

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8650 of 2004

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SHANKAR SINGH son of Late Shivdhari Singh resident of Village Sarahara
PO Dighwalia via Chainpur PS Siswan, Dist. Siwan

... .. Petitioner/s

Versus

THE B.S.R.T.CORPORATION and ORS

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 7056 of 2011

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DEEP NARAIN YADAV S/O Late Dhanu Ydav R/O Vill.Mangar Mathia,
Dilawarpur, P.O. Dindir, P.S. Haspura, Distt.-Aurangabad.

... .. Petitioner/s

Versus

1. The Bihar State Road Transport Corporation
2. The Administrator-Cum-Managing Director, Bihar State Road Transport Corporation, In the Office Of the Bihar State Road Transport Corporation
3. The Chief Of Administration, Bihar State Road Transport Corporation, In The Office Of Bihar State Road Transport Corporation
4. The Divisional Manager, Bihar State Road Transport Corporation, Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Shravan Kumar
		Mr. Krishna Kr.Singh
For the Respondent/s	:	Mr.Prabhat Kumar Verma
		Mr. Arvind Kumar

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 09-08-2019

Petitioners in these two writ petitions are dismissed employees of the Bihar State Road Transport Corporation. They were working as bus conductors and charge against them was that they had allowed passengers in large number to board the buses



plying on the State Roads and allowed them conveyance on the buses without issuing tickets.

Substance of the allegation is that the petitioners have caused loss to the Corporation on account of their misconduct. They have misutilized conveyance facility offered by the Bihar State Road Transport Corporation (for short "BSRTC") for their personal gain and caused undue loss to the Corporation. Issues raised by the petitioners are more or less common in both cases.

Submissions of the parties are based in both cases on some of the official documents available in CWJC no. 7056/2011 and, therefore, it is considered convenient for the parties that matters be heard together.

CWJC No. 8650/2004

Petitioner was issued charge memo on 29.05.1990, 15.09.1992 and 14.03.1993. Allegations in all three charges are identical, that the petitioner was allowing passengers to avail conveyance in the State Road buses plying on the highway in the State of Bihar without issuing tickets. The irregularity was detected during checking on the highway wherein many passengers were found to be travelling without tickets on all three occasions. Three proceedings were conducted on the basis of the said charge memos.



Learned Senior Counsel for the petitioner submits that the petitioner had no information regarding charge memo dated 15.09.1992. It is also submitted that clubbing of three proceedings by the authorities without any prior intimation to the petitioner has caused great prejudice to the petitioner. Another submission advanced by learned Senior Counsel though there is no foundation laid in the pleadings, is that the order of dismissal has been passed by the Administrator who is incompetent to pass order. It is submitted that Divisional Manager is the competent authority. The order of dismissal having been passed by the Administrator, petitioner has been deprived of his right to appeal as Administrator was appellate authority. This issue canvassed by learned Senior Counsel is not based on any pleading in the writ petition. No rule or provision has been placed to show that Administrator was not competent authority or the Divisional Manager was the competent authority (Disciplinary authority).

Admitted position however, is that the Administrator was the authority who was a nominee of the State Government. The Board of the Corporation has been superseded in 1998 itself since the State Government considered that the Board was not performing its function properly and in view of large scale irregularities causing acute loss to the Corporation. It was in these



circumstances that entire function of the Board of the Corporation was vested in the Administrator who was an official of the State Government and posted in the Corporation for discharging the duty, power and function of the Board.

CWJC No. 7056/2011

Petitioner in this case also has been visited with punishment of dismissal dated 29.06.2010 on account of identical charges. He has been charged of misusing his official capacity by allowing passengers to avail facility of conveyance on the State buses plying on the highway without issuing tickets for his personal gain. The allegations of causing financial loss to the Corporation are common in both cases.

Learned Senior Counsel for the petitioner in this case submits that the petitioner was not allowed an opportunity of filing his second show cause notice as he was not furnished copy of statement of cross-examination of witnesses in the enquiry along with second show cause. It is also submitted that authorities could not have taken into consideration the past misconduct of the petitioner to give extreme punishment of dismissal of the petitioner. Placing reliance on office order dated 02.06.2009 (Annexure 7), it is submitted that if the petitioner had repeated such misconduct twice within a year then only petitioner could



have been visited with penalty of dismissal. Since there is no such allegation, at best, authorities could have realized fine ten times value of the tickets of unbooked passengers. It is also submitted that his appeal was also considered by the same Administrator who had awarded him punishment. Such appeal by the same authority is of no avail and futile. Placing reliance on the order of appointment (Annexure 11), it is submitted that it is apparent that petitioner's appointing authority was the Divisional Manager. The order of punishment, in the circumstance, should have been issued by the Divisional Manager and if that was done then only petitioner could have availed his remedy before the Administrator. Since order of punishment has been issued by the Administrator himself, petitioner has been deprived of his right to appeal against the same. No foundation in the pleadings has been laid in support of this submission in the instant writ petition also.

Learned Senior Counsel for the petitioner has not placed any rule or provision to show that the Divisional Manager was his appointing authority. In fact, order of appointment, ex facio, reveals that same was issued as per order of the Chairman, Bihar State Transport Corporation.

In respect of CWJC no. 8650/2004 submission of learned Senior Counsel appearing for the respondents is that the



petitioner had participated in the proceeding before the Enquiry Officer in respect of charges arising out of charge memo dated 29.05.1990 and last charge memo dated 14.03.1993. Second charge memo dated 15.09.1992 was also served on the petitioner. Petitioner has falsely stated on his affidavit in the instant proceeding that he was not communicated or was not aware of second charge memo. Statement to this effect made in para 16 of the writ petition is false. Placing reliance upon Annexures E, E/1, G, I, L which are time petitions filed by the petitioner in the proceeding arising out of second charge memo dated 15.09.1992, it is submitted that the same belies petitioner's assertion that he had no intimation regarding the proceeding. Several notices have been placed on record in the counter affidavit in relation to the proceedings arising out of second charge memo dated 15.09.1992 on the basis of memo no. 4868. Petitioner's appearance and time petition filed in the said proceeding have also been annexed to the counter affidavit, as taken note of hereinabove.

This court would find that till date there is no rebuttal or denial to the said documents placed on record by the Corporation in the counter affidavit which was filed in the instant proceeding after due service upon petitioner's counsel in September, 2011. Petitioner therefore, has chosen not to appear/ participate in the



proceeding arising out of charge memo dated 15.09.1992, his assertion that he had no knowledge is false. In so far as other two proceedings are concerned, separate enquiry report was submitted by the Enquiry Officer on 07.09.2002 (Annexure 4 and Annexure 8).

In none of the proceeding, petitioners have denied the fact that number of passengers, as alleged by flying squad, were not found on the buses without tickets. Petitioners have only tried to justify their presence on the buses without tickets by raising one reason or the other. One plea common in respect of all allegations is that inspection was done by flying squad before petitioners could book their tickets, which they intended to do. Such submission having regard to allegation appears to be unsustainable. Unbooked passengers had been found at a reasonably long distance from last boarding point. It is not a case where unbooked passengers were found immediately after buses departed from last boarding point.

Standing Order issued by the Corporation which too have been relied upon by learned Senior Counsel for respondents to all bus conductors clearly contemplates the procedure to be adopted while allowing passengers to board the buses. Conductors are strictly required to follow the procedure of “pay then board.”



They do not have discrimination to allow any passenger to board without paying, and then pay thereafter.

Learned Senior Counsel seriously objected to the plea regarding incompetence of Administrator to issue order of punishment. He submits that no such plea was taken anywhere before any authority including in the writ petition. The factual issue as to who is the competent authority has also not been asserted on the basis of any rule or provision in respect of alleged incompetence of the Administrator to issue order of punishment.

Objection of the learned Senior Counsel for respondents, in opinion of this court is a valid objection.

Corporation had no opportunity to consider and to respond such plea. Learned Senior Counsel for the petitioners therefore, cannot be permitted to raise this issue. Since factual foundation for raising issue is not available on the pleadings which includes various correspondences made by the petitioner before the authorities of the Corporation. In fact, petitioner has preferred review against order of punishment dated 29.06.2010 by the Administrator himself.

Learned Senior Counsel for the Corporation has also highlighted the fact that the petitioner has chosen not to file any



response/ representation to the second show cause notice issued in CWJC no.8650/2004.

Since he has chosen not to avail opportunity, this court is of the view that petitioners cannot be heard to contend that the procedure adopted by the authorities was unfair. That apart since petitioner has approached this court by making false statement on affidavit regarding non-service of charge memo dated 15.09.1992, that by itself would disentitle the petitioner to avail remedy in the equitable jurisdiction of this court under Article 226 of the Constitution of India.

Order of termination/ dismissal in both cases was rightly issued by the Administrator who had been discharging right, duty and obligation of the Board of the Corporation as a nominee of the State Government since expression of the Board in the year 1998.

Petitioner could have availed remedy of appeal against the order of dismissal before the Secretary to the Government of Bihar in the department of Transport which he has not done. The Corporation is an industry and the petitioners are workmen. In the circumstance, adequate and efficacious remedy was also available to the petitioners under the Industrial Disputes Act. In this regard learned Senior Counsel for the Corporation has relied upon



decision in the case of Sideshwar Prasad vs. BSRTC reported in 2003(2) PLJR 841.

In support of submission regarding prejudice being caused to the petitioners on account of clubbing of three proceedings arising out of two different charge memos in CWJC No. 8650/2004, learned Senior Counsel for the Corporation it is rightly submitted that such plea was devoid of any substance. This court would find that three separate proceedings were conducted by the Enquiry Officer in respect of all three charge memos. Separate second show cause notice was also issued. After affording due opportunity before the Enquiry Officer and after choosing not to avail opportunity of second show cause issued by the Disciplinary authority, petitioners cannot be heard to contend that any prejudice has been caused merely for the fact that punishment order in respect of all three proceedings have been recorded by the Disciplinary authority in one order i.e. the impugned order dated 12.04.2004.

In CWJC no. 8650/2004 petitioner was found guilty of same charges on three different occasions. In CWJC no. 7056/2011, petitioner was earlier found to be guilty of same charges on 13 occasions in last 16 years' service. Fine was imposed with warning on 13 occasions. He had also been visited



with other minor punishment of same charge by allowing unbooked passengers to avail conveyance facility in the State buses for his personal gain and misusing his official capacity as conductor. Placing reliance on the office order dated 02.06.2009 (Annexure 7), he submits that punishment of dismissal was to be awarded, if such misconduct was repeated twice.

In both cases same misconduct has been repeated more than 13 times. The nature of fiduciary relation of the petitioners with Corporation allows no scope for leniency in the matter. Petitioners were required to maintain discipline for financial viability of the Corporation by discharging their duty properly and not to deprive the Corporation or its revenue arising out of operation based on their personal motive. The orders of punishment passed in both cases in opinion of this court does not suffer from any infirmity and requires no interference.

Writ petitions are devoid of merit and the same are dismissed.

(Madhuresh Prasad, J)

s.hassan/-

AFR/NAFR	NAFR
CAV DATE	NA
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