

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ Judgment delivered on: December 23, 2015

% **W.P.(C) No.6414/2004**

DELHI TRANSPORT CORPORATION Petitioner
Through: Mr. Sarfaraz Khan and Mr. Atul Rahman,
Advocates.

versus

SHISH PAL SINGHRespondent
Through: Mr. Prashant Singh, Advocate.

**CORAM:
HON'BLE MR. JUSTICE I.S.MEHTA**

JUDGMENT

I. S. MEHTA, J.

1. The present petitioner, i.e., Delhi Transport Corporation (*hereinafter referred as the 'petitioner-management'*) has preferred the present Writ Petition under Articles 226 of the Constitution of India for quashing and setting aside the impugned orders dated 07.02.2003 and 03.06.2003 passed by the Presiding Officer, Industrial Tribunal-II, Karkardooma Courts, Delhi (*hereinafter referred to as the 'learned Labour Court/Industrial Adjudicator'*) in O.P. No. 313/94 under Section 33(2)(b) of Industrial Disputes Act, 1947.

2. The brief facts of the case as alleged by the petitioner-management are that the respondent-workman, i.e., Shri Shish Pal was appointed as retainer crew conductor vide letter No. PLD (2)/78/8271 dated 07.07.1978. On 08.01.1993 while the respondent-workman was on official duty on bus No. 9649 on route No 305, he was checked by the checking staff of the petitioner-management at 'Fatehpuri' and it was found that:

- (i) he received full fare from passengers but issued tickets of lesser denomination,
- (ii) the sold tickets were found from his hand block of tickets,
- (iii) on physical checking, cash was found in excess by Rs. 14.25

3. Consequently, on the basis of the report received by the checking officials, the respondent-workman, i.e., Shri Shish Pal was served with a charge-sheet dated 03.02.1993. The then disciplinary authority on not finding any satisfactory reply initiated an enquiry against him through the enquiry officer, i.e., Shri A.S. Bains, who held the respondent-workman guilty of the charges levied against him and forwarded the case to the Depot Manager for punishing the respondent-workman. It was found that the irregularities so committed by the respondent-workman amounted to misconduct within the meaning of paras 19 (b), (f), (h) and (m) of the Standing Orders governing the conduct of Delhi Transport Corporation (D.T.C.) employees. The disciplinary authority removed the respondent

from service vide order dated 30.09.1994 and remitted full one month's wages to him by way of money order vide receipt No. 1453 and 1454 dated 30.09.1994. The petitioner-management, i.e., D.T.C. filed an application under Section 33(2)(b) of the Industrial Disputes Act, 1947 before the Industrial Adjudicator for approval of its action against the respondent-workman. However, the respondent-workman denied the allegations so put forward against him.

4. On the pleadings before the Industrial Adjudicator, the preliminary issue, i.e., *“Whether the applicant held a legal and valid enquiry against the respondent according to principles of natural justice?(OPA)”* was framed and after giving fair opportunities to both the parties, the said issue was decided in favour of the respondent-workman and against the petitioner-management on 07.02.2003.

5. The learned Industrial Adjudicator thereafter on the basis of the pleadings of the parties further framed three issues, i.e.,

“(1) Whether the respondent committed the misconduct as alleged against him?”

“(2) Whether the petitioner remitted full one month's wage to respondent at the time of his dismissal from service?”

“(3) Relief”

and the learned Industrial Adjudicator after giving fair opportunity of evidence on the aforesaid issues to both the parties passed the impugned order dated 03.06.2003. Hence, giving rise to the present Writ Petition.

6. The learned counsel Shri Sarfaraz Khan appearing on behalf of the petitioner-management, i.e., D.T.C. has submitted that the learned Industrial Adjudicator while passing the order under Section 33(2)(b) of the Industrial Disputes Act, 1947 exceeded in its jurisdiction. The power under Section 33(2)(b) of the aforesaid Act is very limited and the learned Industrial Adjudicator while deciding the petition under Section 33(2)(b) of the Act, acted as if he was dealing with a reference under Section 10 of the Industrial Disputes Act, 1947. The order dated 07.02.2003 is a cryptic and non-speaking order. The learned Industrial Adjudicator while writing the order dated 07.02.2003 has not given any independent finding, which manifests that the order itself is cryptic in nature. The learned counsel has further submitted that the petitioner-management while holding the enquiry against the respondent-workman has duly followed the principles of natural justice. The learned counsel has further pointed out that the non-supply of the copy of the statement of passenger witnesses will not benefit the respondent-workman at this stage as the same was not asked at the stage of enquiry carried out against him and further during the cross-examination, his admission to the extent that the statement was not

recorded at the back of the challan *ipso facto* does not give any benefit to the respondent-workman. The respondent-workman's non-examination of the passenger witnesses during the enquiry proceedings also does not go against the petitioner-management as the passenger witnesses do not hold the good permanent address. Despite the best efforts of the petitioner-management, the passenger witnesses could not be examined. However, the misconduct could be proved through documentary evidence.

7. Instant is the case where the documentary evidence was available before the enquiry officer. Moreover, the complete file of the enquiry proceedings was well before the learned Industrial Adjudicator and he was duty bound to look into the same particularly where carrying out of the enquiry proceedings is not being disputed by the respondent-workman. The petitioner-management relied upon the following judgments:

- (a) *Assistant Commissioner, Commercial Tax Department, Works Contract & Leasing, Kota vs. Shukla & Brothers*, (2010) 4 SCC 785.
- (b) *State of Haryana and Another vs. Rattan Singh*, (1977) 2 SCC 491.
- (c) *K.K. Shrivastava and Ors vs. Bhupendra Kumar Jain and Ors*, (1977) 2 SCC 494.

8. On the other hand, the learned counsel on behalf of the respondent-workman denied the allegations and submitted that the respondent-workman has not misconducted himself during his official duty and is falsely implicated by the concerned officials and relied upon the following judgments:

(a) State of Haryana vs. Rattan Singh, 1977 (1) SLR 750.

(b) Lalla Ram vs. Management of DCM Chemical Works & Anr. (1978) 3 SCC 1.

9. The facts on record alleges that the inspecting team, i.e., Shri Prem Prakash Goyal, Shri Karan Singh and Shri Harishankar Gupta intercepted the bus No. 9649 on 08.01.1993 at 'Fatehpuri' and while checking, the inspecting team found that the respondent-workman, i.e., Shri Shish Pal (i) has collected full fare and issued tickets of lesser denomination of Re.1 each, (ii) found 13 tickets in hand block and (iii) cash was found in excess by Rs. 14.25 and when he was asked to sign on the inspecting report at the spot, he refused. On that account, Shri Meher Chand, badge No.16906 was substituted against the respondent-workman. The said report resulted into the charge-sheet and enquiry proceedings were initiated against him by the enquiry officer Shri A.S. Bains who found him guilty of misconduct.

10. The alleged misconduct of the respondent-workman was that:

- (i) the respondent-workman did not issue tickets properly to the passengers,
- (ii) the respondent-workman was in possession of the hand block of tickets, and
- (iii) on calculating the fare, Rs. 14.25 was found in excess and on his refusal to sign the report, he was deboarded from the bus and was replaced by Shri Meher Chand, badge No. 16906.

12. The facts as alleged shows that Shri Prem Prakash Goyal, Shri Karan Singh and Shri Harishankar Gupta were witnesses to the incident. The alleged termination was effected as a result of the report of the checking staff, i.e., Shri Prem Prakash Goyal, Shri Karan Singh and Shri Hrishankar Gupta. The very foundation of the termination of the respondent-workman is the accusation as alleged aforesaid, which puts the petitioner-management under legal obligation under Section 33(2)(b) of the Industrial Disputes Act, 1947 for approval of their action being valid under the provisions of law.

13. The learned Industrial Adjudicator has given due opportunity to prove the enquiry proceedings carried out by the petitioner-management against the respondent-workman, but despite the opportunity given to the petitioner-management, none of the witnesses of the incident, i.e., Shri Prem Prakash Goyal, Shri Karan Singh, Shri Harishankar Gupta and Shri

Meher Chand were examined, but the petitioner-management examined AW1, i.e., Shri Qamar Alam, who is not a witness to the incident or having no personal knowledge and it was because of this point that the learned Industrial Adjudicator lost confidence in the enquiry proceedings. Consequently, the learned Industrial Adjudicator has given an opportunity to the petitioner-management to prove the misconduct in his presence.

14. The judgement relied upon by the petitioner-management in the cases of, *Assistant Commissioner, Commercial Tax Department, Works Contract & Leasing, Kota vs. Shukla & Brothers (Supra)*, *State of Haryana and Another vs. Rattan Singh (Supra)* and *K.K. Shrivastava and Ors vs. Bhupendra Kumar Jain and Ors (Supra)* are not helpful to the petitioner-management as they themselves did not prefer to challenge the said order dated 07.02.1993. Rather, they preferred to participate in proving the misconduct of the respondent-workman before the learned Industrial Adjudicator. Moreover, the burden of proving the enquiry always rests on the petitioner-management under Section 33(2)(b) of the Industrial Disputes Act, 1947.

15. The contention of the learned counsel for the petitioner-management that the impugned order dated 07.02.1993 is a cryptic and non-speaking order and the learned Industrial Adjudicator has not given independent findings loses its significance as it was the petitioner-

management who actively participated in the proceedings before the learned Industrial Adjudicator for proving the misconduct committed by the respondent-workman on 08.01.1993 without challenging the prior order dated 07.02.1993 passed by the learned Industrial Adjudicator independently.

16. Further, the learned Industrial Adjudicator framed issues on 07.02.1993 and gave opportunity to the parties to prove the alleged misconduct in his presence. The petitioner-management further preferred to examine the same person, i.e., Shri Qamar Aalam to be witness on behalf of the petitioner-management who himself was not a witness to the incident nor had personal knowledge of the same. There is no explanation on the record as to why the witnesses of the incident even being the department officers, i.e., Shri Prem Prakash Goyal, Shri Karan Singh and Shri Harishankar Gupta had not been examined on both the occasions. Consequently, on both the occasions before the learned Industrial Adjudicator, the petitioner-management failed to prove the misconduct against the respondent-workman for want of evidence.

17. The contention of the learned counsel of the petitioner-management that the learned Industrial Adjudicator exceeded in its jurisdiction while dealing with the petition under Section 33(2)(b) of the Industrial Disputes Act, 1947 is without force.

18. Instant is the case where the petitioner-management failed to discharge the onus of bringing the substantive evidence *qua* against the respondent-workman. The statement of AW1, i.e., Shri Qamar Alam loses confidence in presence of his own admission that he has got no personal knowledge nor he was a witness to the incident, ultimately resulting in zero evidence *qua* against the respondent-workman for the purposes of the incident, i.e., misconduct dated 08.01.1993 and the said admission of Shri Qamar Alam is reproduced as under:

“...It is correct that I do not have any personal knowledge about the allegations levelled against the respondent. It is also correct that I do not have personal knowledge with regard to sending of one month’s salary through the money order....”

Consequently, the proceeding carried out by the learned Industrial Adjudicator is just and proper and does not indicate exceeding its jurisdiction.

19. At common law, it is assumed that employers and employees have a certain fundamental reciprocal duties in their contractual relationship. On the one hand, all the employees owe to their employer to serve the employer faithfully and honestly and to exercise skill and care in the performance of work. In turn, the employers have an obligation to pay wages for work performed or to provide work and to provide safe work,

to act in good faith towards the employee and not to act in such a way as to undermine the trust and confidence of the employment relationship and it is because of this reason, the legislature enacted the provision of Section 33 (2)(b) of the Industrial Disputes Act, 1947 to maintain the status quo between the management and the workers and further to safeguard the workmen from the victimisation of the unlawful acts of the management.

20. As discussed above, this Court while exercising its power of judicial review under Article 226 of the Constitution of India finds no merit in the present Writ Petition and there is no illegality or perversity in the impugned orders dated 07.02.2003 and 03.06.2003. Consequently, the same is dismissed.

The Lower Court record be sent back along with one copy of this judgment. No orders as to costs.

I.S.MEHTA, J

DECEMBER 23, 2015

j