

\$~16(2021)

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

%

Decision delivered on: 13.09.2021

+ **LPA No.318/2021**

DELHI TRANSPORT CORPORATION Appellant

Through : Ms. Bhakti Pasrija, Adv.

versus

LATE SH. SAMAY SINGH THROUGH LRs Respondent

Through : Mr. R.K. Kapoor, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

RAJIV SHAKDHER, J. (ORAL):

[Court hearing convened *via* video-conferencing on account of COVID-19]

1. This is an appeal filed against the judgement of the learned single judge dated 22.01.2020, passed in W.P.(C.) No.1509/2006.

1.1. The appellant before us i.e., the Delhi Transport Corporation (DTC) had assailed before the learned single judge, not only the order dated 29.09.2004, passed by the concerned labour court, in I.D.No.153/1996, but had also challenged the award dated 13.05.2005, which was, thereafter, passed by the concerned labour court in the said matter.

1.2 To be noted, the said order and award are impugned in the present appeal also.

2. The backdrop, in which the impugned order and the award, passed by the concerned labour court, came to be challenged before the learned single judge, is set forth hereafter:

2.1 The deceased respondent, who is now, according to Ms. Bhakti Pasrija, counsel for the appellant/DTC, represented by his legal representatives was charge sheeted *qua* an alleged incident, which took place on 10.03.1994.

2.2. It was alleged that, the deceased respondent, who was employed as a conductor with the appellant/DTC, had not issued tickets to two passengers, while operating on an interstate bus route between Meerut and Delhi, on 10.03.1994.

2.3. Based on the aforesaid allegation, a charge sheet was served on the deceased respondent, on 28.03.1994.

2.4. Thereafter, an enquiry was conducted. Vide report dated 29.07.1994, the enquiry officer found that charge nos.1, 3 and 4 were proved against the deceased respondent.

2.5. Accordingly, the deceased respondent was removed from service, w.e.f. 30.03.1995.

2.6. Being aggrieved, the deceased respondent raised an industrial dispute before the concerned labour court, which resulted in the passing of impugned order and the award.

3. The concerned labour court concluded in the award dated 13.05.2005, that the enquiry report was perverse.

3.1. In reaching the aforesaid conclusion, the concerned labour court noted the fact that, despite the appellant/DTC being given an opportunity to lead evidence, it failed to do so.

3.2. Besides this, one of the passengers i.e., Mr. Siraj Ahmed deposed before the enquiry officer that, although, he was issued a ticket by the deceased respondent, he had misplaced the same. We are told by Ms. Bhakti

that, the said witness was not cross-examined by the appellant/DTC.

3.3. Ms. Bhakti, however, says that, the enquiry officer's conclusion ought to have been upheld, as the deceased respondent had made a contrary statement before the checking staff, on the date of the incident i.e., 10.03.1994.

3.4. In our view, the fact that, before the enquiry officer, the aforementioned witness i.e., Mr. Siraj Ahmed had made a statement, which was contrary to what was indicated before the checking staff, had significance, and therefore, as rightly pointed out, both, by the concerned labour court and the learned single judge, he ought to have been cross-examined.

3.5. It is in these circumstances that, the concerned labour court set aside the order of removal dated 30.03.1995, and directed reinstatement of the deceased respondent in service with full back wages, and other consequential benefits along with continuity of service.

3.6. However, before the learned single judge, the legal representatives of the deceased respondent gave up 50% their claim concerning back wages.

4. The learned single judge has, after a detailed hearing, given her view in the matter, which is noted in the following paragraphs of the impugned judgement :

"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."

[Emphasis is ours]

4.1. The observations made by learned Single Judge in the aforesaid extract are not disputed by Ms. Bhakti. It is also not disputed by Ms. Bhakti that despite opportunity being given, the only witness that the appellant/DTC examined was the enquiry officer, whose report, as noted above, had not been ultimately accepted by the concerned labour court.

5. Having perused the record and heard Ms. Bhakti, we are of the view that no interference is called for with the impugned judgement rendered by the learned single judge as also the impugned order and the award, passed by the concerned labour court.

6. The appeal is, accordingly, dismissed.

RAJIV SHAKDHER, J

TALWANT SINGH, J

SEPTEMBER 13, 2021/aj

[Click here to check corrigendum, if any](#)