passengers, in my view, is not sufficient to discredit the whole version of the petitioner. Mr. Ram Kishan (MW2), one of the members of the checking squad, stepped in the witness box and narrated the events which took place on 26th August, 1992 and categorically stated that statement of passenger was recorded by Ramesh Chand. Industrial Adjudicator ought to have accepted the same as sufficient proof regarding incident of non issuance of tickets to the passengers after collecting fare from them, inasmuch as, it had come on record that on being confronted respondent had issued two unpunched tickets of Rs.4/- each, which was the fare applicable to the green line buses. In this scenario, non production of passengers was not sufficient to hold that charge had remained unproved.

9. In State of Haryana & Anr. vs. Ratan Singh 1977 (34) FLR 264,

Supreme Court has held as under:-

“However, the courts below misdirected themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The ‘residuum’ rule to which counsel for the respondent referred, based upon certain passages from American jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence not in the sense of the technical rules governing regular court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. We find, in this case, that the evidence of Chamanlal, Inspector of the flying squad, is some evidence which has relevance to the charge levelled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground.”

10. In Delhi Transport Corporation vs. N.L. Kakkar, Presiding Officer, Additional Industrial Tribunal & Ors. 2004 (101) FLR 777, a Single Judge of this Court held thus “production of passengers either in a domestic enquiry or before the Labour Court in an industrial dispute is not at all necessary. Indeed, I am of the view that in most cases this would be highly impractical because it would mean that passengers would have to be traced

out, chased and brought before the enquiry officer or the Labour Court causing them unnecessary inconvenience. One has to take a pragmatic view of the situation as well as consider the amount of effort and energy that may have to be expended in producing the passengers as witnesses. DTC carries passengers who are residents of not only Delhi but also of other States. Is it practicable to expect a passenger, who goes back to his State after a trip to Delhi, to appear before an Inquiry Officer for confirming a statement already given by him to the checking staff? As our Division bench has cautioned us, one has to take a commonsense approach to the whole problem and not allow legal technicalities to come in the way.” In *Sultan Singh vs. Delhi Transport Corporation* 1987 I LLN 399 wherein, question of approval under Section 33(2)(b) of the Act was involved, it was held thus “there is no requirement to produce passengers in the witness box to prove the misconduct of the employee. In *North West Karnataka Road Transport Corporation vs. K.S. Raghunathappa* 2003 II CLR 782 also, it was held that non production of passengers will not vitiate the enquiry. In *Karnataka State Road Transport Corporation vs. B.S. Hullikatti* (2001) I LLJ 725 SC, Supreme Court held thus “examination of the passengers of the vehicle from whom the said sum was collected was also not essential. In our view,

possession of the said excess sum of money on the part of the respondent, a fact proved, is itself a misconduct and hence the Labour Court and the learned Judges of the High Court misdirected themselves in insisting on the evidence of the passengers which is wholly not essential.”

11. Learned counsel for the respondent has vehemently contended that writ petition is liable to be dismissed being barred by delay and laches since it has been filed after a period of one and a half years of passing of the impugned Award. He has placed reliance on *Shri Bijender Kumar vs. Municipal Corporation of Delhi* MANU/DE/2215/2009. Per contra, learned counsel for the petitioner has vehemently contended that after passing of the Award petitioner waited for its publication in the Gazette. There is no such inordinate delay which would disentitle the petitioner the reliefs claimed in the writ petition more so when Award suffers from grave perversity. Indubitably, there is no period of limitation prescribed for filing the petition under Article 226 of the Constitution of India, but a person aggrieved is expected to approach the Court expeditiously. However, no hard and fast rule can be laid down nor a straight jacket formula can be adopted for deciding whether or not this Court should or should not entertain such a petition under its writ jurisdiction. Each case has to be viewed in its own

facts. In this case, I am not inclined to dismiss this writ petition on the ground of laches more so when petitioner has not slept over its rights for years together, inasmuch as, respondent has himself taken benefits under Section 17-B of the Industrial Disputes Act, 1947('the Act', for short). Having reaped benefits under this very litigation respondent cannot be heard to say that writ petition be dismissed on technicalities. Judgment relied upon by the respondent is in the context of different facts and is of no help to the respondent.

12. Learned counsel for the respondent has next contended that once enquiry proceedings had been declared unfair no reliance could be placed on the enquiry proceedings and on the statements of the witness recorded during the enquiry. Reliance has been placed on *Neeta Kaplesh vs. Presiding Officer, Labour Court & Another* (1999) 1 SCC 517. I do not find much force in this contention either. The facts involved in *Neeta* (Supra) are totally different. In the said case, enquiry was held vitiated. Thereafter, Industrial Adjudicator proceeded to decide the misconduct himself but the management chose not to lead any evidence. Instead, it sought to place reliance on the evidence already recorded during the enquiry proceedings. In this context, it was held that once the enquiry was held vitiated enquiry

proceedings cannot be read against the delinquent and management has to lead evidence before the Labour Court to justify its action. In this case, Industrial Adjudicator has not placed reliance on the enquiry proceedings. Petitioner has led evidence before the Industrial Adjudicator afresh.

13. In Divisional Controller, N.E.K.R.T.C. vs. H. Amaresh (2006) III LLJ 232 SC, Supreme Court held thus “when an employee is found guilty of pilferage or of misappropriating the Corporation’s funds, there is nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of dismissal. In such cases, there is no place for generosity or misplaced sympathy on the part of the judicial forums and interfering therefore with the quantum of punishment”. In Delhi Transport Corporation vs. Shri Gian Chand 153 (2008) DLT 360, this Court held thus “where person deals with public money or engages in financial transactions or acts in a fiduciary capacity, highest degree of integrity and trustworthiness is a must. In present case, since respondent has defined confidence of petitioner by taking full fare from a group of 11 passengers and by not issuing tickets to them, for that reason, order of his removal from service is fully justified and this Court would not like to interfere in order of punishment.

14. In the light of above discussions, I am of the view that Award is liable to be set aside. Accordingly, writ petition is allowed and impugned Award is set aside. No order as to costs.

A.K. PATHAK, J.

OCTOBER 11, 2013

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