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IN THE HIGH COURT OF DELHI AT NEW DELHI**Judgment reserved on: 13.09.2023**

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Judgment delivered on: 10.10.2023

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**LPA 629/2023 and C.M. Nos. 47060/2023, 47061/2023, 47062/2023
& 47063/2023****DELHI TRANSPORT CORPORATION****..... Appellant****Through: Ms. Manisha Tyagi, Advocate.****versus****KARAMVIR SINGH****.... Respondent****Through:****CORAM:****HON'BLE THE CHIEF JUSTICE****HON'BLE MR. JUSTICE SANJEEV NARULA****J U D G M E N T****SATISH CHANDRA SHARMA, C.J.**

1. The present Appeal is arising out of a judgment dated 09.05.2023 passed by the learned Single Judge in W.P.(C.) No. 8600/2004 titled ***D.T.C. vs Karamvir Singh*** (“**Impugned Judgment**”).

2. The facts of the case reveal that the Workman/Respondent herein was appointed to the post of conductor in the year 1982 in the services of Delhi Transport Corporation/Appellant herein (“**DTC**”), a body incorporated and



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created under the statutory provisions as contained in Section 3 of the Road Transport Corporation Act, 1950 (“**RTC Act**”) read with The Delhi Transport Corporation Laws (Amendment) Act, 1971 (“**DTC 1971 Amendment**”). The terms and conditions of service of Respondent Employee are governed by the Delhi Road Transport Act (Condition of Appointment and Service) Regulations, 1952 (“**1952 Regulations**”) read with Section 4(e) of the DTC 1971 Amendment.

3. The facts of the case further reveal that on 31.08.1992, the Respondent No.2, while serving as a conductor with the DTC was on duty in Bus No. 9115, running at a route from Lajpat Nagar to Faridabad. On the said day, an inspecting team boarded the bus and found that two passengers who boarded the bus from Ashram to Gurukul Sarai paid Rs. 5/- to the conductor for two tickets however, the tickets were not issued to them by the conductor. The statement of these ticketless passengers was recorded by Sh. Sukhbir Singh, T.I., and signed by the Respondent and a checking report was prepared and submitted on 31.08.1992 by Sh. Pran Nath, ATI, Sh. Darshan Singh, Trff. Supt., Sh. Sukhbir Singh, T.I and Sh. P.L. Arora, ATI (“**Report**”).

4. The Report was forwarded to the Disciplinary Authority and the Disciplinary Authority after considering the Report issued a charge-sheet on 14.09.1992 (“**Chargesheet**”). The Disciplinary Authority i.e., Depot Manager sought a reply to the Chargesheet from the Respondent Workman and a reply was submitted by the Respondent Workman on 21.09.1992.

5. The Disciplinary Authority, after receiving reply of the Respondent Workman, decided to proceed with the Departmental Enquiry keeping in view the 1952 Regulations. An Enquiry was held, and the Enquiry Officer after examining the witnesses and material documents submitted the enquiry report on 31.03.1993 (the “**Enquiry Report**”) and the Depot Manager being the Disciplinary Authority



issued a show cause notice on 21.04.1993 (“**Show Cause Notice**”) and forwarded a copy of the Enquiry Report to the Respondent Workman. The Respondent Workman filed a reply to the Show Cause Notice and the Competent Authority taking into account the reply and the Enquiry Report as well as the material documents on record inflicted a punishment of removing the Respondent herein from service vide removal order dated 29.07.2023 (“**Removal Order**”).

6. The Competent Authority also paid a sum of Rs. 2518/- by way of money order in accordance with statutory provisions as contained under Section 32(2)(b) of the Industrial Disputes Act, 1947 (“**ID Act**”), and at the same time the Appellant/DTC preferred an application under Section 33(2)(b) of the ID Act for approval of its action to remove the Respondent from service (“**Approval Application**”).

7. The Labour Court while considering the Approval Application, arrived at a conclusion that the Appellant/DTC has failed to prove the enquiry proceedings, and, therefore, by an order dated 06.01.2003, the Labour Court held that the enquiry proceedings stand vitiated and, at the same time granted an opportunity to the Appellant/DTC to prove the Workman’s misconduct before the Labour Court (“**LC Order-I**”).

8. In view of the opportunity given to the Appellant *vide* LC Order-I, witnesses produced by both the parties were examined afresh before the Labour Court. The Labour Court *vide* order dated 01.05.2003 arrived at a conclusion that the Appellant/DTC has failed to prove the misconduct against the Respondent/Employee and rejected the applications preferred by the Appellant under Section 33(2)(b) of the ID Act (“**LC Order-II**”).

9. The Appellant DTC being aggrieved by the LC Order-I and LC Order-II came up before this Court by filing the underlying writ petition. In the



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proceedings before the learned Single Judge, this Court on 17.08.2004 granted an interim order staying the operation of LC Order-II subject to a deposit of Rs. 5,000/- with the Registry. The facts of the case further reveal that an application was preferred by the Respondent Employee under Section 17B of the ID Act in the pending writ petition and the learned Single Judge *vide* order dated 22.04.2009 allowed the application and directed the DTC to pay the Workman last wages drawn or minimum wages from the date of LC Order-II i.e., 01.05.2003 till final disposal of the writ petition. It is pertinent to note that the Appellant Corporation instead of paying last wages drawn or minimum wages reinstated the Workman back in service.

10. The matter was finally heard by the learned Single Judge and after hearing learned Counsel for the parties at length and after taking into account the documents on record as well as the judgments cited by the parties, the learned Single Judge has declined to interfere with LC Order-I and LC Order-II. Paragraph Nos. 29 to 37 of the Impugned Judgment read as under:

“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 is 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 thumb impression on the bottom of their statements. According to the checking team, the Respondent admitted his guilt and counter signed the statement of



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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.”

11. The aforesaid order passed by the learned Single Judge reveals that the learned Single Judge has affirmed the award passed by the Labour Court and has dismissed the writ petition.

12. Learned Counsel for the Appellant being aggrieved by the order passed by the learned Single Judge has filed this present LPA raising various grounds and has contended that the actions of the Respondent Workman amounted to cheating and is a misconduct under Order 19(b)(h) of the Standing Order governing the conduct of DTC employees, hence an employee who has been held guilty of cheating in a departmental enquiry could not have been given a clean chit by the Labour Court as well as by the



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learned Single Judge and, therefore, the order of the Labour Court as well as the order passed by the learned Single Judge deserves to be quashed.

13. The Learned Counsel for the Appellant has vehemently argued before this Court that the Respondent not issuing tickets to the passengers after collecting a due fare from them amounts to misconduct and the learned Single Judge has dismissed the writ petition only on the ground that the cash was not checked by the checking staff. She has further contended that it is a settled proposition of law that even though the cash is not checked by the checking staff but there is sufficient other evidence to prove the charge against the Workman, a Workman cannot be given a clean chit, and, therefore, the order passed by the learned Single Judge deserves to be set aside.

14. Learned Counsel for the Appellant has vehemently argued before this Court that the DTC is providing transport facility which is a public utility service and is not making any profit out of it. The DTC is running under heavy losses and as the Workman was involved in fraud and misappropriation of public money leading to breach of trust, therefore no leniency was warranted in the matter, and therefore, the order passed by the learned Single Judge deserves to be set aside.

15. In the LPA, the Appellant has further taken a ground stating that the learned Single Judge has failed to acknowledge the fact that the enquiry was conducted in fair and proper manner as per the laid down procedure. There was no violation of principles of natural justice and fairplay, and therefore, as the findings arrived at by the finding officer were not perverse findings,



the Labour Court has erred in law and facts in giving the clean chit to the Workman and the learned Single Judge has also erred in law and facts in upholding the order passed by the Labour Court.

16. Learned Counsel for the Appellant has further stated that the learned Single Judge has ignored the fact that there was an admission on the part of the Workman. The Workman has signed the challans which were prepared by the checking staff and also gave an unpunched ticket. The statement of passengers was also recorded, and, therefore, there was no occasion to give the clean chit to the Workman by the Labour Court nor by the learned Single Judge.

17. Learned Counsel for the Appellant has placed reliance upon a judgment delivered in the case of *Dayal Singh Vs. D.T.C. 2013 SCC OnLine Del 995*, and her contention is that merely because the cash was not checked, it cannot be a ground for giving a clean chit to the Workman in question.

18. Learned Counsel for the Appellant has placed upon a judgment of the Hon'ble Supreme Court in *State of Haryana and Anr. Vs. Rattan Singh*, AIR 1977 SC 1512; as well as judgment of the Delhi High Court in the case of *DTC Vs. N. L. Kakkar*, (2004) 110 DLT 493. She has contended that the interference in departmental enquiry is quite limited and the strict rules of evidence are not applicable in case of departmental enquiry. She has further argued that the interference by the Labour Court and by learned Single Judge, in light of the aforesaid judgment is unwarranted. Hence, the order



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passed by the Labour Court and the learned Single Judge deserves to be set aside.

19. Learned Counsel for the Appellant has placed reliance upon a judgment of the Hon'ble Supreme Court in *U.P. SRTC v. Suresh Chand Sharma, (2010) 6 SCC 555*, and has further stated that in spite of the fact that cash was not checked at the time of surprise inspection, it does not vitiate the departmental enquiry.

20. Another ground raised by the Appellant is that the Workman had superannuated in April 2015, and he had received substantial amount from the department under Section 17B of the ID Act, and, therefore, the order passed by learned Single Judge deserves to be set aside.

21. Heard Learned Counsel for the Appellant at length and perused the record, the matter is being disposed of at admission hearing stage itself with the consent of the parties.

22. The undisputed fact of the case reveal that the Workman while serving as a Conductor on 31.08.1992 in Bus No. 9115 was subject to a surprise check by the checking staff and it is alleged that two persons who boarded the bus from Ashram to Gurukul Sarai, even though they paid Rs. 5/- to the Conductor for two tickets, did not receive any ticket from the Conductor and the Report was submitted on 31.08.1992. The Disciplinary Authority based upon the Report submitted by the checking staff issued the Chargesheet which is reproduced as under:

"N.P DEPOT/AI (T)/36/92/355

DATED 14.9.92

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ROHELLA
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*Sh. Karamvir
Post Conductor B No 17432/37317*

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.

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 yours 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.

Enclosures:

Copy of the report.

*Sd/- Illegible
Depot Manager, Nehru Place Depot*

*Sd/- illegible
B. No. 17482”*



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23. The Workman submitted a reply to the Chargesheet, and thereafter, an enquiry took place in the matter. The Enquiry Officer examined various witnesses and finally the Enquiry Report was submitted. The relevant extract of the Enquiry Report holding the Workman guilty of the misconduct is reproduced as under:

"I have carefully seen the entire case file and the document available on it and have come to the conclusion that all the charges mentioned in the charge sheet against the delinquent are found proved. Prosecution witness has clarified that on 31.8.1992, while standing standing at Gurukul Sarai Stand bus No.9115 arrived and Passengers alighting from the bus were checked in which two passengers without ticket also alighted and when we asked him about the tickets, the group leader said that they paid Rs.5/- to the conductor for two tickets from Ashram to Gurukul Sarai but the. conductor did not issue any tickets to us after taking the due fare" and allowed to get down from the bus. The conductor got confronted with the passengers and written statement of group leader was taken. On this the conductor admitted bis fault and signed on the document and submitted two unpunched tickets of the value of Rs.2.50 each. In the case file the statement of passenger are available and conductor's signature is also available on it and unpunched ticket No.00/97757 and 97758 for the value of Rs.2.50 each is also - available which was given by the delinquent to the checking staff in lieu of the fare taken by him. Reasoning of the delinquent by way of final closing statement that just for checking purpose the checking staff took his hand bloc and taken out unpunched ticket and took his signature on blank paper after threatening him is an after · thought story of him because if there was any truth in the statement of the delinquent· then he would have immediately informed the competent authority within the stipulated period after the challan. Beside this, the justification given by the delinquent in his reply to the chargesheet that the charges leveled in the chargesheet are fictitious and baseless, does not sound logical.



Because the irregularities committed by the delinquent have been confirmed by the prosecution side in the enquiry. Besides this, the delinquent was given full opportunity to present his side. Therefore, it is clear that all the charges mentioned against the delinquent in the chargesheet are found fully proved during the course of enquiry and on the basis of the documents.”

24. The disciplinary authority after careful consideration of the Enquiry Report issued the Show Cause Notice to the Respondent herein and forwarded a copy of the Enquiry Report as well. The Respondent submitted an explanation to the Enquiry Report and the Disciplinary Authority after considering the reply submitted by the Workman/Respondent herein also paid a sum of Rs. 2518/- to him, keeping in view the statutory provisions as contained under Section 32(2)(b) of the ID Act. The Appellant DTC also preferred the Approval Application before the Labour Court.

25. The Industrial Tribunal-II, Karkardooma Courts, on the basis of the Approval Application, on 18.01.1996 framed the preliminary issue which is as follows:

“Whether the applicant held a legal and valid enquiry against the respondent:”

26. The facts of the case further reveal that *vide* order 06.01.2003, the issue of validity of enquiry was decided against the Appellant, and, thereafter, on the basis of pleadings of the parties, the Industrial Tribunal framed the following issues as under:

“1) Whether the respondent committed the misconduct as alleged against him in the charge sheet?



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- 2) Whether the petitioner remitted full one month's wage to respondent as per provisions of Sec.33(2)(b) of the I.D., Act?
3) Relief.”

27. The Industrial Tribunal by LC Order-II has rejected the Approval Application, the operative paragraph of the order as contained in Paragraph Nos. 6 to 9 reads as under:

“6. Issue No. 1

To prove the misconduct, applicant has produced Awl Shri Sukhbir Singh who filed his affidavit dated 7.2.2003 and relied upon the documents Ex.AW1/1 to Ex. AW1/4. During cross examination witness admitted that the two passengers had not paid fare in his presence. He admitted that on entering the bus they had taken in their custody all the documents of conductor, including hand-block. He further admitted that the cash of the conductor was not checked. He could not say whether the passenger has put his signatures on the passenger statement or not. He further admitted that the address of the passenger does not bear the house number of passenger. He further admitted that the statement of no other passenger was recorded. Whereas respondent during his examination denied all the charges leveled against him.

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.

Issue No.2

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To prove the issue applicant produced AW-2 Shri Satender Kumar who filed Iris affidavit dt.3.3.2003 in which he deposed that along with 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.AW2/1 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."

28. The Appellant Management preferred the underlying writ petition before this Court, and on 17.08.2004, this Court had granted an interim order staying the operation of LC Order-II, subject to deposit of Rs. 5000/- with the Registry. It is pertinent to note that an application was also preferred under Section 17B of the ID Act by the Respondent/Workman, and the learned Single Judge passed an order on 22.04.2009 directing the Corporation to pay the Workman last wages drawn or minimum wages from the date of Award i.e., 01.05.2003. However, the Workman was reinstated back in service and also attained the age of superannuation in April 2015, meaning thereby, much before the final order passed by the learned Single Judge, the retiral dues have also been paid in the matter.

29. The order passed by the learned Single Judge reveals that the learned Single Judge after placing reliance upon a judgment delivered in the case of ***John D'Souza Vs Karnataka State Transport Corporation***, 2019 (18) SCC 47, has dealt with the scope of the enquiry permissible under Section



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33(2)(b) of the ID Act. The Hon'ble Supreme Court in the aforesaid judgment has held that the Labour Court/Tribunal is required to examine the record of the enquiry and when no defect is detected, the approval in respect of application under Section 33(2)(b) of the ID Act must follow. It is only in the second stage when the Labour Court/Tribunal finds that the domestic enquiry suffers from one or other legal ailments, that the Labour Court/Tribunal shall permit a party to adduce their respective evidence and appraisal thereof, the Labour Court/ Tribunal shall conclude its enquiry to arrive at a conclusion whether the discharge or another punishment including dismissal was justified.

30. In the present case, while dealing with the two stage process under Section 33(2)(b) of the ID Act *vide* LC Order-I, the Industrial Tribunal has arrived at a conclusion that the Appellant has failed to prove the enquiry proceedings and the enquiry report against the Workman, and proceeded ahead with the second stage.

31. The record of the case reveals that the Industrial Tribunal granted an opportunity to the Corporation to produce the enquiry officer at the first stage and the Enquiry Officer did not appear before the Industrial Tribunal, and, thereafter, in the second stage, the DTC was not able to establish the misconduct resulting in an order rejecting the Application preferred under Section 33(2)(b) of the ID Act.

32. Another important aspect of the case is that the passenger witnesses, nor any other independent witnesses were examined by the Appellant. The checking team did not tally the cash available with the Respondent



Workman and the same has been held to be a material defect keeping in view the totality of the circumstances of the case by the Industrial Tribunal as well as by the learned Single Judge. Therefore, in the considered opinion of this Court, the question of interference with the order passed by the learned Single Judge does not arise.

33. This Court has carefully gone through the judgments relied upon by the Learned Counsel for the Petitioner.

34. Learned Counsel for the Appellant has placed reliance upon a judgment delivered by the learned Single Judge of this Court in the case of **Dayal Singh** (supra). This Court has carefully gone through the aforesaid judgment and in the aforesaid case, the learned Single Judge, after placing reliance upon a judgment delivered in the case of **Rattan Singh** (supra), has held that non-examination of passengers is not a fatal defect to vitiate the department enquiry and the punishment inflicted thereafter. It is true that it has been held by the learned Single Judge that non-examination of passengers is not fatal defect, but at the same time, the scope of jurisdiction under Article 226 in respect of an Award has also been dealt with and it has been held that in case the findings arrived at are not perverse, no interference is warranted. In the present case, the Management was awarded an opportunity to establish the misconduct before the Labour Court. The Management witness Sukhbir Singh, AW-1 before the Labour Court admitted that the cash of the Workman was not checked and he is not in a position to say whether the passenger has put the signature on the passenger statement or not. He further admitted that the address of the passenger does not bear the house number and statement of no other passenger was



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recorded. Hence, in the present case, it was the Management's witness who himself before the Labour Court stated that he is not in a position to say whether the passenger, who was not issued the ticket, has put his signature on the statement or not, and, therefore, the present case is distinguishable on facts, and does not help the Management in any manner.

35. Reliance has also been placed upon a judgment delivered by the Hon'ble Supreme Court in the case of **Rattan Singh** (Supra). This Court has carefully gone through the aforesaid judgment, and in the aforesaid case, it has been held that the departmental enquiry is not bound by strict rule of evidence but by fair play and natural justice. In the aforesaid case also none of the passengers were examined. It is true that non-examination of passenger is not a defect which can result in quashment of departmental enquiry. However, the fact remains, as stated earlier, the Management's witness Sukhbir Singh, AW-1 before the Labour Court, has categorically stated that cash of conductor was not checked, and he is not in a position to state whether the passenger has put his signature on the passenger statement or not. The factum of passenger giving a statement to the checking staff and putting the signature on the statement itself has not been established keeping in view the state of Sukhbir Singh, and, therefore, the Labour Court was justified in holding that the Workman is not guilty of the misconduct. Hence, the reliance placed upon the aforesaid judgment is misplaced.

36. Learned Counsel for the Appellant has also placed reliance upon a judgment delivered by learned Single Judge of this Court in the case of **N. L. Kakkar and Another** (supra). In the aforesaid cases, the Division Bench of this Court has held that production of passenger either in a domestic enquiry



or before the Labour Court is not at all necessary. It is certainly true that production of passenger in a domestic enquiry or before the Labour Court is not at all necessary in light of the aforesaid judgment, but the fact remains that the Management witness before this Court has categorically stated that he is not in a position to state whether the passenger witnesses have signed the passenger statement or not. There were no details of passengers as also observed by the Labour Court, and, therefore, the present judgment is against distinguishable on facts from the present case. In the considered opinion of this Court, the Labour Court has rightly arrived at the conclusion that the Department has failed to establish the misconduct.

37. Learned Counsel for the Appellant has again placed reliance upon a judgment delivered in the case of ***U. P. State Road Transport Corporation vs. Suresh Chand Sharma*** (supra). In the aforesaid case also, the passengers who were found ticketless were not examined nor the cash was checked and, in those circumstances, the Hon'ble Supreme Court has held that non-examination of passengers and non-checking of cash cannot be ground to give clean chit to an employee. This Court has carefully gone through the aforesaid judgment. However, the fact remains that the Management's witness himself before the Labour Court has stated categorically that he is not in a position that the passengers who was travelling ticketless has put his signature on the statement or not. In those circumstances, the Labour Court has given a clean chit to the Workman. It is true that non-examination of passenger and non-checking of cash is not a fatal defect. But in the present case, whether the passengers were travelling ticketless as per the statement which was produced in writing, was not established before the Labour



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Court, and, therefore, the judgment is again distinguishable on facts. Hence, the question of interference in the peculiar facts and circumstances of the case does not arise.

38. It is true that in the Department Enquiry, the theory of preponderance of probability is attracted, however, the fact remains that in the present case, the Appellant Corporation was not able to establish the misconduct before the Tribunal.

39. It is not for the High Court to constitute itself into an Appellate Court over Tribunals constituted under special legislations to resolve disputes of a kind, qualitatively different from ordinary civil disputes and to re-adjudicate upon questions of fact decided by those Tribunals. High Courts cannot interfere with the findings of jurisdictional facts which the Tribunal is competent to decide. (See ***Sadhu Ram Vs. Delhi Transport Corporation***, (1983) 4 SCC 156.

40. The Hon'ble Supreme Court in paragraph 17 of the judgment in ***Indian Overseas Bank Vs. I.O.B. Staff Canteen Workers' Union***, (2000) 4 SCC 245, has held as under:

“17. The learned Single Judge seems to have undertaken an exercise, impermissible for him in exercising writ jurisdiction, by liberally reappreciating the evidence and drawing conclusions of his own on pure questions of fact, unmindful, though aware fully, that he is not exercising any appellate jurisdiction over the awards passed by a tribunal, presided over by a judicial officer. The findings of fact recorded by a fact-finding authority duly constituted for the purpose and which ordinarily should be considered to have become final, cannot be disturbed for the mere reason of having been based on materials or evidence not sufficient or credible in the opinion of



the writ court to warrant those findings, at any rate, as long as they are based upon some material which are relevant for the purpose or even on the ground that there is yet another view which can reasonably and possibly be taken... .. The only course, therefore, open to the writ Judge was to find out the satisfaction or otherwise of the relevant criteria laid down by this Court, before sustaining the claim of the canteen workmen, on the facts found and recorded by the fact-finding authority and not embark upon an exercise of reassessing the evidence and arriving at findings of one's own, altogether giving a complete go-by even to the facts specifically found by the Tribunal below.”

41. The Hon’ble Supreme Court in the aforesaid case has held that the findings of fact recorded by a fact finding authority (Tribunal) duly constituted for the said purpose becomes final unless the findings are perverse or based upon no evidence. The jurisdiction of the High Court in such matters is quite limited.
42. The Hon’ble Supreme Court has taken a similar view in ***Hari Vishnu Kamath v. Ahmed Ishaque & Ors.*** AIR 1955 SC 233, , *inter alia* held as under:

“21. ... On these authorities, the following propositions may be taken as established: (1) Certiorari will be issued for correcting errors of jurisdiction, as when an inferior Court or Tribunal acts without jurisdiction or in excess of it, or fails to exercise it. (2) Certiorari will also be issued when the court or Tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard or violates the principles of natural justice. (3) The court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the court will not review findings of fact reached by the inferior court or tribunal, even if they be erroneous. This is on the principle that a court which has jurisdiction over a



subject-matter has jurisdiction to decide wrong as well as right, and when the legislature does not choose to confer a right of appeal against that decision, it would be defeating its purpose and policy if a superior court were to rehear the case on the evidence and substitute its own findings in certiorari. These propositions are well-settled and are not in dispute...

22. It may therefore be taken as settled that a writ of certiorari could be issued to correct an error of law. But it is essential that it should be something more than a mere error; it must be one which must be manifest on the face of the record. ... The fact is that what is an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case ...”

43. In ***Dharangadhara Chemical Works Ltd. v. State of Saurashtra and others***, (1957) SCR 152, the Supreme Court, once again observed that where the Tribunal having jurisdiction to decide a question comes to a finding of fact, such a finding is not open to question under Article 226, unless it could be shown to be wholly unsupported by evidence.

44. In ***Management of Madurantakam Coop. Sugar Mills Limited v. S. Viswanathan***, (2005) 3 SCC 193, the Apex Court, held that the Labour Courts/ Industrial Tribunals as the case be is the final court of facts, unless the same is perverse or not based on legal evidence, which is when the High Courts can go into the question of fact decided by the Labour Court or the Tribunal. But before going into such an exercise it is imperative that the High Court must record reasons why it intends to reconsider a finding of fact. In the absence of any such defect, the writ court will not enter the realm of factual disputes and finding given thereon.



45. In a Constitution Bench judgement of the Supreme Court in ***Syed Yakooob vs. K.S. Radhakrishnan & Ors.***, AIR 1964 SC 477, the Apex Court has inter alia held as under:

“7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the



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relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Syed Ahmed Ishaque, Nagendra Nath Bora v. Commissioner of Hills Division and Appeals, Assam, and Kaushalya Devi v. Bachittar Singh.

8. *It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious misinterpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly rounded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to*



define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened.”

46. The Hon’ble Supreme Court has in the aforesaid case again dealt with scope of interference by High Court in respect of finding of fact arrived at by Tribunals and in light of the aforesaid judgment, the question of interference with the Impugned Judgment by this Court does not arise.

47. The Hon’ble Supreme Court in ***State of Haryana vs. Devi Dutt & Ors.***, (2006) 13 SCC 32, has held that the writ Court can interfere with the factual findings of fact only if in case the Award is perverse; the Labour Court has applied wrong legal principles; the Labour Court has posed wrong questions; the Labour Court has not taken into consideration all the relevant facts; or the Labour Court has arrived at findings based upon irrelevant facts or on extraneous considerations.

48. In the present case, the Labour Court has arrived at a conclusion based upon the evidence adduced by the parties and the learned Single Judge has affirmed the findings of fact again after minutely scanning the entire evidence, and therefore, the question of interference with the LC Order-I, LC-Order-II or the Impugned Judgment by this Court does not arise.

49. The supervisory jurisdiction of a High Court under Article 227 of the Constitution of India was discussed by the Supreme Court in ***Mohd. Yunus***



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v. Mohd. Mustaqim and Others, (1983) 4 SCC 566, whereby it was, *inter alia*, held as under:

“7. The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is limited “to seeing that an inferior court or tribunal functions within the limits of its authority”, and not to correct an error apparent on the face of the record, much less an error of law. In this case there was, in our opinion, no error of law much less an error apparent on the face of the record. There was no failure on the part of the learned Subordinate Judge to exercise jurisdiction nor did he act in disregard of principles of natural justice. Nor was the procedure adopted by him not in consonance with the procedure established by law. In exercising the supervisory power under Article 227, the High Court does not act as an appellate court or tribunal. It will not review or reweigh the evidence upon which the determination of the inferior court or tribunal purports to be based or to correct errors of law in the decision.”

50. Furthermore, in **Khalil Ahmed Bashir Ahmed v. Tufelhussein Samasbhai Sarangpurwala**, (1988) 1 SCC 155, the Supreme Court held as under:

“13. The intention here is manifest. In any event this is a possible view that could be taken. This Court in Venkatlal G. Pittie v. Bright Bros. (P) Ltd. [(1987) 3 SCC 558] and Beopar Sahayak (P) Ltd. v. Vishwa Nath [(1987) 3 SCC 693] held that where it cannot be said that there was no error apparent on the face of the record, the error if any has to be discovered by long process of reasoning, and the High Court should not exercise jurisdiction under Article 227 of the Constitution. See in this connection the observations of this Court in Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale [AIR 1960 SC 137 : (1960) 62 Bom LR 146] . Where two views are possible and the trial court has taken one view which is a possible and plausible view merely because another view is attractive, the High Court should not interfere and would be in



error in interfering with the finding of the trial court or interfering under Article 227 of the Constitution over such decision.”

51. In light of the aforesaid judgments in the considered opinion of this Court once the Appellant Employer was not able to establish the misconduct before the Industrial Tribunal, the finding of fact, arrived at by the Industrial Tribunal as affirmed by the learned Single Judge after minutely scanning the entire record, does not warrant any interference by this Court.

52. Another important aspect of the case is that the Workman in question was reinstated on account of an order dated 22.04.2009 passed by this Court in Application preferred under Section 17B of the ID Act. The Workman/Respondent herein has attained the age of superannuation in April 2015, he has received the retiral dues, and, therefore, keeping in view the totality of the circumstances of the case, the question of interference with the Impugned Judgment by this Court in the peculiar facts and circumstances of the case, does not arise.

53. In view of the aforesaid, the LPA, accordingly, stands dismissed.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SANJEEV NARULA)
JUDGE

OCTOBER 10, 2023

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