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**(2010) 01 BOM CK 0049**  
**In the Bombay High Court**  
**Case No : Writ Petition No. 2258 of 1991**

Asarm Pawar

APPELLANT

Vs

The Divisional Controller, Maharashtra State Road Transport Corporation

RESPONDENT

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**Date of Decision :** 08-01-2010

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 11A

**Citation :** (2010) 2 BomCR 47

**Hon'ble Judges :** S.S. Shinde, J

**Bench :** Single Bench

**Advocate :** Pradeep Shahane, for the Appellant; None, for the Respondent

**Final Decision :** Dismissed

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## Judgement

S.S. Shinde, J.—This petition takes exception to the judgment and order dated 9.10.1985, passed by the Judge, Labour Court, Aurangabad in Reference IDA Case No. 1 of 1980. The petition further prays that it should be held and declared that the order of dismissal issued by the respondent on 25.7.1977 and findings of the Inquiry Officer are illegal, improper, unjust, perverse and are amounts to unfair labour practice and the same may be quashed and set aside and the respondent may be directed to reinstate the petitioner in service with full back wages and continuity of service w.e.f. 25.7.1977.

2. Brief facts of the case, as disclosed in the petition, are as under;

The petitioner jointed the services of the respondent as Conductor on 27.2.1970, on consolidated salary of Rs. 450/- p.m. The petitioner was served with a charge sheet alleging that he has reissued the ticket bearing No. 098069 to a lady passenger on 6.2.1975. It is also alleged that a IInd ticket bearing No. 098085 was also found in the bag of the petitioner and the said was allegedly kept by the petitioner for resale. The tickets were of the denomination of 0.70 paise only. On these allegations, enquiry was conducted. The spot statement and statement of

the enquiry were recorded. It is the case of the petitioner that incident happened on 6.2.1975 and enquiry was started after two years i.e. in 1977 and there was violation of rules and principles of natural justice.

The petitioner herein filed dispute before the Labour Court, Aurangabad and reference was made under the provisions of the Central Act. The learned Judge held that the enquiry conducted against the petitioner is legal, just and proper. The learned Labour Judge thereafter heard the reference on merits and has been pleased to reject the same.. Hence, this petition is filed by the petitioner.

3. Learned Counsel appearing for the petitioner submitted that the learned Judge of the Labour Court has totally relied upon the spot statement of the passengers which were not recorded in presence of the petitioner. On the blank paper the signatures of the petitioner were obtained and the statement was written on the said paper as per the dictation given by the checkers by some other person. It is further submitted that the Labour Court failed to appreciate that the lady passenger has clearly stated in the spot statement that alleged reissued ticket has been given to her by the relative and not by the petitioner. However, the fact has been ignored by the Labour Judge while recording the findings. It is further submitted that the petitioner has not committed any misconduct. The tickets which were kept in the bag were purchased for the relatives. It is further submitted that the tickets involved in the case are of the denomination of 0.70 paisa. The learned Judge of the Labour Court failed to give the petitioner benefit of provisions of Section 11A of the Industrial Dispute Act, 1947. It is further submitted that the learned Judge has failed to appreciate the punishment of dismissal if highly disproportionate to the allegations of misconduct. Therefore, the benefit of provisions of Section 11A ought to have been given to the petitioner by the learned Judge of the Labour Court. The findings recorded by the Inquiry officer were perverse and the learned Judge failed to appreciate this contention of the petitioner. It is further submitted that the learned Judge of the Labour Court has failed to exercise the jurisdiction vested in him and misdirected him. Therefore, learned Counsel submitted that this petition may be allowed by setting aside the impugned order.

It is further submitted that re-issuance of ticket was not established by the respondent. It is further submitted that unless the charges framed against the delinquent are convincingly established, no punishment can be given. It is further submitted that passengers were not examined before the court by the respondent. It is further submitted that proper procedure has not followed and therefore, entire enquiry was vitiated. The Labour Court failed to consider all these aspects and erroneously rejected the reference. Therefore, the learned Counsel would submit that the petition may be allowed.

4. Though the respondent is duly served, none appeared for the respondent when the matter was heard by the this court, finally.

5. I have heard learned Counsel appearing for the petitioner at length. Perused

the petition and the annexures thereof. Learned Judge of the Labour Court has recorded the findings of facts. Based upon the evidence, it has been recorded that the matter is in respect of three tickets numbering 098069, 0980085 and 098086. For these three tickets, in the spot statement of the second party he has got three explanations that ticket number 098069 was not issued by him for 55 denomination he wrongly issued the ticket No. 098086 and for 098085 his defence was that he had purchased that ticket for his relative out of his own pocket and retained that ticket in the cash bag. All these tickets are of 0.70 paise. In the cross examination of the witness Habibali the suggestion is that the ticket was not issued to the lady passenger. The witness in the cross examination has stated that second party himself took out the ticket from the cash bag while the cash bag was being checked. This statement has not been denied giving suggestions to the witness. It is not the defence of the conductor that this lady passenger was without ticket if he had not issued ticket to her. Equally, it was his duty to see as to whether she possessed any ticket if the ticket possessed, was not issued by him. To the second witness there is no suggestion in respect of all these three tickets. Second party has remained absent and his advocate passed "No instructions pursis". Impliedly we have to assume that second party has no defence in respect of these two tickets in particular one with lady passenger and one found in his cash bag.

The Labour Court further recorded a finding of fact that evidence on record therefore is sufficient to prove the first point that conductor had issued one sold ticket to the lady passenger and he possessed one ticket already sold in his cash bag. The ticket in the cash bag fortifies the fact that he was selling the sold ticket to the passengers and to sale such tickets he had possessed one ticket in his cash bag.

The learned Judge of the Labour Court in para 7 has observed that it is the duty of the conductor to sale the tickets in his tray. It requires no quotation of rule to say that the acts of the second party were in disobedience of the directions of the S.T. Corporation. This act of selling the sold tickets amounts to cheating to Corporation to have the wrongful gain to himself. This is sufficient to prove point Nos. 2 and 3 framed by the Court.

In para 8, the Labour Court has further observed that in the spot statement, the second party has admitted that cash of Rs. 14.50 was found less. The learned Judge has also recorded that there is no evidence placed on record that the writing was made on the blank papers with the signature of the second party. In para 9, the lower court further held that the second party has not come forward to seek justification to reduce the punishment awarded to him. From the schedule in respect of misconduct from D and A Procedure, the act of the second party amounts to misconduct for which dismissal could be the punishment, which has already been awarded. It was for the second party to give the grounds so as not to award this punishment of dismissal. His remaining absent and not prosecuting the case leads to infer that he is not interested in the case for the

reasons best known to him. Therefore, the Labour Court rejected the Reference.

6. On careful perusal of the pleading in the petition and after hearing learned Counsel for the petitioner, I find that nothing has been demonstrated to hold that the findings recorded by the Labour court are perverse in any manner. The absence of the petitioner before the Labour Court during the crucial period i.e. at the time of recording of evidence and filing of pursis by the advocate for the petitioner before the labour Court that "No instructions Pursis" shows that the petitioner had no case and therefore, conveniently he remained absent.

7. So far as the contention of the learned Counsel for the petitioner that there was *ex parte* enquiry by the respondent is concerned, this Court in the case of *Shri Luthfuddin Shaikh Vs. The Asiatic Oxygen and Acetylene Company Limited*, held that inspite of several opportunities given to the petitioner in that petition, he did not avail the same and there is nothing on record to show that the petitioner therein asked for more time.

8. On careful perusal of the case in hand, it also appears that the petitioner did not avail the opportunity to participate either in the enquiry or before the Labour Court at the crucial stage i.e. at the time of recording of evidence, Therefore, there is no substance in the contention of the Counsel for the petitioner that the enquiry proceeded *ex parte*. The judgment of the Hon''ble Supreme court in the case of *Janta Bazar (South Canara Central Co-Op. Wholesale Stores Ltd.) Etc. v. Secretary, Sahakari Nourkara Sangha Etc.* reported in 2000 II CLR 568, can be usefully referred in this case. In the said case, the Hon''ble supreme court held that the law is well settled that once the act of misappropriation is proved, may be for a small or large amount, there is no question of showing uncalled for sympathy and reinstating the employees in service as such the impugned order passed by the High court and the award of the Labour Court are set aside. In the instant case also the misconduct of the petitioner has been proved. Though the amount involved in the case is small, however, as the Hon''ble Supreme Court has held in aforesaid judgment, the amount small or large is not question of showing uncalled for sympathy and reinstating the employees in service. It is also be relevant to refer to the another judgment of the Hon''ble Supreme Court in the case of *The Regional Manager, Rajasthan State Road Transport Corporation Vs. Sohan Lal etc.,* , in para 10 of the said judgment the Hon''ble Supreme court held that the conductor not issuing ticket to passengers, leads not only monetary loss to the Corporation but also lost confidence in employees. Therefore, the Hon''ble Supreme court held that the reinstatement of such employee by virtue of judicial order, is an act of misplaced sympathy which can find no foundation in law in in equity.

9. Therefore, in my considered view, viewed from any angle, no case is made out for interference in the impugned judgment and order of the Labour Court. Hence, the writ petition devoid of merits. Thus the writ petition is dismissed. Rule discharged. Interim relief, if any, stands vacated.