

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15240 of 2017

1. The Bihar State Road Transport Corporation through its Administrator, Pariwahan Bhawan, Patna.
2. The Administrator, Pariwahan Bhawan, Patna.
3. The Chief of Administration, BSRTC, Pariwahan Bhawan, Patna.
4. The Divisional Manager, BSRTC, Purnea at then present Regional Manager, BSRTC, Purnea.
5. The Depot Manager BSRTC, Saharsa.

... .. Petitioner/s

Versus

Md. Fuzlur Rahman S/o Late SARfuddin, Vill- Dolme, Tola- Tee-thi, P.S.-
Saur Bazar, Distt- Saharsa.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Mani Kant Mishra, Adv.
For the Respondent/s	:	Mr.Bhola Prasad, Adv.
		Mr. Mukesh Kr. Jha, Adv.

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 11-07-2019

Heard learned counsel for the parties.

In the present case, the petitioner is challenging the Award of the Labour Court dated 13.7.2015 passed by the Presiding Officer, Labour Court, Purnea in Ref. Case No. 1 of 2014, whereby and whereunder, the Labour Court has held that the Management has failed to prove the charge against the private respondent and set aside the order of dismissal and passed the order of reinstatement in favour of the workman, namely, Fazlur Rahman along with all benefit of service.

Fazlur Rahman (hereinafter to be referred to as ‘the workman’) was entered in service of management in the year 1981 on the post of Conductor and the first posting was in Purnea



Division, later on, he was made permanent in 1987 and posted in Darbhanga Division at Madhubani Depo and, in the year 1997, he was transferred from Madubani to Saharsa Depo. While he was working at Saharsa Depo, an office order was issued by Chief of the Administration vide Memo No. 77 dated 24.1.2008 under which the workman was put under suspension and asked explanation to the charge framed by the Special Officer, BSRTC, Patna on 9.4.2008 and, thereafter, second show-cause was also sent to the workman vide Memo No. 4120 dated 23.11.2009 as to why the services of the workman be not terminated. Later on, it was considered and he was dismissed from service.

From the records, it appears that while he was posted as Conductor in Deluxe Bus bearing No. BR 11C-6709 which was going from Bhagalpur to Purnia on 3.5.2007, on way near zero mile, Naugachhia, the bus was checked by the Central Checking Party and was found that 50 passengers were boarded on the bus, out of them, only 41 passengers were booked and 9 passengers were without ticket. All the 9 passengers were booked from zero mile Bhagalpur to Naugachhia for Rs. 187/-. It was alleged that the workman allowed boarding of 9 passengers for his own gain and causing loss to the Management of Rs. 187/-, is the cause for dismissal of the workman and prior to that, the domestic enquiry was conducted, the workman was called upon to participate in the



enquiry and, on the basis of the report, the action of dismissal was taken against the workman. On the industrial dispute raised by the workman, on the basis of notification no. 03/D/56/2011, L.R.-2511 dated 8.9.2011, the Ref. Case No. 01/2014 was registered by the Labour Court, Purnea and the Labour Court, without deciding the issue of fairness of domestic enquiry, straightway, has allowed the parties to lead evidence on its merit as it appears that the workman has examined the passengers who had boarded in the bus and they stated that they boarded in the bus forcefully as they were coming after funeral and the Management also examined three witnesses and, after discussing the evidence, the Labour Court has recorded a finding that on consideration of evidence of both the parties, it transpires that the Conductor had no fault in boarding such 9 passengers over the said bus and clearly stated in findings that 9 passengers were forcibly boarded in the bus near the zero mile check post, Bhagalpur who were coming from Barari after funeral and they refused to take ticket from the Conductor and none of them told that the Conductor had taken money from them. Hence the dismissal of workman has been done arbitrarily which is illegal and improper.

Learned counsel for the petitioner submits that before deciding the case on its merit, as per settled law, the Labour Court was required to decide the fairness of the enquiry and, after deciding



the issue on the fairness, in the event of holding enquiry to be fair, the Labour Court was required to decide the case on its merit on the basis of material on record but, in the event of unfair enquiry, statement has been made by the Management to prove the charges by brining evidence in the written statement, in that circumstances, the Labour Court would take steps to allow the parties to lead their evidence on its merit or in the event of non-holding of enquiry at all, directly the parties will be at liberty to lead evidence to prove the charge but, as per petitioner, in the present case, the enquiry was conducted which was fair and proper but, without deciding its fairness, straightway, the Labour Court has called upon the parties to lead evidence on merit and, on that basis, the case has been decided. In support of submission, learned counsel for the petitioner has placed reliance on the judgment reported in the case of 2018 (4) PLJR 130 SC reported in M.L. Singla Vs. Punjab National Bank & Anr., there, the Hon'ble Apex Court explained the modalities to be followed by the Labour Court in deciding the case under the Industrial Dispute Act and, in the present case, the other side has not disputed the contention of the petitioner that the enquiry was not conducted against the workman before inflicting punishment of dismissal. In that view of the matter, the irresistible conclusion is that the Labour Court has committed jurisdictional error in deciding the case in the manner he has done.



In that view of the matter, the award dated 13.7.2015 passed by the learned Presiding Officer, Labour Court, Purnea in Ref. Case No. 01 of 2014 is set aside and the matter is remanded back to the Labour Court, Purnea, firstly, he will decide the fairness of domestic enquiry and, in the event, the Labour Court arrives to a finding that the enquiry is fair, in that circumstances, he will decide the case on the basis of material available on record and, in the event, the enquiry is declared to be unfair, then, in that event, the evidence, which has already been recorded, will be treated to be proper evidence and the Labour Court, Purnea will decide the case on its merit.

As it is a very old matter, the Labour Court is directed to complete the adjudication within a period of six months from the date of receipt/production of a copy of this order. For that, the parties are directed to cooperate in the early disposal of the case. If the party fails to cooperate, the Labour Court will proceed with the matter ex-parte and decide the case accordingly.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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