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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision:- 22.01.2020

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W.P.(C) 1509/2006

D.T.C.

..... Petitioner

Through Ms.Manisha Tyagi, Adv.

versus

SAMAY SINGH EX.CONDUCTOR

..... Respondent

Through Mr.Atul Bandhu with Mr.Himanshu
Khari, Adv.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present writ petition filed by the Delhi Transport Corporation/Management assails the order dated 29.09.2004 as also the Award dated 13.05.2005 passed by the learned Labour Court, Delhi in ID No.153/1996. Under the impugned order dated 29.09.2004, the Labour Court, after coming to the conclusion that the findings of the inquiry officer were perverse, held the inquiry to be vitiated. The petitioner was, accordingly, granted an opportunity to lead evidence to prove the misconduct of the respondent but the petitioner, except examining the inquiry officer, did not lead any other evidence in support of its case. In these circumstances, the Labour Court, by way of the impugned award dated 13.05.2005, was constrained to hold that no material had been placed on record to justify the respondent's termination.

2. The brief facts as emerge from the record are that the respondent, having been appointed as a Conductor with the

Corporation on 28.12.1979, was brought on the regular rolls w.e.f. 01.10.1980. On 28.03.1994, he was issued a chargesheet in respect of an alleged incident of 10.03.1994 which took place while he was performing his duties on Bus DL-1P-9939 which was operated on the interstate route between Meerut and Delhi, whereunder the following charges were levelled against him:-

CHARGE SHEET

It is expected of you that you give an explanation why disciplinary proceedings be not taken against you under Delhi Road Transport Law (Amendment) Act, 1971 read with section 15 (2) of the Delhi Road Transport Authority (Appointment and Service Conductors Regulations, 1952 for the following irregularities.

“When you were posted on bus No.9939 on 10.3.94 on Meerut-Delhi route, on the checking of bus at 1330 hours at Mohan Nagar, following irregularities were found against you:-

(1) You had not issued tickets to two passengers after having taken the prescribed fare from them.

(2) Refused by the passenger to write the statement on challan.

(3) On checking of cash by the checking staff, Rs.7.80 was found short.

(4) You deliberately caused financial loss to the corporation.

By doing such an act you tarnished the image of the Corporation by dereliction of duty.

Your said act is misconduct in terms of para 2 (11) and 4 and 19 (b) (f) (h) (m) of Standing orders governed the conduct of DTC employee.

Before passing the final order, your past record will

also be taken into consideration. If you want personal hearing then you have to give representation for your clarification.

Your explanation should reach this office within 10 days of receipt of this charge sheet. If you fail to do so then the matter will be decided on merit without giving you any further information.

3. As the respondent denied the charges, a domestic enquiry was conducted against him. Since the basic charge against the respondent was that he, despite having collected ticket fare from two passengers, had failed to issue tickets to them, Sh. Siraj Ahmed, one of the passengers was examined as a witness in this inquiry. In his testimony before the inquiry officer, the aforesaid Sh. Ahmed deposed that though he had been duly issued a ticket by the respondent, he had inadvertently dropped it on the bus and was unable to locate the same. Sh. Ahmed further denied having given any voluntary statement to the Checking Staff to the effect that the respondent/conductor, despite collecting the fare from him, had not issued him any ticket. His categorical stand before the Inquiry Officer was that he had duly been issued a ticket by the respondent which he had misplaced. The inquiry officer, on the basis of the evidence led before it, concluded that charge Nos.1, 3 and 4 stood proved against the respondent. Based on this Inquiry Report, the respondent was removed from the service vide order dated 13.03.1995.

4. Aggrieved by his termination, the respondent raised an industrial dispute which was referred to the Labour Court for adjudication where the petitioner, while opposing the respondent's

claim, sought to rely on the inquiry report to prove the respondent's misconduct. Thus, the Labour Court framed a preliminary issue regarding the validity of the inquiry.

5. After perusing the inquiry report and the statements given by the witnesses during the inquiry, the Labour Court concluded that the Inquiry Officer had misdirected herself by appreciating the evidence in an illegal manner. The Labour Court specifically observed the fact that during the inquiry, the petitioner had failed to cross-examine Sh. Siraj Ahmed on his denial of having made a statement before the Checking Staff. The Labour Court further observed that the Inquiry Officer had not examined as to why, if the charges against the respondent were true, the cash available with the respondent was short by Rs.7.80. In these circumstances, the Labour Court, while holding that the proceedings of the Inquiry Officer were perverse, observed as under:-

"I have gone through the evidence on record examination of the workman that the management had not questioned various depositions made by him regarding enquiry in his affidavit. The cross examined is confine only regarding his appearance and participation in the enquiry. On going through the enquiry report, I find that enquiry officer has not considered the evidence in its right perspective and the report is perverse. It is seen from the enquiry proceeding that the concerned passenger Siraj Ahmed had appearing during enquiry proceeding and he deposed that he had purchased a ticket but he dropped it in the bus and he could not locate it. The checking staff asked him for the ticket and he searched from pockets, but, he could not find the tickets. He also wanted the checking staff to enquiry from the conductor that he had purchased the ticket. It is seen from the enquiry report that the enquiry officer has disbelieved him relying on the alleged statement given by the passenger on a piece of paper. The enquiry officer has stated that since the

deposition of the passenger in the enquiry proceeding was contrary to the statement recorded by the checking staff, he was deposing falsely and there was no reason to disbelieve him. In my view the enquiry officer committed with the illegality as the passenger should have been confronted with the alleged statement recoded by the checking staff and there are no reasons to disbelieve very lightly the statement made by the passenger on oath before the enquiry officer without cross examined him by the management and without confronting him with earlier recorded statement to find the truth. Likewise, the driver of the bus, also gave the statement in favour of the conductor that in his presence, the passenger had told that they had purchased the ticket which was lost and they were not at fault. The enquiry officer has again dismissed and not believed the statement of this witness produced by the passenger for no good reasons.

Coming to the evidence of checking staff. It is seen from the cross examination of statement of Mahinder Pal Singh that he had admitted that passenger had refused to given her statement at the back of the challan. Under what circumstances, his statement was recorded on a plane paper has not been explained. It is also seen from the cross examination that the passenger never gave in writing that he had given fare for which the ticket was not given by the conductor. The passenger simply stated that he could not locate his ticket. It is seen from the statement of witnesses that they here challaned the conductor not for issuing ticket by the conductor after charging fare but for the reason that passenger was found without ticket. It is not the case of the passenger that he had paid the fare and he had not been issued the ticket. It is I evidence that the checking staff fist asked the passenger for the ticket and they searched from pocket, but, could not find the ticket. In these circumstances, it cannot be said that conductor can be blamed for not issuing of ticket and mere not finding of ticket by the passenger or demand along cannot bring out any charge against conductor. It is further seen that cash of the conductor was also checked and a shortage of Rs.7.80 ps was found. This shortage of cash goes against the management. In case the conductor had not issued the ticket after charging the money, the cash would have been in excess and it was not for the conductor to explain the same. The cross examination of the witnesses by the workman also show that he wanted the enquiry officer to examine the way voucher to prove

that he had issued all the 75 and half tickets as against 76 seats. The enquiry officer has not paid any attention to this aspect nor the enquiry report show any light on this aspect. She has not considered this nor plea nor has discussed this aspect in her report.

In my considered view the total reading of the evidence in case of the workman in the enquiry clearly establishes that the enquiry officer has misdirected herself in appreciating the evidence in illegal manner. I hold enquiry report as perverse and decide the issue in favour of the workman."

6. The petitioner as noted hereinabove was granted time to lead evidence in support of its charges against the respondent. It appears that on an opportunity being granted, the petitioner did not lead any evidence except that of one Smt. Sunita Chauhan, who was the Inquiry Officer examining the allegations against the respondent. In these circumstances, Labour Court was constrained to observe that once the petitioner did not lead any evidence, except that of its own Inquiry Officer, to justify its removal of the respondent from service, the respondent's removal was illegal and unjustified. Accordingly, the Labour Court directed that the respondent be reinstated in service with full back wages w.e.f. the date of his removal, along with all other consequential benefits, including continuity of service.

7. Assailing the aforesaid two orders, the present petition has been filed by the Management.

8. In support of the petition, Ms.Manisha Tyagi, learned counsel for the petitioner submits that the Labour Court's findings that the inquiry report is perverse, was wholly without any basis. By drawing my attention to the inquiry report, she submits that the Inquiry Officer had not only relied on the statements of the witnesses, but had also

relied on the challan form bearing the respondent's signature. Once the respondent had admitted his liability on the challan form, there was sufficient evidence for the Inquiry Officer to conclude his guilt on the charge of misconduct.

9. She submits that the respondent was precluded from raising the plea of being coerced into signing the challan form at a belated stage, when he had never complained of the same to any higher authority initially. Thus, this plea was rightly rejected by the Inquiry Officer. She further submits that the respondent's past conduct shows that he was habitually not issuing tickets to passengers after collecting fares from them for the same, which could not have been discounted while determining the allegation of misconduct against him. She, therefore, prays that the writ petition be allowed and the impugned order and award be set aside.

10. On the other hand, Mr. Atul Bandhu, learned counsel for the respondents while supporting the impugned award submits that once the entire basis of the petitioner's case against the respondent stood demolished by the statement of Sh. Siraj Ahmed, the Labour Court was justified in holding the inquiry report as being perverse. He submits that even before this Court, the petitioner has failed to explain why Sh. Siraj Ahmed, notwithstanding his categorical statement before the Inquiry Officer that he had never complained to the checking staff, had not been cross examined on this aspect. He submits that, in these circumstances, merely relying on the challan form would not be sufficient to prove the respondent's guilt. Taking this plea further, he submits that the petitioner was aware of the fact that the respondent

was forced to affix his signatures to the challan form which explains why, despite opportunity, other members of the checking staff were not produced before the Labour Court to substantiate the findings of the inquiry once it stood vitiated. He further submits that once the Labour Court has after appreciation of facts come to a categorical conclusion that the findings of the inquiry were perverse, there is no reason, why this Court should interfere with these findings in exercise of its writ jurisdiction.

11. In conclusion, Mr. Bandhu submits that even though the respondent's past record was never included in the charge sheet issued to him, keeping in view the fact that the respondent deceased on 21.12.2016 and the present petition is now being prosecuted by his legal heirs, then without prejudice to his contentions, he has instructions to state that the respondent is willing to give up his claim for 50% of backwages.

12. I have considered the submissions of learned counsel for the parties and with their assistance perused the record.

13. From the facts as noted hereinabove and the record, it emerges that despite Sh. Siraj Ahmed specifically denying having given any statement to the checking staff or filing a complaint against the respondent for non-issuance of ticket, the Management failed to question him on these denials during his cross-examination before the Labour Court. In fact I find merit in the respondent's contention that had Sh. Ahmed been examined on this aspect, he would have been able to substantiate his replies with further information to support the respondent's stand, and perhaps only for this reason, he was never

cross examined by the petitioner. The petitioner's failure to cross examine Sh. Siraj Ahmed lends credence to the respondent's stand that he was also coerced to sign his admission of guilt on the challan form, just the way Sh. Siraj Ahmed was. The Labour Court, besides observing that the petitioner had failed to cross-examine the primary witness on whose alleged statement the petitioner's entire case against the respondent rested, also observed that the Inquiry Officer had not considered other vital aspects of the matter and had misdirected herself in appreciating the evidence. In these circumstances, the Labour Court was constrained to hold that the inquiry report was perverse.

14. Before this Court also, the petitioner has not been able to explain as to why Sh. Ahmed, who had specifically denied having made any statement implicating the respondent was not cross-examined or why the Inquiry Officer has not dealt with the entire evidence led on record while arriving upon her conclusions. I, therefore, find no merit in the petitioner's challenge to the findings of the Labour Court on the ground that the inquiry report was perverse, especially when the Labour Court had arrived at the same after examining the statements of the witnesses as recorded in the inquiry report in detail. In these circumstances, I see no reason to interfere with the Labour Court's order dated 29.09.2004 holding the inquiry report to be perverse.

15. Now coming to the impugned award, it is an admitted position that even though after the inquiry report was held to be perverse, the petitioner was granted opportunity to lead evidence to prove the

respondent's misconduct, which it failed to do. In fact, upon being granted the opportunity, the petitioner only examined its inquiry officer and did not lead any evidence to prove the factum of misconduct. Thus, once the petitioner failed to lead any evidence on this aspect, the Labour Court was justified in holding that the respondent's misconduct had not been established and that the penalty imposed on him was unsustainable. I do not find deficiency or illegality in the procedure adopted by the Labour Court while appreciating the evidence placed before it. I, therefore, find that no case has been made out warranting the exercise of my powers under Article 226 of the Constitution of India.

16. Ms. Tyagi has also vehemently urged that even though the petitioner did not lead any evidence to prove respondent's misconduct, his past conduct cannot simply be ignored. She, therefore, prays that this was not a case warranting the award of reinstatement with full backwages in favour of the workman which the Labour Court failed to appreciate. However, in view of the respondent's statement expressing its willingness to give up its claim for 50% of the backwages, I do not find any necessity to delve into this issue. The impugned award is, therefore, modified with the consent of the learned counsel for the respondent insofar as it grants 100% backwages to the respondent and the respondent would, instead, be entitled to receive only 50% backwages.

17. At this stage it is pointed out that the respondent, upon filing its application under Section 17 B of the Industrial Disputes Act, 1947, had been taken back in service by the petitioner, without prejudice to

its rights and contentions in the present petition, albeit on wages which were lower than the salary accruing to him as a regular employee. It is, therefore, directed that while making payment of the amount due to the respondent in terms of this order, the payment already made to him by the petitioner while he was in service shall be adjusted. It is, however, made clear that even though the backwages payable to the respondent are being reduced by 50%, the pension payable to the legal heirs of the respondent shall remain unaffected.

18. The record also shows that pursuant to the orders of this Court, the petitioner had deposited a sum of Rs.3,76,953/- with the Registrar General. As the respondent will now be entitled to receive 50% of the arrears of backwages, it would be appropriate to direct that this amount should be released to the respondent. In view of the statement given on behalf of the respondent's other legal heirs in C.M.No.24537/2017, the Registry is directed to release this amount alongwith upto date accrued interest in favour of the respondent's widow, namely, Ms.Chander Kala. Upon release of the accrued amount to Ms.Chander Kala, the registry shall communicate the same to the petitioner through counsel in order to enable it to make the balance payments to her, in terms of this order. The balance amount, if any, shall be paid by the petitioner to Ms. Chander Kala within a period of eight weeks thereafter.

19. The writ petition is disposed of in the aforesaid terms.

REKHA PALLI, J

JANUARY 22, 2020/sr/sdp