

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

+ Judgment delivered on: February 12, 2016

% **W.P.(C) No. 1063/2004**

DELHI TRANSPORT CORPORATION Petitioner

Through: Mr. Akshay Bhardwaj and Mr. Manish
Garg, Advocates.

versus

SHRI RAJBIR SINGH Respondents

Through: Ms. Rashmi Singh and Ms. Neelam
Tiwari, Advocates.

CORAM:

HON'BLE MR. JUSTICE I.S. MEHTA

JUDGMENT

I. S. MEHTA, J.

1. The present petitioner, i.e., Delhi Transport Corporation (*hereinafter referred to as the 'petitioner-management'*) has preferred the present Writ Petition under Article 226 read with Article 227 of the Constitution of India for issuance of Writ of Certiorari, Mandamus or any other Writ, order or orders for quashing the impugned order dated

02.06.2003 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. 35/91.

2. The brief facts stated are that the respondent-workman, i.e., Shri Rajbir Singh was in the employment of the petitioner-management as a conductor, B. No. 10384. On 11.08.1984, while the respondent-workman was on duty in bus No. DEP-8572 on Vrindavan – Delhi route, the checking officials, i.e., Shri Raj Singh, T.I. and Shri Kanya Lal, A.T.I., of the petitioner-management intercepted the said bus at Kossi City at about 0830 hours and found the following irregularities:-

- (i) Respondent-workman had not issued tickets to a group consisting of three passengers after collecting due fare from them.
- (ii) Way-voucher was found incomplete.
- (iii) Respondent-workman deliberately kept counter foil of ticket No. 07987 blank and one ticket No. 07988 was found missing from the counter foil.
- (iv) Respondent-workman deliberately did not stop the bus at the proper stand of Kossi on the signal of the checking officials,

which shows malafide intention on his part.

and the abovementioned irregularities of the respondent-workman tantamount to misconduct within the meaning of paras 7 and 20 of the executive instructions, duties of a conductor read with para 19 (a), (b) and (m) of the standing orders governing the conduct of Delhi Transport Corporation employees.

3. On the basis of the report of one of the checking officials, i.e., Shri Raj Singh, T.I., the respondent-workman was served with a charge-sheet dated 16.08.1984 and an inquiry was conducted wherein the inquiry officer found the respondent-workman to be guilty of the charge. Consequently, the inquiry officer forwarded the case to Depot Manager, i.e., appointing authority, for appropriate punishment. The Depot Manager issued a show cause notice to the respondent-workman and after going through the reply and thoughtful consideration passed the removal order dated 30.08.1991 and thereafter the appropriate petition under Section 33(2)(b) of the Industrial Disputes Act, 1947 was filed by the petitioner-management in presence of an industrial dispute pending between the parties and remitted one month wages vide money order No. 4768 dated 30.08.1991.
4. On the pleadings before the learned 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 03.04.2002.

5. The learned Industrial Adjudicator thereafter, on the basis of the pleadings of the parties, further framed the following issues:

“(1) Whether the respondent had been exonerated from the charges in the enquiry conducted against him in the year 1987?

If so, its effect?OPW

(2) Whether the DTC could not have taken action against the respondent after his reinstatement in service which was earlier terminated due to participation in the strike of the workers in the year 1988?OPW

(3) Whether the respondent committed the misconduct for which the chargesheet dated 16.8.84 was issued to him?OPM

(4) Whether the petitioner remitted one month’s wage to the respondent at the time of his removal from service?OPM

(5)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 02.06.2003. Hence, giving rise to the present Writ Petition.

6. The learned counsel for petitioner-management has submitted that under Section 33(2)(b) of the Industrial Disputes Act, 1947, the learned Industrial Adjudicator has to adopt the summary procedure to see whether a *prima-facie* case is made out against the respondent-workman without adoption of unfair labour practice or victimisation on the part of petitioner-management.
7. The learned counsel for the petitioner-management has further submitted that in the present case there is neither victimisation nor unfair labour practice on the part of the petitioner-management against the respondent-workman. It is the respondent-workman who misconducted himself by not issuing tickets to a group consisting of three passengers after collecting due fare from them.
8. The learned counsel for the petitioner-management has further submitted that the respondent-workman deliberately did not stop the bus on the signal of the checking officials and diverted the bus to a different route and on finding the irregularities committed by the respondent-workman, a challan, i.e., Challan No. 58695, was issued against the respondent-workman at the spot.
9. The learned counsel for petitioner-management has further submitted that the petitioner-management has adduced material witnesses before the learned Industrial Adjudicator and the learned Industrial Adjudicator despite having sufficient evidence on the record rejected the

approval application under Section 33(2)(b) of the Industrial Disputes Act, 1947 filed by the petitioner-management, which is liable to be set aside and has relied on the following judgments, i.e., *Delhi Transport Corporation Vs. The P.O., Industrial Tribunal No. II and Anr., MANU/DE/1054/2014, Delhi Transport Corporation vs. Madan Gopal, MANU/DE/0478/2011, Delhi Transport Corporation vs. Sh. Rishi Prakash, 2010 (126) FLR 468* and *Delhi Transport Corporation vs. Shyam Lal, MANU/DE/1634/2010*.

10. On the other hand, the learned counsel for the respondent-workman has submitted that the petitioner-management failed to discharge the onus to prove that the inquiry carried out against the respondent-workman was fair and proper after following the due principles of natural justice.
11. The learned counsel for the respondent-workman has further submitted that witness examined before the learned Industrial Adjudicator was not witness to the incident and do not inspire confidence. Therefore, the learned Industrial Adjudicator has rightly rejected the approval application under Section 33(2)(b) of the Industrial Disputes Act, 1947 sought by the petitioner-management.
12. Instant is a case where the allegation *qua* against the respondent-workman is of committing the misconduct while on duty by non-issuing

tickets to a group consisting of three passengers after collecting due fare from them at the spot, i.e., Kossi city on 11.08.1984.

13. Consequently, the inquiry was initiated against the respondent-workman and the inquiry officer found the respondent-workman guilty of the charge and the competent authority passed the removal order, for which the petitioner-management sought approval of its action by the learned Industrial Adjudicator.
14. It is pertinent to note that the said inquiry initiated was not approved by the learned Industrial Adjudicator vide order dated 02.06.2003. The petitioner-management did not challenge the said order before the competent Court. Consequently, the petitioner-management preferred to adduce the evidence before the learned Industrial Adjudicator and examined AW1, i.e., Shri Devender Saroop, Depot Manager.
15. The material witnesses were Shri Raj Singh, T.I. and Shri Kanya Lal, A.T.I., who were the checking officials and were the witnesses to the incident.
16. There is an allegation that the respondent-workman did not stop the bus after receiving signals from the checking officials and further there is an allegation that the bus was diverted to a different route. The aforesaid allegation along with the main allegation *qua* against the respondent-workman dispels the petitioner-management's documents, i.e., Challan

No. 58695, on which the respondent-workman does not accept the allegation to be true and signs on the same.

17. The evidence adduced by the petitioner-management by examining AW1 does not inspire confidence for want of personal knowledge of the incident and its relevance to the subject matter.
18. Consequently, the learned industrial Adjudicator has rightly rejected the approval application under Section 33(2)(b) of the Industrial Disputes Act, 1947 filed by the petitioner-management.
19. The judgement relied upon by the petitioner-management, i.e., ***Delhi Transport Corporation Vs. The P.O., Industrial Tribunal No. II and Anr. (Supra)*** is not applicable in facts of the present case as it pertains to the first order, i.e., the issue of inquiry, whereas instant is the case where the petitioner-management who themselves preferred to prove the misconduct before the learned Industrial adjudicator and had examined AW1, i.e., Shri Devender Saroop, Depot Manager. Further, the judgment relied by the petitioner-management, i.e., ***Delhi Transport Corporation vs. Madan Gopal (Supra)*** is in the context of absence of victimization *qua* against the respondent-workman. However, it is the general principle in law to prove the *prima facie* allegation of the misconduct *qua* against the respondent-workman by the petitioner-management to inspire confidence. Mere absence of victimization *qua* against the respondent-workman *ipso facto* does not entitles the

petitioner-management to obtain approval of its action under Section 33(2)(b) of the Industrial Disputes Act, 1947, as such the same is not applicable in the present case. So far as the judgment ***Delhi Transport Corporation vs. Shyam Lal (Supra)*** is concerned, it is stated that the passenger witnesses are not *sine qua non* to be examined during the proceedings, but the same could be dispensed with if the checking officials are examined. Instant is a case where the checking officials were witnesses to the incident and have not been examined. Therefore, the aforesaid judgment loses its significance in this context. The judgment relied upon by the petitioner-management, i.e., ***Delhi Transport Corporation vs. Sh. Rishi Prakash (Supra)*** is not applicable in the present facts and circumstances of the case.

20. As discussed above, this Court while exercising its power of judicial review under Article 226 of the Constitution of India finds no illegality and perversity in the impugned order dated 02.06.2003.

Consequently, the present Writ Petition is dismissed. The Lower Court record be sent back with a copy of this Judgment. No order as to costs.

I.S.MEHTA, J

FEBURARY 12, 2016

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