
(1980) 08 MP CK 0006

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition Case No. 133 of 78

Babu Khan Ramjankhan

APPELLANT

Vs

M.P.S.R.T.C. and others

RESPONDENT

Date of Decision : 04-08-1980

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Madhya Pradesh Industrial Relations Act, 1960 — Section 31, 61

Citation : (1980) MPLJ 88

Hon'ble Judges : A.R. Navkar, J

Bench : Single Bench

Advocate : H.N. Upadhyaya, for the Appellant; R.D. Jani, for the Respondent

Final Decision : Dismissed

Judgement

A.R. Navkar, J.

This order shall govern disposal of Miscellaneous Petition No. 67 of 1978 (Madhya Pradesh State Road Transport Corporation and another v. Babu Khan and two others) as well.

This is a petition under Articles 226 and 227 of the Constitution of India for issuance of a writ of Mandamus or Certiorari or any other suitable writ for modification of the order of the Labour Court No. 2, Gwalior passed on 9-11-1977 in case No. 297 of 1971, whereby the Labour Court did not award the backwages and the order of the Industrial Court, Madhya Pradesh, dated 28-1-1978, in case No. 558 of 1977 M. P. I. R. Revision.

The facts, as alleged by the petitioner are that the petitioner was holding a permanent post at Gwalior in the Madhya Pradesh State Road Transport Corporation as a Driver. On 7-7-1967, when the petitioner was on duty on the City Bus in Gwalior and when he was driving the bus belonging to the Madhya Pradesh State Road Transport Corporation (hereinafter referred to as the Corporation), which was going from Morar to Gwalior, a military vehicle came

from the opposite side and collided with the bus of the Corporation. The collision, it is submitted, was not due to the fault of the petitioner, but because the military vehicle was driven in a very rash and negligent manner. There was no injury to any passenger, nor any damage to the bus of considerable nature. The Depot Manager of the Corporation served a charge-sheet on the petitioner on 25-6-1968. To this charge-sheet, a reply was submitted by the petitioner. On the basis of the charge-sheet, an enquiry was conducted by the Depot Manager and one witness Vidhichand was examined. In evidence, the petitioner gave his own statement and thereafter, the case was fixed for the rest of the witnesses of prosecution, but no witnesses were examined subsequently and the Enquiry Officer, relying on the report of Vidhichand, issued a show-cause notice against the petitioner. The petitioner gave a reply to the show-cause notice and in the reply, submitted that the enquiry held against him was illegal. But, on the basis of the report and the reply filed by the petitioner, he was dismissed from service from 31-8-1968. The Depot Manager, apart from imposing the penalty of dismissal, also ordered that the full wages for the month of August, 1968 should not be paid to the petitioner and Rs. 100 should be deducted from the security deposit of the petitioner. The petitioner, after approaching respondent No. 1 submitted his application before the Labour Court, Gwalior, challenging the order of dismissal, Respondent No. 1 submitted the reply and submitted that the enquiry is proper and the order passed is legal. In the Labour Court, the petitioner examined himself and one witness Bahadur Khan, while the respondent No. 1 examined two witnesses Shyam Charan and Radha Raman. After taking into consideration the evidence produced and the documents, the Labour Court came to the conclusion that the enquiry was not legal and asked additional evidence regarding misconduct of the petitioner. But, finally, the Labour Court came to the conclusion that the misconduct alleged against the petitioner, was not proved, but even though the Labour Court reinstated the petitioner it did not award any backwages.

Dissatisfied with the order of the Labour Court, both the parties went in revision before the Industrial Court. The learned Member-Judge, Industrial Court dismissed both the revisions vide order dated 28-1-1978, but he found that the domestic enquiry is valid. Against the order of the Industrial Court, both the parties have come before this Court in writ petitions.

To understand the arguments advanced by both the counsel, I will have to give in detail what is the claim of the petitioner and what is the reply filed by the Corporation. But before considering the respective claims, it will be better to summarise the evidence which is produced in the file. The charge-sheet is Annexure P/1. In the charge-sheet against the petitioner, it is mentioned that while he was going from Morar bus stand to Gola-ka-Mandir, he wanted to turn the vehicle towards the crossing which is known as Number 7 Crossing. From the other side, a military truck was coming and because the petitioner was driving the vehicle negligently and with an excessive speed, it hit the military truck. From the marks of the tyres on the road, it is clear that the petitioner wanted to

stop the bus, but because of excessive speed, he could not do so. Neither he sounded the horn, nor he drove the bus with care and caution. The brakes of the bus were found in good condition when they were examined by the departmental driver. Because of this accident, the Corporation has suffered a loss of Rs. 337.96. This conduct of the petitioner is covered under clauses 12 (1) (d) and 12 (1) (f) of the Standing Orders and it amounts to a major misconduct. Therefore, the petitioner was asked to reply to these charges within 72 hours from the receipt of the charge-sheet and also to show cause as to why Rs. 496.96 should not be recovered from him. The charge-sheet is signed by the Depot Manager.

Annexure P/2 is the report given by Vidhichand Jha who is the Head Mechanic of the Gwalior Depot of the Corporation. He inspected the said Bus No. 4767 (M. P. G.) which the petitioner was driving and which met with the accident on the crossing known as Crossing No. 7. He along with Bal Mukund, T. S. and other driver Shahjad, who look the vehicle from the depot, went together on the spot. When they went to the spot, they saw that because of the accident, the bus had turned to the other side, i. e. towards the Leather Factory Road. He also inspected the tie-rod and steering as well as brakes, but he could find no fault in them. The tie-rod and steering and brakes were also shown to Bal Mukund who was with him. From seeing the condition of the bus, it was possible to come to the conclusion that the bus must have been driven at an excessive speed and because of the speed, the vehicle could not be controlled and as the driver lost the control, the vehicle went on the wrong side of the road. Subsequently, the bus was checked by I. T. I.

The next Annexure which was very much relied upon by the petitioner is Annexure P/3. It mentioned that the Police authorities did not allow the servants of the Corporation to move the bus from the place of the accident and the Police took in their possession the bus which met with the accident. This Annexure also shows that the bus was a passenger bus and it was full with passengers.

The effect of the accident on the bus is described in Annexure P/5. This is a report made by Vidhichand, Head Mechanic. After reiterating what he saw in the spot and which I have mentioned above, he has stated that because of the accident, the bus is disfigured. Radiator of the bus also is damaged. Because of the impact of the accident, the radiator was pushed back and because of the radiator going inside, the fan is also broken. The engine of the bus also is displaced from its place. From all these factors, it is clear that the bus must have been driven at an excessive speed. There is a note under this report, which says that Shahjad Khan first agreed to sign this report, but subsequently, he refused to sign it.

Annexure P/7 is the reply filed by the petitioner. In his reply, he has stated that the charges which are levelled against him are baseless. The enquiry which was made against him is also not legal. The witnesses he wanted to produce, could not be produced by him and, therefore, the enquiry should be held again. Shahjad Khan is an important witness because he had reported even before that

the brakes of the bus which met with accident were not in good condition and they used to fail at any time. The report of the Head Mechanic that brakes of the vehicle were in good condition cannot be accepted because the Police did not allow the vehicle to be moved from the place of the accident. Neither the vehicle was such as it could be started by using self-starter. Therefore, whatever report Vidhichand has given is absolutely false. I. T. I. has examined the vehicle and his report says that the accident occurred because brakes failed. Therefore, looking to all these circumstances, the enquiry should be held again and if he is removed from service, he being a man of family, will suffer very heavy loss. This reply is dated 30-8-1968.

The petitioner was examined on 24-8-1968. He was asked whether on 7-7-1967, he was to drive vehicle No. 4767 on route No. 1. To this, he has answered in affirmative. The next question he had answered is that when he was driving the bus, it was full of passengers. The last question is what was the speed of the bus at the time of accident. To this, he has said that it must be 30 to 35 Kms. per hour.

Certain orders which are produced before this Court when the enquiry was conducted, are also important. By letter dated 24-7-1968, the date of enquiry was fixed as 30-7-1968. On that date, Vidhichand, Head Mechanic was present. But, no other member from the staff of the Corporation remained present. Therefore, the next date fixed was 12-8-1968. On 12-8-1968, Vidhichand, Head Mechanic and the petitioner were present and Vidhichand was examined. The order shows that Babu Khan did not bring any evidence with him, nor he cross-examined Vidhichand. Under this order, I find signatures of Babu Khan and Vidhichand. The next date fixed is 24-8-1968. On 24-8-1968, Babu Khan was present, but Bal Mukund and Shahjad Khan were not present. Babu Khan was examined in defence and he was cross-examined by the Enquiry Officer.

One more Annexure (R/5) is also important in this case. Babu Khan was asked whether he has received letter No. 12776/-81 of 3-8-1968. To this, he has replied that he has received the letter on 11-8-1968. The further question was asked that whether he has brought any witnesses with him as was mentioned in the said letter. He has said that he has not brought anyone, but he will bring them subsequently. This statement is also signed by Babu Khan.

These are the documents on which both the counsel relied while arguing the case.

Annexure P/9 is an application given by the petitioner under sections 31 and 61 of the M. P. Industrial Relations Act. Regarding the domestic enquiry, the petitioner has mentioned that it was not done according to the general principles of natural justice. The Enquiry Officer wanted somehow to see that the petitioner is held guilty. The copies of important documents were not supplied to the petitioner and, therefore, he could not defend himself properly. He was asked to take part in the enquiry all of a sudden and, therefore also, he could not conduct his defence properly, nor he could ask certain important questions in cross-

examination. The petitioner is an illiterate man and neither he understands Hindi, nor English and the Enquiry Officer has taken undue advantage of this fact and got the signatures of the petitioner on different papers. The witnesses were not examined in his presence, nor they were put forward for cross-examination to him. The order of the Depot Manager of recovering Rs. 100 from the security deposit and of non-payment of salary for the month of August, 1968 was clearly illegal. The alleged misconduct cannot be termed as major as well as the minor one. In fact, the petitioner was not guilty.

I was referred to the judgment of the Labour Court by the Corporation and was submitted that the Labour Court fell in error in holding the domestic enquiry invalid on the grounds which were not urged by the petitioner in his petition filed before the Labour Court. Therefore, I will have to see on what grounds, the Labour Court came to the conclusion that the domestic enquiry is invalid. This takes me to issue No. 1 decided by the learned Labour Court. Issue No. 1 is that whether the domestic enquiry conducted by respondent No. 1 was not according to law and, therefore, illegal and whether the petitioner was not given proper opportunity to defend himself. In deciding issue No. 1, the learned Labour Court has said that after going through the proceedings of the domestic enquiry, the Labour Court finds that the Enquiry Officer has taken the statement of Vidhichand only and none else. The second ground mentioned by the learned Labour Court is that no witness who was present at the spot was examined by the Enquiry Officer. Therefore, it is not possible to know as to how the accident occurred and, therefore the finding of the Enquiry Officer that because of the negligence of the petitioner, the accident occurred cannot be said to be proper. The third ground taken by the learned Labour Court is that the material witnesses were not examined to prove the misconduct. Much stress was laid by the counsel for the petitioner on this ground. The fourth ground taken by the Labour Court is that on the date of the accident, it was not possible to move the vehicle. Therefore, the finding that the brakes were proper also cannot be said to be legal and it is not possible to come to that conclusion. The fifth ground is that the petitioner was not given proper opportunity to produce his defence. The sixth ground the learned Labour Court found that on 12-8-1968 when the case was not fixed for evidence of the petitioner, then to say that on that date, he did not bring his witnesses was meaningless and, therefore, it cannot be held that opportunity was given to the petitioner to lead his evidence in defence. He also has referred to Ex. P/3 which the petitioner has submitted to the Depot Manager in which he has asserted that the statements of Shahjad Khan and Bal Mukund should be recorded because they are important witnesses and they were not examined when the domestic enquiry was conducted. But it is not clear whether this letter was considered by the Depot Manager as there is no order of the Depot Manager. But the learned Labour Court finds that this letter was given when the domestic enquiry came to a close.

On the defects mentioned above, the Labour Court came to the conclusion that the domestic enquiry conducted by respondent No. 1 is not proper. The Labour

Court, while deciding issue No. 2 has come to the conclusion that the petitioner cannot be held guilty under Standing Order 12(1)(f) or and 12 (1)(d). The alleged conduct of the petitioner is not covered by those two sub-clauses. Therefore, the order of dismissal is not proper. It is not a major misconduct and, therefore, he cannot be punished for commission of a major misconduct.

As to the question of backwages, the Labour Court has found that the petitioner has not given any statement and has said that because of the dismissal, he has suffered loss and as there is no evidence on behalf of the petitioner, the learned Labour Judge disallowed the claim of backwages.

When the matter was taken before the Industrial Court, respondent No. 1 submitted that the finding of the Labour Court that the enquiry was improper and illegal, is bad in law. This the learned Member-Judge of the Industrial Court (herein referred to as the Member-Judge) considered in para. 4 of his judgment. He has stated in the Judgment as under:

It is true that only Vidhichand was examined in the enquiry. But he has stated that he had gone to the spot on 7-7-1967 at 5.00 P. M. He checked the tyres, steering and brakes and all were found to be in order. No question was asked by the driver in cross-examination. The findings of the court below that there were orders of the police not to move the bus and hence how could the brakes be checked. These questions were never put to Vidhichand in his deposition in the enquiry. Besides, in his reply Ex. P/3, the driver has stated that the conductor may be called because. In his statement before the enquiry officer, he was asked If the brakes were already defective then the driver should not have driven the bus. If the brakes failed only at the crossing No. 7 then his reply in Ex. P/3 is self contradictory. The court without examining all these aspects came to a conclusion that there was no proof that the brakes were in order. Besides, if the brakes were defective, it could have been checked when the vehicle was removed. The second ground that no opportunity of defence was given is also perverse. The driver was asked to keep his evidence ready on 30-7-1968 vide letter dated 23-7-1968. In his statement he said he did not bring any witness. Thus the findings that the driver was not afforded an opportunity to lead evidence in defence is a perverse finding. On the basis of such findings the Court could not assume to itself jurisdiction to enquire in to the merits as held by the Full Bench of the M. P. High Court in Nand Kumar Singh Vs. The State Industrial Court, Indore and Others, .

The first grievance of the learned counsel for the petitioner regarding the finding of the learned Member-Judge is that he had no jurisdiction to set aside the finding given by the Labour Court regarding the validity of the domestic enquiry. The Labour Court has given many reasons for coming to the conclusion that the domestic enquiry which was against the petitioner, is illegal. The learned Member-Judge, had not given any reason as to why he is not agreeing with the reasoning of the learned Labour Court and, therefore, the finding of the learned Member-Judge is bad in law. It would have been better if the learned Member-Judge had

discussed the matter in detail and had shown why he is not inclined to agree with the finding and reasons given by the learned Labour Court, but that will not make the order given by the learned Member-Judge bad in law. After hearing the learned counsel on both sides, I feel that the finding given by the learned Member-Judge does not suffer from any infirmity and the finding he has given to the effect that the enquiry is valid, in my opinion, I will have to accept. The first ground is, as stated by the Labour Court, that the Enquiry Officer has taken the statement of Vidhichand only and none else. I do not see any illegality in not examining the other witnesses, because, in my opinion, the other witnesses are not at all necessary to be examined to decide whether the petitioner was negligent or not. The second ground mentioned by the Labour Court is that the witnesses who were present at the spot were not examined. It will be borne in mind that it was a city bus and as soon as the accident occurred, all of them left the place. Therefore, the Corporation was not in a position to know as to who other witnesses were. Therefore, this ground also is not a valid ground for coming to the conclusion that the enquiry is not valid. The third ground is that the material witnesses were not examined. But, if from the facts which are admitted by the petitioner himself, his negligence is proved, then, in my opinion, there is no need to examine the other witnesses. Similarly, the ground that the brakes could not have been examined because the bus was not in motion, cannot be accepted to be correct. By a mechanic who is an expert regarding the machinery, whether the brakes are in order or not, can be seen without moving the vehicles itself. The last ground taken by the learned Labour Court is that no opportunity to lead evidence in defence was given to the petitioner. This also, I do not think, has any force. I have gone through the notice given to the petitioner in which it is mentioned that he should come ready with his evidence in defence. From that date to the date when the enquiry came to an end, he made no grievance. Neither he has submitted any application before the closure of the enquiry that he wants to examine some witnesses and that they should be called for. Therefore, that ground also is not sufficient to come to a conclusion that the enquiry was invalid. Moreover, the application to call for the witnesses is given by the petitioner after the enquiry was over. Therefore, it cannot be said that no proper opportunity was given to the petitioner to lead his defence. That being the case, I am of the view that the finding arrived by the Labour Court that domestic enquiry was not proper and it was defective cannot be maintained and the finding given by the learned Member-Judge that enquiry was not defective and it was legal is correct and justified.

It was also submitted that whether enquiry was proper or not is a question of fact and the learned Member Judge should not have disturbed that finding. I do not find any substance in this submission. When, taking into consideration all the facts and evidence the learned Member--Judge has come to a conclusion that the Labour Court has not considered the evidence and the facts in their proper perspective, then the learned Member-Judge had jurisdiction to interfere in the finding of the Labour Court and to give his own finding. If he has done so, I do

not see that he has over-stepped his jurisdiction in exercising his revisional powers.

On behalf of the Corporation, the learned counsel submitted that the grounds which the Labour Court has taken for coming to a conclusion that the enquiry is bad in law are beyond pleadings and the Labour Court should have decided the matter on the grounds which were raised by the petitioner in his petition under sections 31 and 61 of the Madhya Pradesh Industrial Relations Act. He referred to me the two Supreme Court judgments. I have gone through these judgments, but in my opinion, they do not help him. Law of pleadings cannot be applied strictly to such proceedings and when the evidence on both the sides has come before the Court, the question of burden of proof and pleadings loses much of its importance. Therefore, that submission I am not in a position to accept.

The most important point in this case is as to whether the petitioner is guilty of any misconduct and if he is held to be guilty of misconduct, then it is to be seen whether his misconduct amounts to a major misconduct or a minor misconduct. Different major misconducts are enumerated in clause 12 of the Standard Standing Orders for all the undertakings in the State. The learned counsel for the non-petitioner submits that the case of the petitioner is covered under clause 12 (1) (f) which is as under:

12 Disciplinary action for misconduct.--(1) The following acts or omission on the part of an employee shall amount to a major misconduct--

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(f) drunkenness, riotous or disorderly behaviour during working hours at the undertaking or conduct endangering the life or safety of any person, intimidation, physical duress, or any act subversive of discipline;

While the learned counsel for the petitioner submits that it will only amount to a minor misconduct and if it amounts to a minor misconduct, then the penalty of dismissal cannot be imposed on the petitioner; it is submitted by the learned counsel for the Corporation that as the misconduct amounts to major misconduct, the penalty of dismissal should be awarded in this case to the petitioner. I will take the submission of the learned counsel for the petitioner first. He has referred to me that the punishment for minor misconduct is censure or fine and then he refers me to the Payment of Wages Act, 1936 (Section 7) and submits that the case of the petitioner is covered by section 7 (2) (c) . To this, the reply of the learned counsel for the Corporation is that it cannot be held that bus was expressly entrusted to the petitioner and, therefore, section 7 (2) (c) will not come to the help of the petitioner. This point came before the Madras High Court in State of Madras v. Ramaswami AIR 1958 Mad. 585 and it held as under:

A bus which is given to the person employed as a driver for being plied on the road is expressly entrusted to his custody within the meaning of section 7 (2)

(c) .

The term "expressly" in the context only means clearly. In the case there can be no doubt that the bus is clearly entrusted to the driver. It cannot also be denied that when the driver is given the bus to be plied it is given to his care and therefore his custody. Custody merely denotes keeping at care. It would be factually incorrect to say that the bus is given to the driver for his use and not for custody. The fact that the bus is given to him for being plied is not inconsistent with the bus given to him for custody. Obviously at the end of the day the driver is expected to return the bus or safely leave it at the garage or in any other prescribed place.

Therefore, I will have to accept the submission made by the learned counsel for the petitioner that there is a possibility that the case of the petitioner may fall under the heading "Minor Misconduct". But the learned counsel for the Corporation submits that the same act may fall under the definition of "Minor Misconduct" and it may also fall under the definition of "Major Misconduct". I have no hesitation in accepting this submission of the learned counsel for the Corporation. Therefore, I have to see whether the case of the petitioner is covered under clause 12 (1) (f) of the Standard Standing Orders, or not. If it is covered under clause 12 (1) (f), then the petitioner will be guilty of major misconduct and not of minor misconduct even though the clause which defines minor misconduct may cover the action of the petitioner. Before deciding whether the case is covered by clause 12 (1) (f), certain facts are necessary to be enumerated. The vehicle was a passenger bus. The petitioner was driving it. He had full knowledge that the brakes were not in working order and they usually failed. Neither the petitioner nor the learned counsel appearing for him submitted before me that the report regarding the condition of the bus is fabricated and false. The report clearly indicates that the bus met with an accident and by the grace of God, no life was lost and nobody was injured. If these facts are taken together, then the conduct of the petitioner clearly falls under clause 12 (1) (f). It was submitted before me by the learned counsel for the petitioner that to attract clause 12 (1) (f), it should be proved by the Corporation that the petitioner was drunken or riotous or disorderly during the working hours at the undertaking or his conduct was such which endangered the life or safety of any person or it amounted to intimidation, physical duress or any act subversive of discipline. As nothing is proved and as no life is lost, clause 12 (1) (f) will not cover the case of the petitioner. I do not agree with the submission of the learned counsel. Clause 12 (1) (f) also covers the conduct endangering life or safety of any person. It is not necessary that this conduct should be by a person who is under the influence of drink. The previous clause and the second clause are separated by the word "or". Therefore, they are independent of each other and as such, I do not think that the submission of the learned counsel for the petitioner, I can accept. As mentioned above, the petitioner's conduct in driving the bus which was full of passengers and which he knew will be dangerous to the life and safety of the passengers, in my opinion is covered under clause 12 (1)(f)

and, therefore, the finding of the learned Member-Judge, in my opinion, is legal and I will have to confirm the same.

The last question to be decided is whether the punishment of dismissal should be imposed against the petitioner as submitted by the learned counsel for the Corporation or whether the punishment of non-payment of backwages for this conduct will meet the ends of justice. The learned Member-Judge in para 5 of his Judgment as stated as under:

However looking to the fact that the loss to the Corporation was of Rs. 337.96 only, the extreme penalty of dismissal is unwarranted and grossly out of proportion. I think refusal to award back wages will be sufficient punishment and, therefore, the relief granted by the Court below is maintained but for different reasons. Accordingly, both these petitions are dismissed.

I completely agree with these observations of the learned Member-Judge. It has come in the evidence that the petitioner is in the service of the Corporation since 1963 and he is a permanent employee and that he has a family to support. Therefore, the extreme penalty of dismissal will be a penalty which will ruin him and his family. Therefore, taking into consideration this aspect of the case, I am of the opinion that the order passed by the Member-Judge is proper and no interference is called for.

The result is that both the petitions fail and are dismissed; i.e. the petitioner's demand for backwages is rejected and the demand of the Corporation for imposing the penalty of dismissal of the petitioner is also rejected. The outstanding amount of security be refunded to the petitioners.