

(1994) 02 RAJ CK 0023
In the Rajasthan High Court
Case No : C.W.P. No. 7079 of 1993

Bhagirath Mal Rainwa

APPELLANT

Vs

The Judge, Industrial Tribunal and Another

RESPONDENT

Date of Decision : 21-02-1994

Acts Referred:

Industrial Disputes Act, 1947 — Section 11(A)

Citation : (1995) 1 LLJ 960 : (1994) 1 RLW 445 : (1994) 2 WLN 194

Hon'ble Judges : G.S. Singhvi, J

Bench : Single Bench

Advocate : B.L. Gupta, for the Appellant;

Final Decision : Dismissed

Judgement

G. S. Singhvi, J.—Whether corruption in public services should be overlooked by the courts, whether the court should condone misappropriation, fraud, cheating and similar acts committed by public servant, and whether the court should be a silent and mute spectator of the growing corruption in public services and grant indulgence in cases of proved corruption by public servants? These are the moot questions which arise out of the arguments of learned counsel for the petitioner who has made strenuous efforts to persuade the court to annul the award dated September 1, 1993 passed by the Industrial Tribunal, Jaipur in reference case No. IT 35/1991.

2. In order to make a detailed examination of the arguments advanced by learned counsel, it will be appropriate to make the brief reference of facts. The petitioner had been appointed in the service of the Corporation on June 25, 1986 on daily wages of Rs. 20 and was posted under Hindon Depot of the Corporation. His service was terminated after he served for about 7 months and 15 days. Though brought about by an order worded innocuously, termination of service of the petitioner was founded on allegation of misconduct, namely, carrying passengers without ticket after collecting fare from them. The petitioner claimed that he was "workman concerned" in a dispute which was pending before the

Industrial Tribunal and the employer had not sought approval from the Tribunal u/s 33(b)(2) of the Industrial Disputes Act which could be done only by complying with three conditions enumerated in that Section and as such his termination of service is void. With this allegation he filed petition before the Industrial Tribunal Jaipur u/s 33A of the Industrial Disputes Act, 1947.

3. During the course of proceedings before the Industrial Tribunal, an application was made by the employer seeking leave to lead evidence in order to substantiate its case, namely, that the termination of service of the workman was in reality on account of grave acts of misconduct committed by him. The Tribunal granted this permission to the employer by its order dated February 4, 1992. Thereafter both the parties led evidence in the form of affidavits and the deponents were subjected to cross examination.

4. The Tribunal heard the arguments and evaluated the pleadings as well as evidence of the contesting parties and came to the conclusion that allegations of misconduct levelled against the petitioner that he had carried four passengers and one passenger respectively on February 1, 1987 without issuing tickets to them even after collection of the fare, has been fully proved on the basis of evidence of witnesses who were examined on behalf of the Corporation. The Tribunal then turned its attention to the question of quantum of punishment and came to the conclusion that looking to the length of service of the workman (seven months and a half) and the nature of misconduct found proved against him, there was no warrant for ordering any other penalty than his removal from service. On this premise, the Tribunal upheld the action of employer. But at the same time in recognition of the fact that enquiry had for the first time been made before it and finding of guilt has been recorded for the first time by it, it refused to apply the doctrine of relate back. It passed an award that the workman shall not be entitled for reinstatement but shall be entitled to wages for the period between February 11, 1987, to the date of Award.

5. Shri Gupta learned counsel, has argued that award passed by the Tribunal is perverse and suffers from an error of law apparent on the face of it because the Tribunal has failed to consider the affidavit filed by the petitioner. According to Shri Gupta, being a judicial authority, the Tribunal was under an obligation to take into consideration the evidence produced by the petitioner in the form of affidavit and then to have recorded a finding about the credibility of evidence. Non-Consideration of this relevant piece of evidence, according to Shri Gupta, constitutes an error of law apparent on the face of the record. Second Submission of Shri Gupta is that evidence produced on behalf of the Corporation was too weak and laconic to constitute a sound basis for recording a finding that the petitioner had in fact committed a misconduct. He pointed out that one of the witnesses of the Corporation, namely, Shri Satyanarain had admitted in his cross examination that the bus checking report has not been prepared on the spot but was prepared subsequently. The incharge of the party had not signed the way bill then and checking party had not examined any of the passengers who had

allegedly not been issued ticket by the petitioner after taking fare. According to Shri Gupta, this serious infirmity in the evidence of Corporation could lead to only one conclusion, namely, that charge of misconduct has not been established against the petitioner and the Tribunal has committed a serious error in relying on the evidence of Satyanarain and Prabhatilal Sharma in recording finding that the allegation stands proved against the petitioner. Shri Gupta placed reliance on the office Order Annexure-3 for pointing out the procedure which is required to be followed in the case of corruption in the service of the Corporation. On the strength of this order he argued that when the Corporation itself has taken a policy decision to condone the grave acts of misconduct committed by Conductors by simply taking a fixed amount from them in proportion of the number of passengers, there was no justification to remove the petitioner from service. Shri Gupta argued that as per this order a Conductor could be proceeded by way of disciplinary action only in the event of his committing the fifth act of similar misconduct of carrying passengers without ticket and, therefore, the order of punishment passed against him should be declared as illegal and without jurisdiction. Lastly, Shri Gupta argued that the Tribunal has not properly applied itself to the provisions of Section 11A of the Act of 1947 and has arbitrarily upheld the action of employer in terminating service of the petitioner. He argued that even if the allegation levelled against the petitioner of carrying four and one passenger respectively without ticket after taking fare, is held to be proved, punishment of removal from service must be declared arbitrary, excessive and wholly disproportionate to the allegation of misconduct.

6. I have carefully looked into the entire material which has been placed by petitioner on record of this writ petition.

7. It is most significant to note that in his claim petition the petitioner had alleged that he had not collected fare from the passengers and, therefore, the allegation that he was carrying passengers without issuing tickets is false. He pleaded that the Inspectors who had inspected his bus, had demanded monthly bribe from him and since he declined to concede to their demand, a false case has been concocted against him by the Inspector. He submitted that enquiry was not held in accordance with the Standing Order No. 34 of the Rajasthan State Road Transport Corporation Workers and Workshop Employees" Standing Orders, 1965. He further pleaded that termination of his service was wholly unjustified and that the action of employer was contrary to Section 33(2)(b) of the Act of 1947. Interestingly, the petitioner himself in his affidavit came forward with an altogether different story. In the affidavit he, in addition to allegation of demand of bribe by the Inspectors, stated that his bus had not been checked on February 1, 1987. He stated that on February 1, 1987, he had gone to get his vehicle booked to Sikandra Choraha and there Inspector Shri Pareek had come. The Inspector inspected the vehicle and made a false remark in the way bill of return journey. The inspectors again met him at Nadoti. They were drunk and in that state of intoxication they had made a false remark in the way bill that he was carrying four passenger without ticket. He pleaded that the Corporation had

issued Circular for compounding the misconducts committed by the Conductors in lieu of penalty per passenger and, therefore, there could be no justification in punishing him. However, the petitioner has not been able to produce any tangible evidence to substantiate his plea that the Inspectors had demanded bribe from him. No material has been produced by the petitioner even before this Court to show that one of the two Inspectors, who inspected the bus had, in the past demanded monthly bribe from him. That apart, the petitioner has miserably failed to explain as to why did he sign the way bill which contained the remark that he was carrying passengers without ticket. Total absence of any protest by the petitioner immediately after he signed the way bill, clearly negatives the argument advanced by Shri Gupta that the petitioner has been coerced/forced to sign the way bill. It was natural for the petitioner to have protested to the higher departmental authorities about the force which was used by the two Inspectors for making him to sign the way bill. The very fact that the way bills contain signature of the petitioner, completely belies his version that the two Inspectors demanded monthly bribe from him and hauled him up in a false case because of his failure to meet their demand. Similarly, in the absence of any evidence, plea of the petitioner that the two Inspectors were intoxicated and they had made remarks in the state of intoxication, deserves a summary rejection.

8. In the light of this, if the impugned award is examined, there remains little doubt that failure of the Tribunal to make a detailed analysis of the affidavit of petitioner has not caused any prejudice to the petitioner. Nor it is possible to hold that the said failure on the part of Tribunal amounts to an error of law apparent on the face of award. In so far as evaluation of the evidence of the two witnesses, who were produced on behalf of the Corporation is concerned, it is clearly seen that both the witnesses of the Corporation were consistent in their assertion that the bus has been checked on February 1, 1987 and passengers were found without ticket even though the Conductor had collected fare from them. The Tribunal being a specialised body constituted u/s 7 of 1947 Act, had the jurisdiction to make an evaluation of evidence produced before it. It has jurisdiction to accept or not to accept the testimony of witnesses produced on behalf of the Corporation in fact this is a matter which precisely and primarily falls within the domain of a body constituted under the Act of 1947 and this Court while exercising certiorari jurisdiction, will be extremely slow in interfering with such evaluation of evidence made by the Tribunal. The Court will interfere only when it is found that the Tribunal has totally misread the evidence or has completely overlooked a legally admissible evidence and such mistake has resulted in palpable injustice to a party. Thus, I have no doubt in my mind that the impugned award does not suffer from any legal infirmity in so far as this part of the award is concerned.

9. Now I may examine the submission of Shri Gupta that the punishment awarded to the workman should be treated as excessive and the Tribunal ought to have set aside the extreme penalty of removal from service. Shri Gupta's argument is that the Tribunal has failed to exercise the jurisdiction vesting in it u/

s 11A of 1947 Act, I have carefully considered this submission of Shri Gupta. A look at the impugned award shows that the Industrial Tribunal has directed its attention to the nature of employment of the petitioner, the length of his service as also the nature of misconduct committed by the petitioner. The Tribunal observed that the petitioner, who was a daily waged employee, was found guilty of having committed a grave misconduct twice over on the same day. He had collected fare from five passengers and had not issued tickets to them. The Tribunal then made reference to the decision of Gujarat High Court in Gujarat State Road Transport Corporation v. Jamnadas Bihari Bhai 1982-(2)-LLN 583, and held that a person who is found guilty of grave misconduct or misappropriation of public money has no right to be reinstated in service. In my opinion the Tribunal has correctly applied the principles which are required to be kept in mind while exercising the power u/s 11A of the Act. The Supreme Court and this Court has on more than one occasion held that the cases of misconduct involving allegation of bribe, misappropriation of public funds, theft of public property etc. constitutes a class by themselves and there is no room for leniency or compassion in such like cases. Being a third organ of the State under our constitutional set up, the courts cannot be a silent spectator or a mute corroborator in such acts of misconduct by public servants. The Court cannot grant any indulgence to a public servant who is found guilty of grave misconduct like cheating, fraud, misappropriation of public funds, theft of public property etc. The employees of the Corporation hold a post of public trust and therefore, if an allegation of theft, misappropriation, embezzlement fraud etc. is proved against an employee of the corporation, there is no room for compassion. In fact any compassion shown in such like matters would be gravely detrimental to the public interest. Indeed it is high time that the Industrial Tribunals and Labour Courts take note of this growing malady in the public services and reduce interference with the punishments imposed on an employee

10. The service conditions of the employees engaged as Conductor in the service of the Corporation are governed by the provisions contained in the Standing Orders of 1965. Clause 34 of these Standing Orders enumerates the acts and omissions which are treated as misconduct. Clause 35 deals with the suspension etc. Clause 36 lays down that one or more of the penalties specified in that clause may be imposed on a worker by a competent authority. Clause 34(i) describes the acts of dishonesty, fraud, theft, mal-practice or misappropriation of cash or property as misconduct. Clause 36(vii) provides for termination of service which shall not be disqualification for future employment and Clause 36(viii) provides for dismissal from service which shall be a disqualification for future employment. These provisions show that if an employee who is governed by the provisions of the Standing Orders, commits an act of dishonesty or commits fraud, theft, mal-practice or misappropriates the property of the Corporation, the competent authority is free to impose any of the penalties specified in Standing Order No. 34 including termination of service or dismissal.

11. Section 11A was inserted by the Industrial Disputes (Amendment) Act, 1971.

By enacting Section 11A, the Parliament has conferred statutory power on the Labour Courts/Tribunals/National Tribunals to give appropriate relief in case of discharge or dismissal of workmen. By exercising power u/s 11A the Labour Courts/Tribunals/National Tribunals are entitled to set aside an order of discharge or dismissal and direct reinstatement of the workmen on such terms and conditions as it thinks fit. However, power u/s 11A can be exercised only on fulfillment of the conditions enumerated in that Section, namely, that the Labour Court/Tribunal or the National Tribunal must be satisfied that the order of discharge or dismissal was not justified. However, conferment of wide power on the Labour Court/Tribunal or National Tribunal to set aside the order of discharge or dismissal does not mean that in each and every case the Labour Court/Tribunal or National Tribunal has got un-trammelled power to interfere with the punishment imposed by the employer. The power has to be exercised only after the Labour Court, Tribunal or National Tribunal is satisfied that the order of discharge or dismissal. The satisfaction of the Labour Court, Tribunal or National Tribunal is not a subjective satisfaction but clearly an objective satisfaction. This obviously involves application of mind by the Labour Court, Tribunal or National Tribunal on various relevant circumstances, like the nature of delinquency committed by the workman, his past conduct, the impact of the delinquency on the employer's business/industry as also the total length of service rendered by the workman. That apart, the Labour Court, Tribunal or National Tribunal is required to consider as to whether the decision taken by the Management^ just or not. Only after due consideration of these factors, the Labour Court, Tribunal or National Tribunal can upset the punishment imposed by the employer. Interference cannot be done by the Labour Court, Tribunal or National Tribunal with the ; quantum of punishment without recording a specific finding in the manner aforesaid and after consideration of the material circumstances.

12. In *R.S.R.T.C. and Anr. v. Presiding Officer, Labour Court, Kola*, S.B. Civil Writ Petition No. 9/85 decided on October 7, 1992 this Court had an occasion to consider an award passed by the Labour Court wherein it had interfered with the punishment awarded by the employer by way of removal of the employee from service. While upsetting the award passed by the Labour Court, this Court observed as under:-

"It cannot be ignored that a Conductor in the service of the Corporation plays an important role in collecting the revenue which ultimately constitute the part of fund on which the Corporation can carry on its business, industry and undertaking. Employees belonging to the cadre of Conductors or any other cadre who is found responsible for making holes in the fabric which constitutes the foundation of the petitioner Corporation, constitutes a serious threat to the entire industry. In fact this is true for all employees who may be serving the government, the other public employees or even the private employees. In addition to this, so far as the employees engaged in the public employment are concerned, they constitute a class which carries a more onerous responsibility on their shoulders. They are public servants and not the masters of public. They are

trustees of the public at large in the institutions of public importance, corporations, companies and undertakings. These public bodies have been created, established and constituted to serve the masses, to serve the common man of the State. If by their actions, they commit breach of the trust or commit theft or misappropriation, there is absolutely no justification for showing any compassion or leniency with such employees in the matter of quantum of punishment. A public servant who is found guilty of misappropriation of public funds, corruption, dishonesty, fraud or theft has no right whatsoever to serve the public and the public who is its real master and who is represented by the employer, has a right to see the ouster of such an employee by due process of law." :

The aforesaid observation made by this Court are fortified by similar decision of Andhra Pradesh State Road Transport Corporation v. Additional Judge, Labour Court-cum-Industrial Tribunal 1986 63.FJR 230, Gujarat State Road Transport Corporation v. Jamnandas Behari Bhai 1987 I LLN 152 (supra), and Municipal Corporation of City of Ahmedabad v. Hussinmiya Chandmiya.

13. The Apex Court has also in D.C. Roy Vs. The Presiding Officer, Madhya Pradesh Industrial Court, Indore and Others, has interpreted Clause 12(b) of M.P. Standard Standing Orders which is similar to Standing Order No. 34 and held that where a person was found guilty of misconduct in relation to dishonesty, the punishment of dismissal can neither be considered as harsh nor unfair.

14. In the present case the Presiding Officer of the Industrial Tribunal has carefully applied his mind to the relevant circumstances and has declined to interfere with the penalty by invoking its jurisdiction u/s 11A. Indeed it is a matter of great satisfaction that some of the Presiding Officers of the Labour Court/Industrial Tribunal are conscious of the deep erosion made in the morality of public services and they are not ready to become party of the rampant corruption in public services by interference with the punishment awarded to an employee for proved misconduct like carrying passengers without ticket after collecting fare. 15. Last submission of Shri Gupta centres round the circular issued by the Corporation. A bare reading of the said circular has sent shocking waves to my mind. It is beyond comprehension that a public authority like the Corporation which by itself exists and runs on public money could think of issuing a circular like this whereby misconduct involving misappropriation and cheating has been sought to be compounded. In my opinion, this circular is clearly a result of totally misconceived notion entertained by the officers of the Corporation about corruption in the public services. Time has so far not come where the corruption has been legalised in this country and till that happens, no public body or authority or Corporation can be permitted to go unscathed even after issue of circular like the one dated July 30, 1990. By issuing such circular, officer of the Corporation has done greatest dis-service to the institution itself. In my considered view the circular deserves to be rejected with contempt because it is not only against the interest of the Corporation but also against the interest of

the public. Therefore, the argument of Shri Gupta which is based on the bed rock of the circular merits nothing more than rejection.

16. For the reasons mentioned above, I do not find any substance in this writ petition and the same is hereby dismissed.

17. A copy of this order be sent to Hon''ble the Chief Minister of Rajasthan so that he may have a first hand knowledge of the actions/omissions of a public authority like the Rajasthan State Road Transport Corporation and he may get an opportunity to take action against the officers who were responsible for issue of circular dated July 31, 1990.