

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

+ Judgment delivered on: February 03, 2016

% **W.P.(C) No.198/2004**

THE MANAGEMENT OF
M/S DELHI TRANSPORT CORPORATIONPetitioner

Through: Ms. Arati Mahajan Shedha and
Mr. Manoj Kumar, Advocates.

versus

SHRI PURAN CHANDRespondent

Through: Mr. Saurabh Ahuja, 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 to as the 'petitioner-management'*) has preferred the present Writ Petition under Articles 226 and 227 of the Constitution of India whereby seeking the quashing of the impugned order dated 26.05.2003 passed by the Ld. Presiding Officer, Industrial Tribunal-II, Karkardooma Courts, Delhi (*hereinafter referred to as the 'learned Labour Court/Industrial Adjudicator'*) in O.P. No. 109/94 being totally illegal, arbitrary, unreasonable, perverse and unjustified order.

2. The brief facts stated are that the respondent-workman, i.e., Shri Puran Chand was in the employment of the petitioner-management and he was on duty in bus No. 9069 on route No.46. On 15.07.1993, while the respondent-workman was on duty in the aforesaid bus, the checking officials, i.e., Shri Ram Kishan, A.T.I, Shri Rajvir Singh, T.I and Shri Ram Phool, A.T.I of the petitioner-management intercepted the said bus at Paharganj and found the following irregularities:-

- (i) Respondent-workman had not issued tickets to a group of 15 passengers after collecting due fare.
- (ii) Respondent-workman had surrendered 15 unpunched tickets of Rs.2/- denomination each in a half punched position.
- (iii) An amount of Rs. 27.50 was found short in the possession of the respondent-workman.

and the abovementioned irregularities of the respondent-workman tantamount to misconduct within the meaning of para 19 (a), (b), (h) and (m) of the standing orders governing the conduct of Delhi Transport Corporation employees.

3. On the basis of the report by one of the checking officials, i.e., Shri Ram Kishan, A.T.I, P.T. No. 18074, the respondent-workman was served with a charge-sheet 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 after thoughtful consideration passed the removal order dated 07.07.1994 and thereafter an 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 orders No. 2453 & 2454 dated 07.07.1994.
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?(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 16.08.2002.
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 26.05.2003. Hence, giving rise to the present Writ Petition.

6. However, during the pendency of the present Writ Petition, the respondent-workman was deputed on school bus duty on bus no. 0314. A complaint was received from the school management stating therein that the respondent-workman during the official duty was found in drunken condition. The petitioner-management filed an application, being CM No. 776/2011 for necessary action. Consequently, this Court passed an order dated 21.01.2011, giving liberty to the petitioner-management to take necessary action against the respondent-workman. The petitioner-management proceeded with the inquiry and the inquiry officer found the respondent-workman guilty of the charge of misconduct.

7. The learned counsel for the petitioner-management has drawn the attention of this Court to the existence of the challan No. 59365, i.e., Ex. AW-1/3, on record which is been proved by the complainant, i.e., Shri Ram Kishan, A.T.I(AW1) and submitted that sufficient evidence, which

is required under the law, has already been led by the petitioner-management whereas the learned Industrial Adjudicator misread the evidence on the record and reached to the wrong conclusion.

8. The learned counsel for the petitioner-management further submitted that the respondent-workman further committed the misconduct while on duty. A complaint from the school authority finding the respondent-workman in drunken condition in school was received and further inquiry was initiated against him in which inquiry officer found him guilty of the charge. This Court in C.M. No. 77/2011 gave liberty to the petitioner-management to proceed with the matter as per law. Further, the petitioner-management relied upon the judgment rendered by the Hon'ble Supreme Court in the case of *State of Haryana and Anr. vs. Rattan Singh*, AIR 1977 SC 1512 and the judgment rendered by this Court in the case of *Delhi Transport Corporation vs. N. L. Kakkar & Anr.*, 110 (2004) DLT 493.

9. On the other hand, the learned counsel for the respondent-workman has submitted that the finding given by the learned Industrial Adjudicator is correct and there is no evidence *qua* against the respondent-workman neither at the inquiry level nor before the learned Industrial Adjudicator. Therefore, the present Writ Petition finds no substance either on facts or on law and the same is liable to be dismissed. It is further submitted that the inquiry conducted by the petitioner-management was found to be

illegal and erroneous vide order dated 16.08.2002, to which the petitioner-management did not prefer to challenge the said order before this Court. It is further submitted that the petitioner-management failed to prove the misconduct before the learned Industrial Adjudicator and, therefore, the argument of the management *qua* against the respondent-workman that he misconducted is baseless. In support of the arguments, the learned counsel for the respondent-workman has relied upon the judgment rendered by this Court in the case of ***Delhi Transport Corporation vs. Ashok Kumar And Ors***, W.P. (C) 1387/2003 & W.P. (C) 15508/2006 decided on 10.04.2015 and an order rendered by the Division Bench of Delhi High Court in ***Delhi Transport Corporation vs. Ashok Kumar***, LPA 632/2015 & LPA 637/2015, decided on 21.09.2015.

10. The whole case hinges around whether in the instant case there is sufficient evidence on record to prove the misconduct *qua* against the respondent-workman?

The answer is **YES**.

11. The allegation *qua* against the respondent-workman is that on 15.07.1993 while the respondent-workman was on duty in bus No.9069 on route No.46, the checking officials, i.e. , Shri Ram Kishan, A.T.I., Shri Rajvir Singh, T.I. and Shri Ram Phool, A.T.I. of the petitioner-management intercepted the said bus at Paharganj and following irregularities were found:-

- (i) Respondent-workman had not issued tickets to a group of 15 passengers after collecting due fare.
- (ii) Respondent-workman had surrendered 15 unpunched tickets of Rs.2/- denomination each in a half punched position.
- (iii) An amount of Rs. 27.50 was found short in the possession of the respondent-workman.

12. The petitioner-management examined the checking official, i.e., Shri Ram Kishan, A.T.I. as AW1, who filed his affidavit dated 04.12.2002 stating therein that he along with Shri Rajvir Singh, T.I. and Shri Ram Phool, A.T.I. were on checking duty and intercepted the said bus at about 0630 hours at Paharganj wherein it was found that the respondent-workman had collected fare from a group of 15 passengers but had not issued the tickets. On checking the cash, the same was found in short of Rs. 27.50 and further the respondent-workman had also signed on the challan, i.e., Ex. AW-1/3.

13. The challan No. 59365 is exhibit as Ex. AW-1/3 which is duly signed by all the members of the checking staff, i.e., Shri Ram Kishan, A.T.I., Shri Rajvir Singh, T.I. and Shri Ram Phool, A.T.I. and including the respondent-workman himself. The allegation alleged in the charge-

sheet is same as mentioned in challan No. 59365, i.e., Ex. AW-1/3, which is duly signed on the spot at the time of interception and there was no occasion for bringing a false allegation against the respondent-workman.

14. The respondent-workman neither during the cross-examination to AW1, i.e., Shri Ram Kishan has disputed that he did not signed on the challan No. 59365, i.e., Ex. AW-1/3, nor he has ever disputed his signature not been made on the aforesaid challan in its reply or the proceedings carried out before the learned Industrial Adjudicator. The respondent-workman during the argument too did not deny that the signature on the challan, i.e., Ex. AW-1/3, belonged to him.

15. The challan No. 59365, i.e., Ex. AW-1/3, is an independent document and even if the passenger witnesses could have been examined the same would be saying so and not otherwise unless the respondent-workman takes otherwise plea of his signature on the aforesaid challan. Therefore, the complainant's, i.e., Shri Ram Kishan, ocular statement along with the signed challan by the respondent-workman on the record constitute sufficient evidence to show the misconduct as alleged on the part of the respondent-workman in the instant case. In this regard, reliance could be placed on the judgment in the case of *State of Haryana and Anr. vs. Rattan Singh (Supra)* and in the case of *Delhi Transport Corporation vs. N. L. Kakkar & Anr (Supra)*, wherein the passenger

witnesses were not examined, however, the statement of the checking officials were recorded.

16. While going through the challan, i.e., Ex. AW-1/3, which bears the signature of the respondent-workman, and the respondent-workman thereafter not taking any defence *qua* against the contents thereof, nothing else brings to the mind of this Court to believe that the contents therein are true and believable to be true, particularly in the presence of the ocular supportive statement of Shri Ram Kishan, A.T.I. The judgment relied upon by the respondent-workman, i.e., ***Delhi Transport Corporation vs. Ashok Kumar And Ors***, W.P. (C) 1387/2003 & W.P. (C) 15508/2006 and an order in ***Delhi Transport Corporation vs. Ashok Kumar***, LPA 632/2015 & LPA 637/2015, loses its significance in presence of the documentary evidence, i.e., Ex. AW-1/3, and the ocular evidence of Shri Ram Kishan, A.T.I.
17. Therefore, the act of the respondent-workman is apparent on the face of the record that he has misconducted himself by not issuing the tickets after collecting due fare from the passengers on 15.07.1993 while he was on official duty as conductor in bus No. 9069 on route No.46.
18. Consequently, the present Writ Petition along with the approval application under Section 33(2)(b) of the Industrial Disputes Act, 1947 filed by the petitioner-management are allowed resulting in setting aside of the impugned order dated 26.05.2003 passed by the Ld. Presiding

Officer, Industrial Tribunal-II, Karkardooma Courts, Delhi in O.P. No. 109/94.

19. So far as the contention of the learned counsel for the petitioner-management that the respondent-workman has further misconducted while on school duty is concerned, the same is not arising out of the alleged date of incident, i.e., 15.07.1993. Therefore, the petitioner-management is at liberty to deal with the alleged misconduct as per law independently.

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

I.S.MEHTA, J

FEBURARY 03, 2016

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