

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2627 of 2013

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1. The Bihar State Road Transport Corporation, through the Administrator
Birchand Patel Marg, Patna

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Presiding Officer, Labour Court, Patna
3. Mahendra Prasad Sinha S/O Late Baiju Lal Ex-Conductor, Bihar State Road
Transport Corporation, Bankipur Depot, Patna, Permanent Resident At Village/
Mohalla- Andharwari, P.O.- Andharwari, P.S.- Rajauli, Distt.- Nawada
4. Bihar State Road Transport Corporation Employees Federation through its
General Secretary, Kedar Bhawan, Amarnath Road, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. P.K. Verma, Sr. Adv.

Mr. Lakshmi Kant Tiwary, Adv.

For the Respondent/s : Mr. Sushil Kumar Singh, A.C. to AAG-10

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 09-03-2017

Heard learned counsel for the petitioner and learned
counsel for the State. Despite valid service of notice, the private
respondent no.3 has chosen not to appear before the Court.

2. The petitioner has filed this writ application for quashing
of the award dated 31st October, 2011 passed by the Presiding
Officer, Labour Court, Patna in Reference Case No. 20 of 2005
whereby and whereunder the punishment order dated 18th July, 2002
issued by the petitioner Bihar State Road Transport Corporation (for
short 'Corporation') terminating respondent no.3 Mahendra Prasad
Sinha (for short 'workman') from service has been set aside and a
further direction has been issued that the workman would be deemed



to be in service since the date of his termination till the date of his superannuation with entitlement of full back wages along with all consequential benefits.

3. The short facts of the case are that the workman had been working as Conductor in the Corporation in Bankipur Depot, Patna. He was on duty on 26th November, 2000 in vehicle no. BPL-494 (Pali-Patna Service). A flying squad of the Corporation represented by one Ravindra Pillai, Traffic Inspector and one Keshri Singh, Assistant Traffic Inspector checked the aforesaid vehicle near Hirawanpur at about 8.15 a.m. and found that out of 39 passengers boarding the bus, 15 were found traveling without ticket. On enquiry from the unbooked passengers, they stated that they paid the fare to the workman but he did not issue the ticket.

4. Subsequently, a departmental proceeding was initiated against the workman by issuing charge-sheet vide Memo No. 88 dated 05.01.2001 for the alleged act of misconduct under Rules 21(2) and 21(4) of the Standing Orders. Mr. Y.N.Jha, Traffic Manager was appointed as Enquiry Officer in the departmental proceeding. Mr. Ravindra Pillai, Traffic Inspector was examined in support of the charge. The workman cross-examined the aforesaid Ravindra Pillai and also examined himself in order to prove his innocence.

5. After considering all the materials on record, the Enquiry



Officer submitted his report on 22nd July, 2001 with a finding that 15 passengers inside the bus were traveling without ticket and they had covered the distance of about 9 kms from the last point of checking and out of 15 passengers, 10 had already paid fare to the workman but the workman did not issue ticket to them.

6. On receipt of the aforesaid enquiry report, second show cause notice was issued to the workman vide Memo No.734 dated 5th November, 2001 and thereafter he filed his second show cause before the Managing Director of the Corporation on 12th January, 2002.

7. Upon examination of the materials available on record, the disciplinary authority found the charge framed against the workman to be proved and accordingly passed the punishment order whereby the workman was dismissed from service vide order dated 18th July, 2002.

8. As the workman was not satisfied with the order of punishment, the State Government was of the opinion that the dispute existed and as such referred the dispute under Section 10(1)(c) of the Industrial Disputes Act, 1947 to the Labour Court, Patna. The term of reference is as under :-

“Whether termination of service since 18.07.2002 of Sri Mahendra Prasad Sinha, conductor by administrator Bihar State Road Transport Corporation, Patna is justified ? If not, what relief the workman is entitled to ?”



9. The aforesaid reference by the State Government was answered by the Presiding Officer of the Labour Court vide award dated 31st October, 2011 whereby termination of service of the workman since 18th July, 2002 was held to be bad and the dismissal order was set aside granting all consequential monetary benefits to the workman. The operative part of the order reads as under :-

“... On the basis of aforesaid discussion, I find and hold that the termination of service since 18.07.2002 of Sri Mahendra Prasad Sinha, conductor by Administrator, B.S.R.T.C., Patna is not justified. Accordingly the dismissal order dt- 18.07.2002 is hereby set aside. However, the delinquent workman has completed the age of superannuation of service. Hence, the delinquent workman will deem to be in service since the date of termination upto the date of his retirement. Now the delinquent workman is entitled to get full back wages along with all the consequential benefits.

I pass the award accordingly.”

10. The aforesaid award dated 31st October, 2011 is under challenge in the present writ application.

11. Mr. Lakshmi Kant Tiwary, learned counsel for the petitioner submitted that the order impugned is bad in law as well as on facts. He submitted that there is no reasonable finding recorded by the Labour Court for exonerating the workman from the charge as full opportunity was given to the delinquent workman to prove his innocence and there was no procedural irregularity or illegality in conducting the disciplinary proceeding against him. He submitted that



once the Enquiry Officer had found the allegations made against the delinquent workman to be proved, which was concurred by the disciplinary authority, there was no valid ground for the Labour Court to substitute the finding.

12. As noted above, despite valid service of notice, private respondent no.3 has failed to appear before the Court. However, the State has filed its counter affidavit wherein averments have been made that since the order was passed by a statutory authority in a quasi judicial proceeding, no error can be found with the award. Learned counsel for the State submitted that the Corporation was given full opportunity to prove its case but the charge framed against the delinquent workman could not be proved with cogent evidence.

13. I have heard learned counsel for the parties and perused the record.

14. It is true that in support of the charge, only one witness, namely, Sri Ravindra Pillai was examined on behalf of the Corporation. However, several documents were produced in order to substantiate the charge which have duly been proved and marked as Exhibits.

15. The delinquent workman got himself examined in course of enquiry in support of his defence. He has not disputed the fact that 15 unbooked passengers were found present in the bus at the time of



checking by the flying squad. However, his defence was that 15 passengers came in the bus at Hirawanpur and in spite of request made by him they denied to buy tickets. He stated that he could not take money from the passengers at that time. He stated that he had taken defence before the flying squad also but they did not pay any attention on his version. It is on the basis of the aforesaid evidence the Enquiry Officer had come to the conclusion that the charge was proved, which was accepted by the disciplinary authority but according to the Labour Court, the evidences produced were not sufficient to prove the charge.

16. The Labour Court formed its opinion mainly on the basis of the fact that no passenger came forward in support of the charge. It also formed its opinion on the basis of the fact that the statement of the passengers was not recorded at the time of checking made by the flying squad.

17. In the opinion of this Court, the findings recorded by the Labour Court are erroneous. The Labour Court has not found any illegality or irregularity in conducting the proceeding against the delinquent workman. The checking report of the flying squad clearly records that inside the bus 10 unbooked passengers, from whom fare was pre-realised, were traveling and they had covered distance of about 9 kms. It had also recorded that in all 15 passengers out of 39



were found traveling without ticket. The checking officer Mr. Ravindra Pillai came forward and fully supported the allegation made against the delinquent workman and I find no discrepancy in his evidence. The defence taken by the delinquent workman was not believed by the Enquiry Officer and the disciplinary authority.

18. It is well settled that once in a domestic enquiry an opinion is formed based on evidence, normally it is not open to the appellate tribunal or the courts to substitute subjective opinion in place of the one arrived at in the domestic proceeding. In the present case, there is evidence of the officer, who checked the bus, which establishes the imputation of misconduct on the part of the workman. However, the Labour Court has misdirected itself in insisting on the evidence of the ticketless passengers or passengers who claimed to have paid the fare to the workman but tickets were not issued to them.

19. In *State of Haryana Vs. Rattan Singh [(1977) 2 SCC 491]*, which is also a case arising out of non-issuance of ticket by a conductor, the Supreme Court held as under :-

“In a domestic enquiry all the strict and sophisticated rules of the Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible, though departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Evidence Act. The essence of judicial approach is objectivity, exclusion of extraneous materials or



considerations, and observance of rules of natural justice. Fair play is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment, vitiate the conclusion reached, such a finding, even of a domestic tribunal, cannot be held to be good. The simple point in all these cases is, was there some evidence or was there no evidence - not in the sense of the technical rules governing court proceedings but in a fair common-sense way as men of understanding and worldly wisdom will accept. Sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny by court, while absence of any evidence in support of the finding is an error of law apparent on the record and the court can interfere with the finding.

In the present case, the evidence of the inspector is some evidence which has relevance to the charge and the courts below had misdirected themselves in insisting on the evidence of ticketless passengers. Also merely because the statements were not recorded, the order for termination cannot be invalid.”

(emphasis supplied)

20. Similarly in ***Karnataka State Road Transport Corporation Vs. B.S. Hullikatti [(2001) 2 SCC 574]***, the Supreme Court observed as under :-

“It is misplaced sympathy by the Labour Courts in such cases when on checking it is found that the Bus Conductors have either not issued tickets to a large number of passengers, though they should have, or have issued tickets of a lower denomination knowing fully well the correct fare to be charged. It is the responsibility of the Bus Conductors to collect the correct fare from the passengers and deposit the same with the Company. They act in a fiduciary capacity and it would be a case of gross misconduct if knowingly they do not collect any fare or the correct amount of fare.”



21. In a recent judgment in ***U.P. Road Transport Corporation & Anr. Vs. Gopal Shukla & Anr. [2015-IV-LLJ-1(SC)]***, the Supreme Court upheld the order of the disciplinary authority who had dismissed the bus conductor for allowing 25 passengers to travel in the bus without ticket and reversed the findings of the Labour Court and the High Court which by taking a lenient view had reinstated him to service. It held that both the Labour Court and the High Court have fallen in error by imposing a lesser punishment where only punishment should have been dismissal and not a lesser one.

22. In the present case, there is no dispute to the fact that the domestic enquiry was conducted in accordance with law. The delinquent workman has not raised any issue of bias against the members of the flying squad. The doctrine of fair play was observed throughout the proceeding. It is not a case where there was no evidence rather there were documentary and oral evidence against the delinquent workman. The head of the flying squad, who was at the relevant time Traffic Inspector of the Corporation, was examined as a witness and had fully supported the charge alleged against the workman.

23. In the opinion of this Court, such being the position, if the disciplinary authority found the misconduct alleged against the



delinquent workman to be proved, no fault could have been found by the Labour Court in the order passed by the disciplinary authority.

24. In view of the discussions made above and the ratio laid down by the Supreme Court in the decisions noted above, in my considered opinion, the writ application deserves to be allowed. The impugned award of the Labour Court dated 31st October, 2011 is set aside. The writ application stands allowed.

25. The parties shall bear their own costs.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	
Transmission Date	

