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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition No. 867 of 2001

Pramod Kumar Mishra, aged about 38 years, S/o Late Dr. C.B. Mishra, Posted in the post of conductor, Raipur Depot No.1, MPS RTC

---- Petitioner

Versus

1. M.P. State Road Transport Corporation, Through Divisional Manager, Bilaspur (C.G.)
2. Industrial Court, 16-H.I.G. Shanker Nagar, Raipur.
3. C.G. State Infrastructure Development Corporation, Through the Managing Director (Home) (Transport Section) Raipur (C.G.)

---- Respondents

For Petitioner : Mr. B.D. Guru, Advocate
For Respondents : None appears

S.B.:Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

18/10/2016

Heard.

This petition is directed against order dated 30.04.2001 passed by the Industrial Court whereby the order dated 02.04.1996 of the Labour Court has been set aside and the punishment imposed in departmental enquiry is affirmed.

2. Relevant facts of the case giving rise to the present petition are that the petitioner, at the relevant time, was working as conductor in the services of the then M.P. State Road Transport Corporation. A department enquiry was initiated against the petitioner by issuance of charge-sheet on the allegation that when the bus of which the petitioner was conductor, was inspected at about 7:30 a.m. on 23.04.1988, en-route, five passengers and five luggages were being found carried without ticket. The departmental enquiry eventually culminated in order of dismissal passed by the employer



on 28.04.1990. The order passed in departmental enquiry was assailed by filing a petition under M.P.I.R. Act, 1996 before the Labour Court. Vide order dated 02.04.1996, the Labour Court though held that the departmental enquiry did not suffer from any procedural defect, it interfered with the finding on the ground that it was perverse and charges could not be said to be proved. The petitioner was reinstated in service though, without back wages.

3. Aggrieved by the order of reinstatement and aggrieved by the part of the order by which back wages were denied, the employer and employee both preferred appeal before the Industrial Court.

4. The Industrial Court set aside the order of the Labour Court and restored the order of dismissal from service passed by the employer giving rise to this petition.

5. Submission of learned counsel for the petitioner is that in the departmental enquiry, the prosecution, itself, came out with contradictory evidence. He submits that the first document prepared upon inspection of the vehicle was Panchnama (Ex.D/3). This Panchnama (Ex.D/3) clearly recorded that the vehicle was inspected in get down position. However, later on, the inspection report (Ex.D/2) recorded that the inspection was carried out by stopping the vehicle en-route. Therefore, in view of this serious contradiction, the entire case of the prosecution failed. Further submission is that the oral evidence led by the prosecution was only to prove the inspection and the officer who conducted inspection did not dispute the correctness of Panchnama (Ex.D/3). Therefore, on one hand, the prosecution came out with Panchnama (Ex.D/3) which recorded that the inspection was carried out in get down position and on the other hand came out with subsequently prepared inspection report (Ex.D/2) and oral evidence recorded during departmental enquiry that the inspection was carried out by stopping the vehicle en-route. Therefore, the oral and documentary evidence prepared subsequent to the preparation of Panchnama were rightly rejected by the Labour Court. The Industrial Court committed illegality in ignoring the prosecution's own document Panchnama (Ex.D/3) which clearly recorded that at the time of inspection, vehicle was standing in get down position. Even if, the petitioner did not cross-examine the departmental witness who was examined in the domestic enquiry that would not mean that the Panchnama has been

denied by the prosecution.

6. After going through the order passed by the Labour Court as well as Industrial Court, I find that both the Labour Court as well as Industrial Court have taken into consideration the prosecution's document (Ex.D/3) which is a panchnama of inspection prepared by Inspecting Authority at the time of inspection of the vehicle. It is reflected that the panchnama contains recital that the vehicle was checked when it was in get down position, this would mean that at the time of checking, the vehicle was not running on any route but it was standing that would further mean that the passengers were either boarding the vehicle or disboarding. This was the first document of inspection prepared by the Inspecting Authority. This document has been prepared by the officer of the employer and is not a document prepared either by the petitioner employee or by any other person. The inspection report (Ex.D/2) is a subsequent document prepared after the inspection was made and when the case was sent for further action. Similarly, the oral evidence was led by the prosecution before the Enquiry Officer subsequent to the aforesaid two documents. Therefore, it would be seen that at the time very first occasion when the vehicle was inspected and the Panchnama was prepared, it was clearly recorded in the document that the vehicle was checked in get down position. Other documentary and oral evidence of the prosecution are only subsequent to preparation of the first documentary evidence of the fact of inspection of the vehicle. The Labour Court therefore rightly appreciated the evidence of record to hold that in view of such a contradictory material placed by the prosecution, itself, charges could not be said to be validly proved.

7. The Industrial Court, however, swayed only by the fact that during departmental enquiry the petitioner did not cross-examine the prosecution witness, proceeded to hold that the Panchnama (Ex.D/3) is not very important.

8. In the considered opinion of this Court, this approach of the Industrial Court was clearly perverse. The only affect of petitioner not cross-examining the oral evidence would mean that the oral evidence as it stands, is required to be appreciated. However, it would not mean that all other evidence appearing on record are liable to be ignored from consideration while marshaling evidence and assessing the evidenciary value of oral and documentary evidence on record. At no point of time, the

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prosecution came out with any justification to show that the Panchnama was wrongly prepared or falsely prepared. In fact, Panchnama is the document of the prosecution itself. If that be so, it being the first document in point of time and prepared on the spot and at the time of inspection, carried greater evidentiary value than all documents which were prepared subsequent to Panchnama. In fact, the inspection report ought to be prepared strictly on the Panchnama and anything contained in the inspection report, which is contrary to what has been stated in the Panchnama was liable to be rejected. The oral evidence supported subsequently prepared inspection report but completely contrary to the first document i.e. Panchnama (Ex.D/3) which was rightly disbelieved by the Labour Court.

9. Therefore, as an upshot of the above discussion, I have to hold that finding recorded by the Industrial Court is clearly perverse. True, it is that in a departmental enquiry, the degree of proof required is not beyond reasonable doubt as in criminal cases, nevertheless, the requirement of law is that the charges should be proved on the basis of the application of principal of preponderance of probabilities. This requires weighing the evidence on record by applying well settled principles of appreciation on evidence. The reason assigned by the Industrial Court to ignore prosecution's own document, the Panchnama (Ex.D/3), is completely unacceptable.

10. In the result, the order passed by the Industrial Court cannot be sustained in law and is accordingly set aside restoring the order of the Labour Court directing reinstatement of the petitioner in service.

11. In view of the fact that on the basis of interim order, the petitioner is continuing in service, I do not consider any need to pass any further order in the matter of back wages.

12. The petition is accordingly partly allowed in the manner and to the extent indicated above.

Sd/-
Manindra Mohan Shrivastava
Judge