

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11604 of 2006

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Mahendra Sahni, son of Late Bansidhar Sahani, resident of village- Ratwara, P.S.
Aurai, District- Muzaffarpur

.... Petitioner

Versus

The Bihar State Road Transport Corporation through its Chairman-cum- Managing
Director, Birchand Patel Marg, Patna

.... Respondent

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Appearance :

For the Petitioner/s : Mr. Braj Nandan Tiwary

For the Respondent/s : Mr. MADAN MOHAN

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 07-09-2015

The present writ petition under Article 226 of the Constitution of India was filed with a prayer to quash an Award dated 20.12.2005 published on 27.02.2006, whereby the order of dismissal passed on 30.11.1984 by the Management of the Bihar State Road Transport Corporation against the petitioner was confirmed. The petitioner was functioning as conductor on 30.04.1984 in a bus of Bihar State Road Transport Corporation, bearing Registration No.BHF-3513 and on the said date the bus was checked by a checking team of two officials. During checking out of 35 passengers, nine passengers were found travelling without ticket. At the time of inspection, this fact also was noticed that the petitioner had pre-realised ticket charge from six passengers, however no ticket was issued. Subsequently, on the basis of said report/ allegation, the



petitioner was put under suspension on 02.05.1984 and thereafter, a domestic enquiry was initiated against the petitioner. Finally, on the basis of enquiry report, the petitioner was held guilty and, as such, the petitioner was dismissed from service on 30.11.1984. After the order of dismissal, the Bihar State Road Transport Corporation filed an application under Section 33(2) (b) of the Industrial Disputes Act, 1947 before Industrial Tribunal, Patna for approval of dismissal of the petitioner, since prior to the occurrence, in which the petitioner was held guilty, a dispute vide Reference Case no.27/82 was already pending. The Industrial Tribunal, Patna accorded the approval. Thereafter, the petitioner aggrieved with the approval granted by the Industrial Tribunal, Patna, approached this Court invoking its writ jurisdiction vide C.W.J.C. No.2106 of 1987. The said writ petition stood dismissed on 06.01.1988. Thereafter, the petitioner raised a dispute. After failure of conciliation, a reference was made by the Government of Bihar vide Notification no. 3/D1-13034/92-L& E-673 dated 04.05.1993 under Section- 10(1)(c) of the Industrial Dispute Act 1947, for adjudication :

“Whether the termination of service of Sri Mahendra Sahani, Conductor, Bihar State Road Transport Corporation was proper? If not, whether he was required to be reinstated on work and/or he be given compensation?”



2. In reference case, written statements were filed by the petitioner as well as the Management. The petitioner raised several grounds for passing award in its favour. Besides this, he also produced certain documents, which were got exhibited. Similarly the Tribunal also examined number of documents of the Management. The learned Tribunal besides this noticed two important facts; firstly the dismissal of the petitioner after being approved by the Industrial Tribunal Patna, the petitioner had filed a writ petition before this Court, which stood dismissed and secondly, the service history of the petitioner suggests that prior to the occurrence in the present case, the petitioner was thrice put under suspension and in the proceeding, he was imposed fine. The learned Tribunal also noticed the fact that the petitioner in his written statement had accepted that at the time of checking, nine passengers were travelling who were having no valid ticket. The learned Tribunal rejected the plea of the petitioner that nine passengers were travelling without ticket forcefully and the petitioner/ workman had tried to realize the fare from them, but he failed to realize.

3. After noticing all the facts including aforesaid two important facts, the learned Tribunal prepared an award against the workman/petitioner. Aggrieved with the order of the Tribunal, the petitioner approached this Court by filing the present writ petition.



4. Sri Saurendra Pandey, learned counsel, who was assisted by Sri Braj Nandan Tiwary, learned counsel for the petitioner has argued that it is true that earlier after approval of dismissal of the petitioner by the learned Industrial Tribunal, Patna, the petitioner had filed a writ petition, which stood dismissed. However, the said writ petition was not exactly for the relief, which has been sought for in the present writ petition and such rejection of the earlier writ petition may not be treated as bar for pursuing the present proceeding. He further submits that in the locality , where the bus was plying on number of occasions it was noticed that unauthorized passengers forcefully occupied Road Transport Bus and in that view of the matter, failure to realize tickets from nine passengers out of 35 passengers may not be treated as misconduct on the part of the petitioner. Moreover, he submits that the charges were not so serious warranting dismissal of the petitioner. However, learned counsel for the petitioner has not disputed the fact that prior to domestic enquiry in the present case, the petitioner was earlier thrice put under suspension and he was imposed fine.

5. Sri P.K.Verma, learned Senior Counsel appearing on behalf of Respondent/Bihar State Road Transport Corporation submits that this writ court may not interfere with the matter firstly on the ground that dismissal order was passed long back in the year



1984. He further submits that the dismissal order was approved by the Industrial Tribunal, Patna and, the said approval was got sealed by this Court. After the approval of dismissal by the Industrial Tribunal, Patna the writ petitioner preferred a writ petition vide C.W.J.C.No.2106 of 1987, which stood dismissed. Accordingly, after dismissal of C.W.J.C. No.2106 of 1987, there was no point for the Tribunal in Reference Case no.2/93 to further adjudicate in favour of the petitioner. He submits that so far the conduct of petitioner is concerned, earlier thrice he was put under suspension on almost similar allegation, which suggests that the petitioner was habitually committing such misconduct and, as such save and except passing order of dismissal, no other punishment was required to be imposed in case of the petitioner. He has specifically referred to paragraph-16 of the award passed in Reference Case no.2/93. He submits that firstly on 9.01.1979 during checking of a bus, in which the petitioner was conductor, thirteen passengers were found without ticket out of 18 passengers. He was put under suspension and finally released with a fine of Rs.50/- and “Severe Censure” was recorded in his service book. Again on 22.08.1980 during checking he did not produce any document and further allowed the unbooked passengers to get down from the bus. In the said case also, he was put under suspension and fine of Rs.100/- was realized and “Severe Warning”



was recorded in the ACR of the petitioner. Again on 21.01.1984, six passengers without ticket were found in the petitioner's bus. In the said case also, he was put under suspension and a fine of Rs. 300/- was realized and lastly in the present case i.e. on 30.04.1984 out of 35 passengers, nine were found travelling without ticket. He further submits that in domestic enquiry, the petitioner was given adequate opportunity and the petitioner himself had cross-examined the witnesses, who were produced on behalf of the Management.

6. In the present case, the Court has noticed two important facts (i) after dismissal of the petitioner, same was firstly approved by the Industrial Tribunal, Patna. The said approval was assailed by the petitioner before this Court by way of filing a writ petition vide C.W.J.C. No.2106 of 1987. The writ petition filed by the petitioner was dismissed by this Court. Meaning thereby that dismissal of the petitioner from service of Bihar State Road Transport Corporation got sealed by this Court. Once the dismissal order was got approved by this Court, it was difficult for the Industrial Tribunal to adjudicate contrary to the said order. Similar difficulty is being faced by this Court. The dismissal order was earlier approved by this Court and, as such, it would be difficult for this Court to examine the same. Secondly, the conduct of the petitioner, which was noticed by the Tribunal also, suggests that the

petitioner was habitually committing such misconduct. It has also been noticed that in the domestic enquiry, the petitioner was given adequate opportunity to cross examine the witnesses. In that view of the matter I do not find any ground to interfere with the award.

7. The writ petition stands dismissed.

(Rakesh Kumar, J)

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