

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1356 of 2018

In

Civil Writ Jurisdiction Case No.10459 of 1999

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

... .. Appellant/s

Versus

1. The State of Bihar through the Secretary, Transport Department, Bihar, Patna.
2. The Presiding Officer, Industrial Tribunal, Patna.
3. The Sri Nageshwar Jha, Son of Late Punit Lal Jha, resident of Village - Kunautha, P.O. and P.S.- Sultanganj, District- Bhagalpur.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. P.K. Verma, Sr. Advocate Dr. Anand Kumar, Advocate
For the Respondent/s	:	Mr. Sourendra Pandey, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 05-09-2023

1. The impugned judgment in appeal, fully endorses the Award of the Industrial Tribunal, Patna (for brevity “the Tribunal”) in Reference Case No. 5 of 1989. The Bihar State Road Transport Corporation (for brevity “the Corporation”), who was the respondent-Management before the Tribunal, sought for setting aside the Award of the Tribunal and affirming the order of dismissal passed by the Disciplinary Authority against the 3rd Respondent, the petitioner-workman. We refer to the parties as the Management and the Workman for



convenience.

2. The allegation against the Workman was that while he was driving the stage carriage of the Management bearing Registration No. BPJ-849 in the route Bhagalpur-Tata on 27.10.1987, it met with a serious accident. The vehicle dashed against a tree at about 10:30 P.M. resulting in all the eleven passengers suffering injuries and one of them, a lady, succumbing to her injuries. Heavy damages were caused to the vehicle and the Divisional Manager, Dhanbad rushed to the spot, prepared a report and submitted it to the Chief Mechanical Engineer, which was produced at the enquiry, and in the writ petition as Annexure-2. A disciplinary enquiry was initiated and based on the same the Disciplinary Authority, who is the Additional Managing Director, dismissed the workman by Annexure-9 order.

3. At the time of initiation of the enquiry and the dismissal of the workman, there was an Industrial Dispute pending before the Tribunal between the Workmen and the Management. The Management, admittedly, did not comply with the proviso to Section 33 (2)(b) of the Industrial Disputes Act, 1947 (for brevity “the Act”). Neither was the workman paid wages for one month nor an application made by the



Management to the Tribunal for approval of the action taken by the Management. The Workman filed an application under Section 33A of the Act before the Tribunal, where the earlier dispute was pending at the time of dismissal. The Tribunal considered the case of dismissal, treating the complaint filed as a reference made and held against the Management, finding absolutely no evidence to hold the Workman guilty of the charges levelled, of rash and negligent driving and removal of parts of the damaged bus.

4. The Tribunal found that there were only two witnesses at the enquiry, one an Engineer and the other a Depot Superintendent, whose evidence was relied on by the Disciplinary Authority to come to the conclusion that the defense set up, of failure of the brake system, was incorrect. The Motor Vehicle Inspector (for brevity "M.V.I."), who is an independent expert on the subject, who would necessarily have inspected the bus at the accident spot itself, was not examined as a witness in the enquiry, nor was the report filed by him in the criminal case produced before the Enquiry Officer. The Engineer whose evidence was relied on by the Enquiry Officer deposed that he could not ascertain whether there was failure of brake system, since that portion of the engine was considerably



damaged. The Divisional Manager, who had arrived at the site immediately after the accident, was not examined. The charge of the workman having removed the parts of the damaged bus was also found to be highly improbable since the workman also sustained injuries in the accident, after which he was hospitalized. The criminal case against the workman for rash and negligent driving also ended in acquittal of the workman, giving him the benefit of doubt. Finding also that there was no notice pay disbursed to the workman and that there was no application for approval filed under Section 33, the reference was allowed in favour of the Workman and he was directed to be reinstated with full back wages.

5. The learned Single Judge looked at the provisions applicable, being Section 33 (2) and Section 33A as also the decisions placed before Court, to find that admittedly there was no approval sought for the dismissal of the Workman, by the Management, before the order of dismissal was passed. The learned Single Judge also emphasized the fact that earlier, the allegation against the Workman was that, he allowed the Conductor, who was also proceeded against, to drive the vehicle. Later, finding no evidence to substantiate the said contention, the Management had alleged rash and negligent



driving on the workman, which did not stand proved in the enquiry or before the Tribunal.

6. Learned Senior Counsel appearing for the Management, Shri P.K. Verma argued that the Tribunal did not address the issue properly. The Tribunal was not sitting in appeal and the order of dismissal could not be interfered with, merely for reason of an approval having not been taken under Section 33(2) of the Act. ***Rajasthan State Road Transport Corporation and another v. Satya Prakash; (2013) 9 SCC 232*** is relied on to contend that merely on the failure of the Management to take approval under Section 33(2), there can be no interference caused to the dismissal order. In the application under Section 33A, the Tribunal ought to consider the dismissal on merits, as a reference made by the Government. In so considering the merits, the Tribunal is not sitting in appeal over the findings of the Enquiry Officer and if on facts coming out in the enquiry the allegations are proved, it is not for the Tribunal to arrive at a different conclusion based on the very same evidence. The Tribunal's power under Section 11A of the Act to interfere with the punishment was also not invoked; which invocation necessarily has to be on the proportionality of the punishment awarded with reference to the gravity of the



offence. It is pointed out that the accident caused the death of a lady and ten other passengers were also injured. The Engineer who was examined at the enquiry has clearly deposed that the inspection at the accident site made it very clear that the workman had been driving the vehicle in a rash and negligent manner and perhaps, the accident occurred while avoiding collision with another vehicle on the road. The care and caution to be taken by a driver while driving a vehicle was clearly and palpably visible, at the accident spot, is the contention. It is also contended that the evidence of the Engineer pins the guilt of the charges levelled on the Workman; squarely and undisputedly. There could have been no interference caused to the order of dismissal passed by the Disciplinary Authority and, in any event, there could not have been any back wages granted to the workman.

7. Shri Sourendra Pandey, learned counsel appearing for the 3rd Respondent stoutly opposed the contention raised by the learned Senior Counsel. Reliance was placed on the Constitution Bench decision of the Hon'ble Supreme Court in ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v. Ram Gopal Sharma and others; (2002) 2 SCC 244*** wherein it was held that when there is a failure to seek approval under Section 33(2), the



workman need not do anything more than present himself for reinstatement; the order of dismissal without approval under Section 33(2) being void. While accepting the position that the Tribunal, in the application filed under Section 33A could go into the sustainability of the order of dismissal, it was pointed out that the Tribunal meticulously considered the evidence and interfered with the punishment. A reading of the evidence would clearly indicate that the findings of the Enquiry Officer, affirmed by the Disciplinary Authority, were perverse to the core. It is also pointed out from the order of the Disciplinary Authority, produced as Annexure-9 that the Disciplinary Authority was swayed by the lurking suspicion that the Workman had allowed the Conductor of the bus to drive the vehicle. The interference caused to the dismissal order is perfectly in order and in that circumstance the order of reinstatement with full back wages cannot be faulted, especially in the context of the Management having not taken the approval of the Tribunal before the order of dismissal.

8. *Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd.*

(supra) considered the effect of Section 33(2)(b) and its proviso, especially in the circumstance of no approval sought under the proviso, by the Management. Section 33, as it stood before



1956, was stringent in so far as no Disciplinary Proceedings could be continued when an Industrial Dispute is pending which was to maintain a peaceful atmosphere within the rank and file of an establishment and to ensure that no witch-hunting is carried out by the Management. However, on the working of the provision, finding it to be too stringent and not permitting appropriate action against erring employees, amendments were made in the year 1956, permitting the employer to make changes in the conditions of service or to discharge or dismiss an employee with respect to misconducts totally unconnected with the pending industrial disputes. However, as a measure of safeguarding the workmen from ill motivated punitive actions, the proviso required the Management to get an approval of the Tribunal before which the earlier referred dispute is/was pending. The language of the proviso to Section 33(2)(b) was found to be very unambiguous and clear, making it mandatory which has to be essentially complied with. The penal provision under Section 31(1), on contravention of Section 33, was found to be a further pointer to the mandatory nature of the proviso. Reiterating the trite principle of interpretation, that no part of a statute should be construed as unnecessary or superfluous, it was categorically held that the proviso could not be diluted or



disobeyed by an employer. A dismissal or discharge made in contravention of the proviso to Section 33(2)(b) would be void and inoperative and if no approval is sought or the approval sought is declined, then nothing more is to be done by the employee, since the order of discharge or dismissal would be deemed to be *non-est* in law. Section 33A was found to be available to an employee challenging the order of discharge or dismissal instead of making efforts to raise an industrial dispute by getting a reference and adjudication thereat. The provision was found to be not a remedy to an aggrieved Workman but only a penal provision against the offender, the Management.

9. In ***Rajasthan State Road Transport Corporation*** (supra), the Hon'ble Supreme Court held that in the proceedings under Section 33A, the Tribunal should treat it as a reference under Section 10 and go into the merits of the case after affording an opportunity to both parties to present their case. If the Tribunal finds the misconduct to be proved, then the technically vitiated dismissal order, which is rendered inoperative or void for reason of no approval having been taken under the proviso to Section 33(2)(b), would revive. In the said case, though the Tribunal concluded that the misconduct was proved and the dismissal was proper, the initial non-compliance



of the proviso to Section 33(2)(b) was relied on to find the dismissal irreparably void and inoperative; which was overturned by the superior court.

10. In the present case, admittedly there was no approval taken under the proviso to Section 33(2)(b) and the Workman had moved the Industrial Tribunal before whom, the earlier dispute was pending under Section 33A. The Tribunal rightly, as held by the Hon'ble Supreme Court, treated it as a reference. Two parties were examined before the Tribunal, the petitioner-Workman and the Enquiry Officer; the latter of whom could only mark the Enquiry Report and not speak anything on the facts of the case. Essentially, the Tribunal has to look at the Enquiry Report to adjudicate upon the allegation levelled and find the misconduct to have been proved.

11. The learned Single Judge has extracted the operative portion of the Tribunal's order which considered the facts leading to the allegations and found the misconduct to be not proved. We have also referred to it in the earlier part of the judgment when the order of the Tribunal was looked at. We have also looked at Annexure-9 produced in the writ petition, which is the order of the Disciplinary Authority. Reliance placed by the Disciplinary Authority is on the evidence of the Depot



Superintendent and the Senior Foreman of the Giridh Depot of the Management. It was also the deposition of the Senior Foreman that the cause of the accident was rash driving but, since the vehicle was considerably damaged, the brake system could not be examined. In this context, we have to observe that initially the allegation against the Workman was that he had permitted the Conductor to drive the vehicle. We have to immediately notice that even the Workman who was entrusted with the duty of the driver was a Conductor, in the service of the Management.

12. Be that as it may, the allegation of allowing another person to drive was not pressed by the Management, since there was no substantiating evidence. The Management pressed only the allegation of rash and negligent driving as also the parts of the vehicle having been removed by the Workman-driver. The Divisional Manager who arrived at the site immediately after the accident was not examined. His report was produced before the Enquiry Officer but no reliance can be placed on the same since the Divisional Manager did not prove the report by stepping on to the box and the Workman was never given an opportunity to cross-examine the said person.

13. Yet again, we have to notice that the memorandum



of charges itself asserts that all the eleven passengers were injured, one of whom also succumbed to the injuries sustained. None of these passengers were examined before the Enquiry Officer, either to establish the identity of the person who was driving the bus or the fact of the vehicle having been driven in a rash and negligent manner. Even the Divisional Manager was not at the site when the accident occurred and not at all, the Senior Foreman, whose evidence was relied upon to find rash and negligent driving. It shocks the conscience of any reasonable man, leave alone a judicially trained person, from assuming rash and negligent driving, merely on an inspection of the accident site, after the accident occurred and such assumption leading to gross punishment of dismissal from service.

14. The defense set up against the allegation of rash and negligent driving was failure of the brake system. The witnesses examined at the enquiry could not depose as to whether there was a failure in the brake system and the explanation was that the engine portion was so grossly damaged that the verification of the brake system was impossible. The accident resulted in ten persons sustaining injuries and one death, in which event definitely the jurisdictional M.V.I. would have inspected the bus and filed a report before the Criminal Court. No such report was produced



before the Enquiry Officer nor was the M.V.I. examined. It is also pertinent that the accused was acquitted in the criminal case, though conferring him with benefit of doubt; which acquittal assumes relevance in the context of there being no substantiating evidence for the rash and negligent driving, adduced before the Enquiry Officer. But for the individual perceptions aired at the enquiry, there is nothing to find the rash and negligent driving of the Workman having caused the accident, even on preponderance of probabilities.

15. The findings at the enquiry and that of the Disciplinary Authority are nothing but perverse. In fact, we notice that the Disciplinary Authority has made a perfunctory order and has also referred to a lurking suspicion that the Conductor was allowed to drive the bus by the workman and that it is only realizing the seriousness of the charges he accepted the onus of driving, on himself. This makes the order further perverse.

16. We find absolutely no reason to interfere with the judgment of the learned Single Judge and we dismiss the appeal directing the Management-appellant to reinstate the respondent-workman with back wages, if not already done. If he has attained the age of superannuation, the Management shall pay



him the full back wages from the date of his suspension, if he was placed under suspension pending enquiry proceedings, minus any subsistence allowance paid. If not suspended, back wages from the date of his dismissal and also computation of pension and disbursal of the same with arrears within a period of six months from today; if the service was pensionable. If the workman is entitled to reinstatement, the same shall be done within one month and the six month period is only for computation of the consequential monetary benefits due to the workman.

17. The appeal shall stand dismissed with the above directions and the parties shall suffer their respective costs.

18. Interlocutory Application(s), if any, shall stand closed.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

P.K.P./-.

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