

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

CWP No.8427 of 2012 (O&M)  
Date of Decision:-09.12.2016.

The Divisional Manager, Chandigarh Transport Undertaking, Chandigarh

.....Petitioner

Versus

The Presiding Officer, Industrial Tribunal & Labour Court, Union Territory  
Chandigarh and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI**

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Present: Mr. I.P.S. Doabia, Advocate for the petitioner.

Mr. Namit Gautam, Advocate for respondent No.2.

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**P.B. BAJANTHRI, J. (Oral)**

1.) In the instant writ petition, the petitioner has questioned the award passed by the Labour Court dated 20.7.2010. The respondent-workman is a Conductor. While he was on duty on 15.7.1995 with Bus No.CH-01-G-5084 of Route No.43 at about 19.45 hrs., his bus was stopped for inspection at Bhiwani Octroi. The inspecting squad found that there were 34 passengers in the bus who had boarded the bus from Rohtak to Bhiwani and they had paid a sum of ₹ 374/- @ ₹ 11/- each as fare to the respondent-Conductor. The inspecting squad found that the respondent has tampered the denomination of ₹ 0.6 tickets to ₹ 10.60 by inserting 1 before 0 with his own hand and likewise denomination tickets of ₹ 1.25 to ₹ 7.25.

Thus, in order to defraud a sum of ₹ 331/-, the respondent has tampered the

record. Based on the allegations, he was charge-sheeted on 4.10.1995 and the inquiry was concluded in imposing the penalty of reduction to the minimum of time scale for a period of 5 years and his suspension period has been treated as suspension only to the extent of payment of subsistence allowance. The respondent raised an industrial dispute. The Labour Court passed the award while setting aside the order dated 4.6.1999 on the score that inquiry is vitiated for the reasons that recording the statement of passengers in the bus is not forthcoming, counting of cash-in-hand in the hands of respondent-Conductor was not conducted and further reporting of inspecting squad in relation to the manipulation of tickets and defrauding a sum of ₹ 331/- was after two days and the explanation given by the Inspector is that he remained busy due to Divisional Manager duty.

2.) Learned counsel for the petitioner submitted that recording the statement of the passengers is not a ground to allow the claim of the respondent-Conductor in view of the Supreme Court decision passed in ***U.P. State Road Transport Corporation Vs. Suresh Chand Sharma*** reported in 2010(5) SLR 128 in which it is held as under:-

*“12. The High Court has decided the Writ Petition only on the ground that the passengers found without tickets, had not been examined and the cash with the employee was not checked. No other reasoning has been given whatsoever by the Court.*

*13. In State of Haryana & Anr. Vs. Rattan Singh AIR 1977 SC 1512 : [1977(1) SLR 750 (SC)], this Court has categorically held that in a domestic enquiry, complicated principles and procedure laid down in the Code of Civil Procedure, 1908 and the Indian Evidence Act, 1872 do not apply. The only right of a delinquent employee is that he must be informed as to what are the*

*charges against him and he must be given full opportunity to defend himself on the said charges. However, the Court rejected the contention that enquiry report stood vitiated for not recording the statement of the passengers who were found travelling without ticket. The Court held as under:*

*"We cannot hold that merely because statements of passengers were not recorded the order that followed was invalid. Likewise, the re-evaluation of the evidence on the strength of co-conductor's testimony is a matter not for the court but for the administrative tribunal. In conclusion, we do not think courts below were right in over-turning the finding of the domestic tribunal."*

*20. We do not find any force in the submissions made by Dr. J.N. Dubey, learned Senior counsel for the employee that for embezzlement of such a petty amount, punishment of dismissal could not be justified for the reason that it is not the amount embezzled by a delinquent employee but the mens rea to mis- appropriate the public money."*

It was further submitted that the Labour Court allowed the claim of the respondent-Conductor on the ground that statement of the passengers has not been recorded. On this count, the award passed by the Labour Court is contrary to Supreme Court decision. Hence, it is liable to be set aside.

3.) On the other hand, learned counsel for the respondent-Conductor submitted that the Labour Court not only taken into consideration regarding non-recording the statement of passengers but also

which is mandatory to find out the misappropriation or fraud. It was further submitted that after inspection on 15.7.1995, the same was not reported by the Inspectors immediately to the Competent Authority to take action. They have taken two days time to inform the concerned Manager for taking further action in the matter. Therefore, the same has been taken note of while setting aside the punishment order dated 4.6.1999 and there is no infirmity so as to interfere with the award passed by the Labour Court dated 27.7.2010.

4.) Heard learned counsel for the parties.

5.) Short question for consideration in the instant petition is whether the Labour Court has committed error in taking the fact that non-recording the statement of the passengers in the bus vitiates Labour Court award or not which is the sole contention of the petitioner in the present case. Having regard to the decision of the Apex Court in U.P. State Road Transport Corporation (supra) wherein it is held that non-recording of the statement of the passengers do not vitiate the inquiry. The other two issues which have been taken note by the Labour Court i.e. relating to non counting of cash-in-hand of the respondent when the Inspecting squad inspected the bus and two days' delay in informing of the inspection to the Manager are concerned, necessary for the reasons that to find out the defraud of ₹ 331/- as contended by the Inspectors, it is necessary to count the cash- in-hand of the conductor-respondent workman which has not been done otherwise defrauding of Rs.331/- cannot be proved. Admittedly, there is delay of 2 days in reporting of the inspection to the Manager. The petitioners have no say in respect of counting of cash-in-hand and delay is

Manager duty. It is a serious allegation made against the respondent-workman relating to defrauding the Corporation money. Therefore, it was the duty of the Inspector to report the inspection and defrauding immediately. Delay of two days would be fatal. Therefore, even if the contention in respect of non-counting of cash-in-hand and delay is concerned, rightly the Labour Court has set aside the order dated 4.6.1999. Hence, no interference is called for.

6.) Writ petition stands dismissed.

**(P.B. BAJANTHRI)**  
**JUDGE**

**December 09, 2016.**

*sandeep sethi*

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.