

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

+ Judgment delivered on: February 05, 2016

% W.P.(C) No. 8185/2004

DELHI TRANSPORT CORPORATION

.....Petitioner

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

versus

SHRI PALE RAM

.....Respondent

**Through: Mr. Sanjoy Ghose and Mr. Vikramaditya,
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 Articles 226 of the Constitution of India for issuance of Writ of Certiorari for quashing/setting aside the impugned order dated 27.05.2003 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. 260/94.
2. The brief facts stated are that the respondent-workman, i.e., Shri Pale Ram was in the employment of the petitioner-management as a

conductor, B. No. 18555. On 14.07.1991, while the respondent-workman was on duty in bus No. 9032 on Patiala-Delhi route, the checking officials, i.e. , Shri Jagdish Chander, A.T.I., Shri Rajeev Wedhera, T.S., Shri Attar Singh, T.I., Shri Gulshan Kumar, T.I. and Shri Nathu Ram, T.I., of the petitioner-management intercepted the said bus and found the following irregularities:-

- (i) Respondent-workman had not issued tickets to 15 passengers after collecting due fare.
- (ii) An amount of Rs. 560.65 was found short in the possession of the respondent-workman.
- (iii) Respondent-workman refused to give the complaint book.
- (iv) Respondent-workman refused to sign on the passenger statement.
- (v) Respondent-workman had stopped at Samana Bahu hotel where it was prohibited.

and the abovementioned irregularities of the respondent-workman tantamount to misconduct within the meaning of para 19 (a), (b) and (h)

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 Jagdish Chander, A.T.I., P.T. No. 18079, 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 09.09.1994 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 orders No. 3638 & 3639 dated 09.09.1994.

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 23.09.2002.

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 in the charge sheet?OPP

(2) Whether the petitioner has remitted one month’s salary as required U/s 33(2)(b) of I.D. Act?OPP

(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 27.05.2003. Hence, giving rise to the present Writ Petition.

6. The learned counsel for the petitioner-management has submitted that the finding given by the learned Industrial Adjudicator is not correct. It is further submitted that there is sufficient evidence placed on record by petitioner-management. The petitioner-management has already examined inquiry officer, i.e. Shri Sunit Mudgal and the complainant, i.e., Shri Jagdish Chander, A.T.I, who was the witness to the incident and placed the material evidence on record. It is further submitted that the learned Industrial Adjudicator misread the evidence and reached to wrong conclusion and the impugned order dated 27.05.2003 is liable to be set aside.

7. The learned counsel for petitioner-management further submitted that non examination of the passenger witnesses *ipso facto* cannot be the

ground to negate the case in hand. It is further submitted that the statements of 4 passenger witnesses were duly recorded on the spot but it was the respondent-workman who refused to sign the same and relied upon the judgments in the cases of *Karnataka State Road Transport vs. B.S. Hulikatti, JT 2001 (2) SC 72*, *Regional Manager RSRTC vs. Ghanshyam Sharma, JT 2001 (10) SC 12* and *Subhash Chander vs. P.O. Labour Court, 2013 (138) FLR 281*.

8. On the other hand, the learned counsel for respondent-workman has submitted that this Court has no jurisdiction to go into the merits of the case and the evidence appreciated by the learned Industrial Adjudicator is the final, as he is the master of his own opinion, unless perversity is demonstrated in existence or an error apparent on the face of the record. It is further submitted that the judgment rendered by the Apex Court in the case of *State of Haryana and Anr. vs. Rattan Singh, AIR 1977 SC 1512* is not the mantra to say that under no circumstance the passenger need not be examined.

9. The allegation of the misconduct on the part of the respondent-workman is alleged to be that on 14.07.1991, while he was on official duty, his bus was intercepted by the checking officials of the petitioner-management and following irregularities were found:

- 1) Respondent-workman had not issued tickets to 15 passengers after collecting due fare.

2) An amount of Rs. 560.65 was found short in the possession of the respondent-workman.

3) Respondent-workman refused to give the complaint book.

4) Respondent-workman refused to sign on the passenger statement.

5) Respondent-workman had stopped at Samana Bahu hotel where it was prohibited.

10. The whole question arises whether there is sufficient evidence *qua* against the respondent-workman to hold respondent-workman guilty of the alleged misconduct?

The answer is **NO**.

11. The petitioner-management examined Shri Jagdish Chander, A.T.I. as AW1, who has stated in his affidavit dated 29.01.2003 that he along with Shri Rajeev Wedhera, T.S., Shri Attar Singh, T.I., Shri Gulshan Kumar, T.I. and Shri Nathu Ram, T.I. intercepted the bus No. 9032 on Patiala-Delhi route and found the aforesaid irregularities on the part of the respondent-workman.

12. During the cross examination, AW1, i.e. Shri Jagdish Chander, has specifically stated that he is unable to identify the signature of the respondent-workman on the challan, i.e., challan No. 125310. Further, his affidavit dated 29.01.2003 does not state that the challan was signed by

the respondent-workman. However, it is stated that the statements of the passenger witnesses were recorded on the spot to which the respondent-workman refused to sign the same.

13. The petitioner-management during the cross-examination of the respondent-workman did not put forth any suggestions that his bus No. 9032 on Patiala-Delhi route was intercepted by the checking officials of the petitioner-management.
14. The petitioner-management further did not put forth any suggestion that the following persons, namely, Shri Jagdish Chander, A.T.I., Shri Rajeev Wedhera, T.S., Shri Attar Singh, T.I., Shri Gulshan Kumar, T.I. and Shri Nathu Ram, T.I., were the checking officials.
15. The petitioner-management further did not put forth any suggestion that the respondent-workman did not issue tickets to alleged 15 passengers after collecting due fare from them.
16. The petitioner-management also did not put forth any suggestion that the statements of passenger witnesses were recorded at the back of the challan and that the respondent-workman refused to sign the same.
17. The petitioner-management, on the one hand, is alleging that the respondent-workman has committed misconduct, but at the same time the petitioner-management is avoiding to put forth the same questions to the respondent-workman who is the true replier of the said facts.

18. As per the statement of AW1, i.e., Shri Jagdish Chander, A.T.I., the traffic superintendent, i.e., Shri Rajeev Wedhera, was present at the place where the said bus was intercepted but the statements of the passenger witnesses were not attested by the aforesaid traffic superintendent.
19. The sole ocular evidence of AW1, i.e., Shri Jagdish Chander, A.T.I., in the aforesaid circumstances, does not inspire confidence to discharge the onus on the part of the petitioner-management to say that the respondent-workman on 14.07.1991, while on official duty, did not issue tickets to the alleged 15 passengers after collecting due fare from them unless there is such corroboration from the other independent corners.
20. In the present case, the petitioner-management failed to examine the remaining members of the checking staff, i.e., Shri Rajeev Wedhera, T.S., Shri Attar Singh, T.I., Shri Gulshan Kumar, T.I. and Shri Nathu Ram, T.I. or the passenger witnesses to strengthen the statement of AW1.
21. In these circumstances, the learned Industrial Adjudicator was right in not holding confidence in the statement of AW1, i.e. Shri Jagdish Chander, A.T.I., and rejected the approval application under Section 33(2)(b) of the Industrial Disputes Act, 1947 filed by the petitioner-management. The judgements relied upon by the petitioner-management, i.e., *Karnataka State Road Transport vs. B.S. Hulikatti (Supra)*,

Regional Manager RSRTC vs. Ghanshyam Sharma (Supra) and *Subhash Chander vs. P.O. Labour Court (Supra)* are not helpful as the sole ocular statement of AW1 does not inspire confidence.

22. 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 order dated 27.05.2003. 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

FEBURARY 05, 2016

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