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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 21.02.2023

Pronounced on: 09.05.2023

+ W.P.(C) 8600/2004 & C.M. Nos. 6229/2004 & 21756/2010

D.T.C.

..... Petitioner

Through: Ms. Manisha Tyagi with Ms.
Damini Vishwakarma,
Advocates.

versus

KARAMVIR SINGH

..... Respondent

Through: Mr. Kunal Manav and Mr.
Puneet Jaiswal, Advocates.

CORAM:

HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T

GAURANG KANTH, J.

1. The present petition has been filed under the Article 226 of the Constitution of India for setting aside the impugned orders dated 06.01.2003 ("***Impugned order-I***") and 01.05.2003 ("***Impugned order-II***") passed by the Presiding Officer, Industrial Tribunal-II, Karkardooma Court, Delhi ("***Labour Court***") in O.P. No.452/92. *Vide* the Impugned order-I, the learned Labour Court held that the Petitioner/Corporation failed to produce the enquiry officer, in absence of whom the proceedings were not proved, and hence the enquiry proceeding was vitiated. Learned Labour Court *vide* the Impugned order-II dismissed the application filed by the

Petitioner/Corporation under Section 33(2)(b) of the Industrial Disputes Act, 1947 (***"I.D. Act"***) on the grounds that the applicant failed to prove alleged misconduct against the Respondent.

FACTS RELEVANT FOR THE ADJUDICATION OF THE MATTER

2. The Respondent was appointed by the Petitioner/Corporation as a conductor in the year 1982. On 31.08.1992, the Respondent was on duty in Bus no. 9115 running in route from Lajpat Nagar to Faridabad. The said bus was checked by the inspection staff of the Petitioner/Corporation. Allegedly, upon the inspection it was found that two passengers were travelling in the said bus without any ticket. On asking the passengers, they stated that they have paid full fare to the Respondent, but he refused to issue any ticket to them. Statement of ticketless passengers was recorded by Sh. Sukhbir Singh, T.I. which was also signed by the Respondent. Thereafter a checking report was prepared and submitted on 31.8.1992 by Sh. Pran Nath, ATI; Sh. Darshan Singh, Trff. Supt.; Sh. Sukhbir Singh, T.I. and Sh. P.L. Arora, ATI.
3. On the basis of the abovesaid report, a chargesheet dated 14.09.1992 was issued by the Depot Manager, Nehru Place Depot to the Respondent to which the Respondent submitted his reply dated 21.09.1992. The chargesheet dated 14.09.1992 has been reproduced herein below:

"It is expected of you that you give on 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.

On 31.8.92, you were on duty on bus No. 9115, the bus was checked by the inspection staff, it was found that the group 2 passengers alighted without ticket who were traveling from Ashram to Gurukul Sarai and on enquiry it was stated by the group leader that he paid Rs.5/- to the conductor for two tickets on demand and conductor did not issue any tickets to him. On demand of tickets he said to get down without it.

This act of your is misconduct within the meaning of section 19 (b)(f) and (m) of the Permanent Standing Order governing the conduct of employees of the DTC.

On the basis of which report the chargesheet is based the copy of same is enclosed. A copy of your previous record is also annexed. This will be kept in view at the time of passing final orders in this matter or at the time of giving recommendations. If you want personal hearing, then request for it in your explanation.

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.”

4. An enquiry was held *qua* the charges. During the course of the enquiry, statement of Sh. Pran Nath, ATI, Sh. Sukhbir Singh, Tr. Supt., Sh. Darshan Singh, Tr. Supt., and Sh. P.L. Arora, ATI were recorded. Respondent filed the closing statement on 29.03.1993 wherein he denied the charges levelled against him and prayed for exoneration from all such charges.
5. The Inquiry Officer on 31.03.1993, submitted the enquiry report in which he found all the charges levelled against the Respondent fully proved and forward the case to the depot manager.
6. In pursuance of the enquiry report dated 31.03.1993, the depot manager issued a show cause notice dated 21.04.1993 to the

Respondent. The Respondent replied to the show cause notice, which was found to be unsatisfactory, hence the Respondent was removed from the services of the Petitioner/Corporation *vide* Removal order dated 29.07.1993. It is also stated in the aforesaid order that the Respondent has been paid Rs.2518/- by way of money order in accordance with Section 33(2)(b) of the I.D. Act. Simultaneously, the Petitioner/Corporation preferred an approval application under Section 33(2)(b) of the I.D for approval of the Petitioner's action of removing the Respondent from service.

7. The application was dismissed through a two-stage process. *Vide* the impugned order-I dated 06.01.2003, the learned Labour Court observed that the Petitioner/Corporation has failed to prove the enquiry proceedings and the enquiry report against the Respondent and therefore decided the issue against the Petitioner/Corporation. The relevant extract of the Impugned order-I has been reproduced herein below:

"5. From the affidavit and statement of AW-1 it is evident that the enquiry officer was available with the management but who is busy in some assignment.

The management has not made efforts to produce the enquiry officer to prove the enquiry proceedings as well as report. Consequently, in the absence of the enquiry officer, the applicant has failed to prove the enquiry proceedings and report, which vitiated the enquiry proceeding. The issue is decided against the applicant."

8. Learned Labour Court, thereafter, granted an opportunity to the Petitioner/Corporation to prove the misconduct before the

learned Labour Court. On the basis of the pleadings, the learned Labour Court framed the following issues:

- “ 1. Whether the Respondent conducted the misconduct as alleged against him in the chargesheet?*
- 2. Whether the Petitioner remitted full one months wage to the Respondent in accordance with Section 33(2)(b) of the ID Act?*
- 3. Relief?*

9. To prove these issues, the Petitioner/Corporation produced AW-1, Sh. Sukhbir Singh and AW-2 Sh. Satinder Kumar. The Respondent examined himself as RW-1.

10. Based on the evidence adduced by the parties, learned Labopur Court *vide* Impugned order-II dated 01.05.2003 held that the Petitioner/Corporation failed to prove the alleged misconduct against the Respondent. Consequently, learned Labour Court rejected the approval application filed by the Petitioner/Corporation under Section 33(2)(b) of the I.D. Act. The relevant extract of the Impugned order-II has been reproduced herein below:

“6. Issue No. 1

...

7. I have gone through the record available on file. Admittedly, no passenger witness was examined or produced by the applicant to prove the misconduct of respondent. Even during cross examination AW-1 Sukhbir Singh admitted that passengers did not paid the fare in his presence and the cash of respondent was not checked. He further admitted that in the address of passenger house number is not mentioned and no statement of any other independent passenger was record. Consequently, it is held that applicant has failed to prove the alleged

misconduct against the respondent. Issue is decided against the applicant.

8. Issue No.2

To prove the issue applicant produced AW-2 Shri Satender Kumar who Filed his affidavit dt.3.3.2003 in which he deposed that alongwith the removal order, one month's salary of Rs.2518/- was sent to the respondent and he proved the copies of charge sheet, show cause notice, removal order, salary slip and postal receipt as Ex.AW2/l to Ex.AW2/6. On the other hand respondent during his cross examination admitted that he received the notice salary. Consequently, the issue is decided in favour of applicant.

9. Issue No.3

Keeping in view the finding on Issue No.1 the approval sought by applicant is rejected and application filed u/s 33 (2) (b) of I.D.Act is hereby dismissed. File be consigned to record room."

11. Aggrieved by the Impugned order-I and Impugned order-II, the Petitioner/Corporation has filed this instant writ petition impugning the legality of the aforesaid orders. The Petitioner/Corporation is seeking quashing of the impugned orders and approval of the order dated 29.07.1993 by which the Respondent was removed from service.

12. This Court *vide* order dated 17.08.2004 was pleased to stay the operation of the Impugned order-II dated 01.05.2003 upon the Petitioner/Corporation depositing Rs.5,000/- in the Registry of the court.

13. *Vide* order dated 22.04.2009, this court allowed the application filed by the Respondent under Section 17-B of the I.D. Act and directed the Petitioner/Corporation to pay to the respondent the last drawn wages or the minimum wages, whichever are higher,

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from the date of the award 01.05.2003 till the final disposal of the petition. The Respondent was taken back in service in lieu of payment of future wages under Section 17-B of the I.D. Act.

SUBMISSIONS MADE ON BEHALF OF THE PETITIONER CORPORATION

14. Ms. Manisha Tyagi, learned counsel appearing on behalf of the Petitioner/Corporation has vehemently opposed the impugned order-I and II on grounds that the orders suffer from perversity. Counsel has submitted that the learned Labour Court was well-equipped with the relevant evidence that demonstrated and proved that the oral enquiry was fairly conducted.
15. Counsel draws the attention of this court towards the checking report (**Annexure P-2**) and the statement of passenger recorded by the checking staff wherein the passenger categorically stated that the Respondent refused to issue him the ticket despite him paying the full fare. It is submitted that the Challan and Statement of passenger was signed by the Respondent which implies his acceptance of guilt. It is further submitted that the checking staff recovered two unpunched tickets from the possession of the Respondent.
16. With regards to the fairness of the enquiry proceedings conducted against the Respondent, the counsel averred that throughout the course of enquiry proceedings, the Respondent was given adequate opportunity to represent himself and cross examine the Petitioner's witnesses. The learned Labour Court failed to appreciate that the properly recorded enquiry

proceedings along with the testimony of the checking staff and passenger were sufficient to adduce the misconduct by the Respondent. While conducting the enquiry, the principles of natural justice were adhered to, and every proceeding was recorded and produced before the learned Labour Court.

17. Learned counsel submitted that the learned Labour Court failed to appreciate the well settled law that mere non-production of the Inquiry Officer does not vitiate a fairly conducted enquiry proceeding. Moreover, the counsel relied upon the affidavit filed by the typist Sh. Suresh Chand, who was attached with the inquiry officer at the time of enquiry proceedings. While relying upon the aforesaid testimony, the counsel submitted that the Inquiry officer was not produced since he left the services of the Petitioner/Corporation and was working in Jaipur.
18. Learned counsel also highlighted the past record of the Respondent to demonstrate that on earlier incidents too the Respondent indulged himself into acts amounting to misconduct.
19. For buttressing the arguments made, learned counsel relied upon judgment delivered in *State of Haryana v. Rattan Singh*, reported as (1977) 2 SCC 491; *Delhi Transport Corporation v. Shree Kumar*, reported as 2004 SCC OnLine Del 557; *SBI v. Ashok Kumar Bhatia*, reported as (2021) 4 HCC (Del) 408; *Delhi Transport Corporation v. N.L. Kakkar, Presiding Officer*, reported as 2004 SCC OnLine Del 200; *NDMC v. Hari Ram Tiwari*, reported as 2020 SCC OnLine Del 2085;

20. With these submissions, learned counsel for the Petitioner/Corporation prayed for the setting aside of the Awards impugned herein.

SUBMISSIONS MADE ON BEHALF OF THE RESPONDENT

21. Mr. Kunal Manav, learned counsel appearing for the Respondent has submitted that the entire narrative of the passengers is false and concocted. The passenger on being confronted by the checking staff for being travelling without tickets, to defend himself shifted his guilt upon the Respondent.

22. Learned counsel for the Respondent denied that the Respondent was given full opportunity to defend the case. It is submitted that the Inquiry Officer failed to follow the rules and regulations governing the departmental enquiry of the Petitioner/Corporation. It is further submitted that the Petitioner/Corporation never duly summoned the alleged passenger since as per the report of the postal authority the summons was received back due to incomplete address.

23. Learned counsel for the Respondent further submitted that the Petitioner/Corporation deliberately failed to produce the Inquiry Officer before the learned Labour Court, despite knowing his whereabouts. It is alleged that no efforts were made by the Petitioner to call the enquiry officer to prove the enquiry proceedings and the witnesses. It is submitted that the judgment cited by the learned counsel for the Petitioner/Corporation is not applicable to present matter since as per the facts of the said

judgments, the Inquiry Officer was not produced due to lack of knowledge of his whereabouts.

24. Mr. Manav, learned counsel further counters the argument made by the learned counsel for the Petitioner with respect to the past misconduct about non-action of the corporation if there exists history of misconduct by the Respondent.

25. Learned Counsel placed reliance upon the judgement delivered by this Court in ***Delhi Transport Corporation v. Kalu Prasad*** reported as **2022/DHC/004339**.

26. With these submissions, learned counsel for the Respondent prayed for the dismissal of the writ Petition.

LEGAL ANALYSIS

27. This Court has heard the arguments advanced by the learned counsels for both the parties and perused the documents on record and Judgments relied upon by the parties.

28. The present proceedings emanate from the approval application filed by the Petitioner/Corporation under section 33 (2)(b) of the I.D. Act. The Hon'ble Supreme Court in ***John D'Souza Vs Karnataka State Transport Corporation***, reported as **2019 (18) SCC 47**, reiterated the scope of enquiry permissible under Section 33(2)(b) of the I.D. Act. The relevant portion of the said Judgment, reads, inter alia, as follows:

“24. Section 33(2)(b) of the Act, thus, in the very nature of things contemplates an enquiry by way of summary proceedings as to whether a proper domestic enquiry has been held to prove the misconduct so attributed to the workmen and whether he has been afforded reasonable

opportunity to defend himself in consonance with the principles of natural justice. As a natural corollary thereto, the Labour Court or the Forum concerned will lift the veil to find out that there is no hidden motive to punish the workman or an abortive attempt to punish him for a non-existent misconduct.

25. The Labour Court/Tribunal, nevertheless, while holding enquiry under Section 33(2)(b), would remember that such like summary proceedings are not akin and at par with its jurisdiction to adjudicate an 'industrial dispute' under Section 10(1)(c) and (d) of the Act, nor the former provision clothe it with the power to peep into the quantum of punishment for which it has to revert back to Section 11A of the Act. Where the Labour Court/Tribunal, thus, do not find the domestic enquiry defective and the principles of fair and just play have been adhered to, they will accord the necessary approval to the action taken by the employer, albeit without prejudice to the right of the workman to raise an 'industrial dispute' referable for adjudication under Section 10(1)(c) or (d), as the case may be. It needs pertinent mention that an order of approval granted under Section 33(2)(b) has no binding effect in the proceedings under Section 10(1)(c) and (d) which shall be decided independently while weighing the material adduced by the parties before the Labour Court/Tribunal.

30. This Court in the above cited decisions has, in no uncertain terms, divided the scope of enquiry by the Labour Court/Tribunal while exercising jurisdiction under Section 33(2)(b) in two phases. Firstly, the Labour Court/Tribunal will consider as to whether or not a prima facie case for discharge or dismissal is made out on the basis of the domestic enquiry if such enquiry does not suffer from any defect, namely, it has not been held in violation of principles of natural justice and the conclusion arrived at by the employer is bona fide or that there was no unfair labour practice or victimisation of the workman. This entire exercise has to be undertaken by the Labour Court/Tribunal on examination of the record of enquiry and nothing more. In the event where no defect is detected, the approval must follow. The second stage comes when the Labour Court/Tribunal finds that the

domestic enquiry suffers from one or the other legal ailment. In that case, the Labour Court/Tribunal shall permit the parties to adduce their respective evidence and on appraisal thereof the Labour Court/Tribunal shall conclude its enquiry whether the discharge or any other punishment including dismissal was justified.”

29. Hence it is evident that the enquiry envisaged under Section 33 (2) (b) of the I.D. Act is a limited enquiry and in the nature of summary proceedings. While examining the application under Section 33 (2) (b) of the I.D. Act, the learned Labour Court is to conduct the enquiry in two stages. In the first stage, the Labour Court/Tribunal will consider as to whether the domestic enquiry is conducted in accordance with the (a) principles of natural justice (b) the conclusion arrived at by the employer is bonafide (c) there was any unfair labour practice or victimization of the workman (d) a prima facie case for discharge or dismissal is made out on the basis of the domestic enquiry. In the event, no defect is detected in the enquiry, the approval must follow. The second stage comes when the Labour Court/Tribunal finds that the domestic enquiry suffers from one or the other legal ailment. In case there is any defect in the enquiry, the Labour Court/Tribunal shall permit the parties to adduce their respective evidence before it. On appraisal of the evidence adduced by the parties, the Labour Court/Tribunal shall conclude whether the discharge or any other punishment including dismissal is justified. Hence the enquiry under Section 33(2) (b) of the ID Act is to be conducted in two stages as explained herein above.

30. Based on the legal principles as explained by the Hon'ble Supreme Court in *John D'Souza (supra)*, this Court now proceeds to examine the facts of the present case.
31. In the present case, the learned Labour Court vide order dated 06.01.2003 held that the Petitioner/Corporation failed to produce the Inquiry Officer and hence failed to prove the enquiry proceedings. Hence the first stage was decided against the Petitioner/Corporation. Learned Labour Court then proceeds to the second stage and permitted the Petitioner Management to adduce the evidence to prove the alleged misconduct of the Respondent. The Petitioner/Corporation availed the said opportunity and led evidence to prove the alleged misconduct. However, after examining the matter in detail, the learned Labour Court was of the considered view that there was no prima facie evidence to proceed against the Respondent and hence rejected the approval application filed by the Petitioner/Corporation.
32. As held by the Hon'ble Supreme Court in *John D'Souza (Supra)*, the learned Labour Court was examining whether there was any prima facie case made out or not. Learned Labour Court, in the first stage, vide order dated 06.01.2003 held that the domestic enquiry is vitiated as the Petitioner/Corporation failed to produce the enquiry officer to prove the enquiry report. Since both the parties proceeded to the second stage to adduce evidence to establish the prima facie case, this Court is of the considered opinion that no purpose will be served by examining the legality

of the order dated 06.01.2003. Hence this Court now proceeds to examine the legality of the impugned order dated 01.05.2003.

33.It is the case of the Petitioner/Corporation that they caught two passengers while getting down from the bus. The said passengers stated that they paid the requisite bus fares to the Respondent, however, the Respondent failed to issue tickets. The passengers were stated to be illiterate and hence they put the thump impression on the bottom of their statements. According to the checking team, the Respondent admitted his guilt and counter signed the statement of the passengers. However, before the enquiry officer, the Respondent categorically denied the guilt. After examining the evidence adduced by the parties, the learned Labour Court held that the Petitioner/Corporation failed to prove the misconduct against the Respondent. The relevant portion of the impugned order dated 01.05.2003, reads as follows:

"I have gone through the record available on file. Admittedly, no passenger witness was examined or produced by the applicant to prove the misconduct of respondent. Even during cross examination AW-1 Sukhbir Singh admitted that passengers did not paid the fare in his presence and the cash of respondent was not checked. He further admitted that in the address of passenger house number is not mentioned and no statement of any other independent passenger was record. Consequently, it is held that applicant has failed to prove the alleged misconduct against the respondent...."

34.On perusal of the records reveals that the Petitioner/Corporation failed to examine the passenger witness or any other independent witness. The checking teams of the Petitioner/Corporation failed to tally the cash with the unpunched tickets. This court in **Savitri**

Devi v. Delhi Transport Corporation, reported as **2011 SCC OnLine Del 3507** has discussed briefly about importance of checking cash by the checking staff. Relevant extract of the judgment is produced below for perusal.

“14. ...The Tribunal appears to have overlooked that in a majority of the cases where the charges are that after collecting cash from the passengers the conductor has not issued them tickets, the checking of the cash with the conductor is absolutely essential to determine if the passengers who were allegedly travelling without tickets were telling the truth...”

35.The non verification of the cash available with the Respondent with unpunched tickets, is a material defect. In view of the same, it can safely be presumed that there is no substantial evidence available with the Petitioner/Corporation to prove the guilt of the Respondent. Except the statements of the members of the checking team, there was no other independent evidence available before the Inquiry Officer to proceed against the Respondent. Hence from the evidence adduced by the parties, it is clear that the Petitioner/Corporation has no prima facie evidence available with them to proceed against the Respondent. Therefore, the learned Labour Court rightly rejected the approval application.

36.As mentioned herein above, the Respondent was reinstated back in service in lieu of payment of future wages under Section 17-B of the I.D. Act. Hence, post joining, the Respondent was paid for the work performed by him. However, as per the order dated 22.04.2009, the Respondent was entitled for the payment under

Section 17-B from the date of the impugned Award dated 01.05.2003. till the final disposal of the present Writ Petition. It is clarified that in view of the law laid down by the Hon'ble Supreme Court in *Dilip Mani Dubey Vs M/s SIEL Limited & Anr* reported as **2019(4) SCC 534**, the amount paid to the Respondent in lieu of Section 17-B is not recoverable.

37. In view of the detailed discussions herein above, this Court is of the considered view that there is no perversity or illegality in the impugned orders dated 06.01.2003 & 01.05.2003. Hence, this Court is not inclined to exercise its extra ordinary jurisdiction under Article 226 of the Constitution of India and the present Writ Petition is dismissed. All pending applications are accordingly disposed off. No order as to costs.

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GAURANG KANTH, J.