

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 13TH DAY OF JANUARY 2015/23RD POUSHA, 1936

WA.No. 2269 of 2012 () IN WP(C).30901/2011

AGAINST THE ORDER/JUDGMENT IN WP(C) 30901/2011 of HIGH COURT
OF KERALA DATED 18-06-2012

APPELLANT(S)/2ND RESPONDENT:

KERALA STATE ROAD TRANSPORT CORPORATION
REPRESENTED BY ITS MANAGING DIRECTOR
TRANSPORT BHAVAN, FORT.P.O
THIRUVANANTHAPURAM-695 023.

BY ADVS.SRI.M.GOPIKRISHNAN NAMBIAR, SC, KSRTC

RESPONDENT(S)/PETITIONER:

R.SAJI KUMAR, AGED 54 YEARS
POURNAMI, KUTTOOR.P.O, THIRUVALLA
INSPECTOR-IN-CHARGE
KERALA STATE ROAD TRANSPORT CORPORATION
EDATHUA DEPOT, EDATHUA-689 573.

BY ADV. SRI.P.S.PRADEEP
BY SRI.R.SANTHOSH BABU

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 13-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B.RADHAKRISHNAN &
K.HARILAL, JJ.

.....
W.A.No.2269 of 2012
.....

Dated this the 13th day of January, 2015.

J U D G M E N T

Thottathil B.Radhakrishnan, J.

- 1.Kerala State Road Transport Corporation is in appeal. It challenges the decision of the learned single Judge interfering with a punishment order and disciplinary proceedings.
- 2.We have heard the learned counsel for the appellant and the learned counsel for the respondent, who has since retired from the service of the KSRTC.
- 3.The respondent was conductor of a bus, which was on a trip on 06.10.2004. A passenger boarded the bus from Kottarakkara to alight at Vembayam. He gave a hundred rupee note to the conductor and sought a ticket, the value of which was ₹23/-. He was issued with the ticket, but balance was not tendered. When the bus reached Vembayam, the passenger requested for the

balance. The conductor refused the amount stating that there is shortage of change. Going by the materials seen by the revisional authority, which is the appellate Tribunal, the passenger managed to give ₹30/- again to the conductor. But the conductor gave him only ₹7/- as balance instead of ₹107/-. It is the allegation that the passenger was abused by the conductor in the midst of other passengers and the passenger who was to get the balance amount had to travel from Vembayam to Thiruvananthapuram Central Station to get the balance and for that transit he had to buy another ticket of worth ₹9/-.

4. The aforesaid fact situation led to the disciplinary proceedings with an enquiry being conducted. The defence set up by the conductor in the disciplinary proceedings was that the bus was over crowded and that he forgot to tender the balance. Later on, he appeared to say, even before us, that two other employees, who were in the same bus but were not on duty, had intervened and, ultimately, the amount was returned with a word of apology. We pause here to wonder for ourselves trying to visualise a frame

in which we can see an employee of KSRTC offering a word of 'apology' to a passenger!

5. The conductor was compulsorily retired from service. He challenged it before the revisional authority, which is the appellate Tribunal. The Tribunal found that the fact that the passenger in question was in the bus and had travelled is not disputed; the further fact that he tendered ₹100/- and that he was not given the balance is also not disputed; and that the plea of the conductor about involvement of other personnel clearly shows that the material evidence clinchingly proved the allegation against the conductor. The fact that the passenger, who had initially made the complaint on account of being deprived of his money, was not examined was of no consequence, in the view of the appellate Tribunal. The Tribunal, however, in our view, quite magnanimously tapered down the punishment by holding that the punishment of compulsory retirement is on the higher side and on scales of proportionality what ought to have been handed down is only barring of three increments with cumulative effect.

That order was handed down by the appellate Tribunal on 17.06.2006. In 2011, the conductor filed writ petition from which this appeal arises. The learned single Judge has set aside the entire proceedings holding that non-examination of the passenger amounts to violation of natural justice. The learned single Judge relied on the decision of the Apex Court in Hardwari Lal v. State of U.P. and Others [(1999) 8 SCC 582].

6. While the learned counsel for the KSRTC argued that the learned single Judge had exceeded jurisdiction in setting aside the entire disciplinary proceedings, particularly when the punishment was tapered down by the revisional authority (appellate Tribunal), the learned counsel for the respondent conductor argued that there is no ground to interfere in appeal, more particularly, when the conductor has since superannuated from service.

7. Hardwari Lal (supra) dealt with a case where one policeman allegedly assaulted another policeman under the influence of liquor and yet another policeman was stated to be a witness to

that incident. Neither the victim of the assault nor the so-called witness was examined in the enquiry, and therefore, the Honourable Apex Court did not countenance the contention that there were other materials on the basis of which the disciplinary proceedings could be concluded against the delinquent. The facts of the case clearly indicate that the reasoning process of that judgment holding that natural justice was violated in that case cannot be applied as a precedent to decide the case in hand. We are unable to concur with the learned single Judge in that regard.

8. Be that as it may, as rightly noted by the appellate Tribunal, the facts that the passenger had boarded the bus, had tendered the amount, but was not paid the balance, etc. were matters which stood even by admissions or by collateral materials. In our view, it would be too farfetched to say that the ultimate victim of the transaction, that is the passenger of a KSRTC bus, was rightly not summoned to support the disciplinary proceedings. We say this because, if such a stand is taken, no one would be interested even

to put up a complaint when there are such violations in public sector bodies, who deal with public utility services. Non-examination of the passenger in the case in hand was of no consequence at all. We, therefore, do not find our way to sustain the impugned judgment of the learned single Judge.

In the result, this writ appeal is allowed setting aside the impugned judgment and dismissing WP(C)No.30901 of 2011. We, however, dissuade ourselves from imposing any order of costs on the respondent.

(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

(K.HARILAL, JUDGE)