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**(2011) 06 PAT CK 0019**

**In the Patna High Court**

**Case No :** Civil Writ Jurisdiction Case No. 5869 of 1994

Bihar State Road Transport Corporation

APPELLANT

Vs

A. Sattar Wahidi, Conductor, Bihar State Road Transport Corporation, The Presiding Officer and State of Bihar

RESPONDENT

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**Date of Decision :** 30-06-2011

**Acts Referred:**

**Citation :** (2011) 06 PAT CK 0019

**Final Decision :** Dismissed

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## **Judgement**

Jayanandan Singh, J.—It has been quite some time since the matter was finally heard and orders were reserved. Hence, this Court has got the matter listed under heading "To be mentioned" on 21.06.2011 and 23.06.2011 to refresh itself with regard to the facts of the case, issues involved and submissions of the respective learned Counsels for the parties.

2. Petitioner-Bihar State Road Transport Corporation (hereinafter to be referred also as "the Management" in the context) has filed this writ application challenging the award dated 30.10.1993 submitted by the learned Presiding Officer, Labour Court, Patna in Reference Case No. 22/1990 by which the court below has directed for reinstatement of Respondent No. 1 (hereinafter to be referred to as "the Workman") in service with half back wages. A copy of the award is annexed as Annexure-1 with the writ application.

3. Facts of the case, as per the Management, are that the Workman was employed as a Conductor with the Petitioner-Corporation during the relevant period. On 30.09.1975 while he was on duty on a Bus bearing Registration No. BRH-2877, plying on Munger-Nawada-Jamui Route, it was checked by one S.B. Mishra, a Traffic Inspector and one S.N. Verma, an Assistant Traffic Inspector, at a little distance from Purabsarai, the last stoppage of the Bus before its checking. In the checking it was found that there were 16 passengers in it out of whom 4 were not having tickets, although three out of them had already paid the fare. Accordingly, checking report was submitted, a copy whereof is Annexure-2 with

the writ application. The Workman submitted his first representation on 06.10.1975 to the Additional General Manager (D.P.) stating therein that in fact, there were 23 passengers in the bus, but none of them was without ticket. However, in view of the checking report, Workman was put under suspension by order dated 23.10.1975, a copy whereof is Annexure-3 with the writ application. Thereafter a proceeding was drawn, charges were framed and charge sheet, contained in Memo no/805/AGM dated 16.12.1975, was issued, a copy whereof is Annexure-4 with the writ application. The Workman submitted his explanation in which he took the same stand as he had taken in his representation. The matter was thereafter sent to the Special Officer for holding enquiry, in which Workman participated and was examined as a witness also. After completing the enquiry, the Enquiry Officer submitted his report dated 18.10.1976, a copy whereof is Annexure-6 with the writ application.

4. The previous history of the Petitioner, a copy whereof is Annexure-5 with the writ application, was also considered by the Enquiry Officer and an enquiry report was submitted holding the Workman guilty of the charge. Enquiry report was considered by the Disciplinary Authority and, under the orders of the Chief of Administration dated 07.06.1977, a copy whereof is Annexure-7 with the writ application, the Workman was discharged from service. Hence, he preferred an appeal against the same which was, however, rejected by the Chairman-Cum-Managing Director of the Petitioner-Corporation by order dated 07.07.1983, a copy whereof is Annexure-8 with the writ application. Thereafter the State Government made reference to the Labour Court u/s 10(1)(c) of the Industrial Disputes Act, 1947 (hereafter to be referred to as "the Act") by notification dated 04.05.1990, terms of which for adjudication by the Labour Court was as under:

Whether the dismissal of Shri Abdul Sattar Wahidi, Conductor, Munger is proper and justified ? If not, whether he is entitled to reinstatement or/and any other relief ?

5. After receipt of the notification of reference, notices were issued to the parties to appear and file their respective statements. The Court below first proceeded to decide the fairness of the domestic enquiry as a preliminary issue. The issue was decided by order dated 06.04.1993 in favour of the Management and enquiry held was found to be fair and proper. Thereafter the Court below proceeded to decide other issues framed in the Reference case by the Court, which were as follows:

(i) Whether the charges of misconduct levelled against the workman is proved to the satisfaction of this Court by acceptable evidence?

(ii) Is the punishment of dismissal of the services of the workman, justified in view of the charges proved against him?

(iii) Is it proper to deny relief to the workman on the ground of staleness of the dispute ?

6. The Court below took up consideration of the first issue separately and, while analysing the materials placed on record by the Management during the domestic enquiry to prove charge of misconduct against the Workman, it found that the said evidence was not cogent and convincing to establish the misconduct of the Workman. While considering the next two issues jointly, the court below found that there was delay of 5-6 years in raising dispute by the Workman, but on that basis reinstatement of the Workman could not be denied. However, it found that staleness in raising the claim by the Workman may adversely affect his case in the matter of admissibility of back wages. Hence, the Court below submitted its Award directing the Management to reinstate the Workman with half back wages only. The Management has challenged the said Award in this case on the grounds that the court below had entertained the reference and allowed the claim of Workman, in spite of unexplained delay in raising the claim, and that the Court below has reappraised the evidence produced during the domestic enquiry, which it was not authorized to do in law.

7. The Management, after seven years, filed an interlocutory application bearing I.A. No. 5471 of 2001 in this matter for stay of operation of the Award of Labour Court. However, the said interlocutory application has remained pending for years, without being pressed.

8. During the course of hearing of this application, Workman has filed a supplementary counter affidavit giving details of steps taken by him for reference of the matter of his discharge to the Tribunal under the Act, after his appeal was dismissed by the Chairman-cum-Managing Director. He has also annexed his application and other communications in support of his claim that he had taken prompt steps in 1984 itself which were entertained by the Deputy Labour Commissioner, Patna in February, 1984 itself and his case was referred to the Deputy Labour Commissioner, Bhagalpur through letter No. 2914 dated 15.03.1984, a copy whereof is Annexure-C with the supplementary counter affidavit. Other developments in the matter have also been narrated in the supplementary counter affidavit and it is stated that finally the Conciliation Proceeding before the Joint Labour Commissioner, Patna failed in 1986 and then the dispute was referred to the Government which, in turn, made Reference by the said notification dated 04.05.1990. It is also stated in the supplementary counter affidavit that Workman reached his age of superannuation on 31.12.1994.

9. Learned Counsel for the Petitioner-Corporation, while challenging the impugned Award, first submitted that delay in raising the dispute had not been explained by Workman before the Court below. He submitted that the Court below itself had found that there was delay of 6-7 years in raising the claim. In the circumstances, he submitted that, the same was sufficient to reject the claim of Workman. He submitted that the explanation of delay, now being furnished by Workman before this Court, could not be taken into consideration as the same had to be furnished before the Court below, which the Workman had failed to do.

He next submitted that the Court below erred in analysing the evidence produced by the Management in domestic enquiry in support of charge of misconduct against Workman, as it was not authorized in law to examine the sufficiency of evidence produced during the domestic enquiry. Hence, the finding of the Court below that charge of misconduct did not stand proved by cogent and convincing evidence in the case, was bad in law. He also submitted that, to claim back wages, it was the Workman who had to prove that he was not under any employment, which he did not do before the court below. He also submitted that no specific issue was framed by the Court below in this respect and, therefore, the Award of half back wages to the Workman with reinstatement was bad in law.

10. Learned Counsel for the Workman, in reply, submitted that the effect of delay in raising the claim by Workman for settlement of an industrial dispute has always to be examined in the light of facts and circumstances of each case. He submitted that delay is not always fatal to a proceeding instituted on reference made by a Government u/s 10(1)(c) of the Act and there may be various circumstances which may prove sufficient to condone the delay. He submitted that newly inserted Section 11A of the Act gives jurisdiction to a Labour Court to go into the question of sufficiency of evidence produced by the Management in the domestic enquiry for holding a workman guilty of the charges. Hence, Labour Court was well within its jurisdiction in analysing the evidence produced by the Management which it did and rightly came to the conclusion that the evidence was not cogent and convincing to support the finding of guilt of misconduct against the Workman. He also submitted that in the domestic enquiry it was not open to the enquiry officer to look into past service history of a workman to come to the conclusion with regard to his guilt. He submitted that charge had to be proved by the Management on the evidence produced in the domestic enquiry itself and not on the basis of some past facts which were not part of the enquiry or connected with the charge. He also submitted that Workman was entitled for his full wages during the pendency of this writ application in terms of Section 17B of the Act as there was no stay of operation of the order of the Labour Court and as the Management never took steps for pressing their interlocutory application for stay, filed as late as in 2001.

11. In view of the submissions of learned Counsels for the parties, first issue which is required to be considered, is as to whether the Court below was right in issuing the Award in favour of the Workman in spite of its finding that there was delay of 6-7 years in raising the claim by the Workman.

12. It is true that records do not show that Workman had produced evidence before the Court below explaining the delay in reference being made by the Government in 1990, in spite of rejection of his domestic appeal in 1983 itself. Due to this, the Court below has come to a finding that there was delay of 6-7 years in the matter. But the Workman has brought materials on record, through the supplementary counter affidavit, to show that he was taking steps at different levels against his discharge. He has also showed, by producing a letter

of the Deputy Labour Commissioner, Patna dated 15.03.1984 addressed to the Deputy Labour Commissioner, Bhagalpur dated 15.03.1984, a copy whereof is Annexure-C, that the dispute in fact had been raised by him in 1984 itself which had been referred to a competent authority. Another document produced by him, which is annexed as Annexure-F with the supplementary counter affidavit, is a notice from the Joint Labour Commissioner, Bihar, Patna dated 18.02.1986, which shows that conciliation proceeding was being held by the Joint Labour Commissioner. The said proceeding failed, as stated by the Workman, and then the matter was referred to the Government for Reference which, has not been denied by the Management itself. Therefore, if there was any delay in reference, the same may be at the level of the State Government itself and, in the opinion of this Court, the Workman should not be penalized and denied his claim solely on the ground that he could not bring those documents on record of the proceeding before the Court below. It cannot be taken for granted that materials in respect of attempt of conciliation made by the Joint Labour Commissioner were not at all available on record of the reference case. Judgments relied upon by learned Counsel for the Petitioner-Corporation as reported in *The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Others*, are on the facts of the cases and conjoint reading of the observations in the judgments clearly indicate that fatal affect of delay has always to be considered in the background of facts and circumstances of each case. This Court finds that the judgment of this Court, in the case of *Amlendu Kumar v. The State of Bihar*, through Commissioner, Bihar, reported in 1979 BBCJ 677 (FB), relied up by learned Counsel for the Petitioner-Corporation has no relevance for the present case. To the contrary, the judgment of the Apex Court, in the case of *Ajaib Singh Vs. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited and Another*, relied upon by learned Counsel for the Workman, lends strength to his case that no reference could be turned down merely on the ground of delay as a hypothetical defence, without real prejudice shown to have been caused to the Management. In the circumstances, this Court finds that the Court below has rightly held that delay was not fatal to the claim of the Workman for his reinstatement. This Court also finds that in the facts and circumstances, as appearing from the records of the case, Workman should not be denied his claim for reinstatement on the ground of delay only, as above two documents show that he had, in fact, raised a claim promptly and the matter remained pending at different levels thereafter, till reference was made by the State Government by the said notification dated 04.05.1990.

13. The next contention raised by learned Counsel for the Petitioner-Corporation, in respect of jurisdiction of the court below in reappraising the evidence produced in the domestic enquiry, is to be considered in the backdrop of powers of the Court below as emanating from the said newly inserted Section 11A of the Act. For easy reference, the said Section is being reproduced hereinbelow:

11A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.- Where an

industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require: Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.

(Emphasis added)

14. Apparently, the language of the section is clear enough to show that, by this section, jurisdiction of the Labour Courts, Tribunals and National Tribunals, set up under the Act, has been enlarged in the matter of reference in respect of discharge or dismissal of a workman. The very expression used in section "is satisfied that the order of discharge or dismissal was not justified" shows that the Legislature bestowed power on the Labour Court and the Tribunals to go into the very question of sufficiency and reliability of evidence produced by the Management during a domestic enquiry, and to come to its own independent conclusion, on the basis of the said materials, as to whether discharge or dismissal in the case was "justified?, or not. The judgment of the Apex Court, in the case of State of Haryana and Another Vs. Rattan Singh, relied upon by learned Counsel for the Petitioner-Corporation, is of no help to his case in view of the judgment of the Apex Court, in the case of The General Secretary, South Indian Cashew Factories Workers' Union Vs. The Managing Director, Kerala State Cashew Development Corporation Ltd. and Others, relied upon by learned Counsel for the Workman in which scope of Section 11A and power of a Labour Court has been clearly noticed. Hence, this Court is of the opinion that the Court below was justified in analysing the evidence produced by the Management in support of charge of misconduct against the Workman which it did not find cogent and convincing.

15. After analysis, the Court below found (i) that from the very beginning the definite stand of the Workman was that altogether 23 passengers were travelling in the bus out of which 5 passengers were already booked from Munger Counter while 18 tickets/vouchers had already been issued to passengers by the Workman himself; (ii) that he had categorically challenged the checking report to the effect that only 16-17 passengers were there in the bus and out of which 4 were unbooked; (iii) that although the checking report was on record of the domestic enquiry, the same was not exhibited; (iv) that the same was in a printed proforma in which particulars of the checking had been filled in and bore the signatures of only T.I. and A.T.I. and there was no signature of the Workman

on the same which made checking report a doubtful piece of evidence; (v) that in column 8 of the report, distance of travelling and unbooked passengers was mentioned which showed that they had boarded the bus at Purabsarai, which was half kilometer from the place of checking which meant that even if the Bus was travelling at a speed of 30 kilometers per hour, only one minute time had passed between loading of four passengers in the Bus and checking of the Bus and it was highly unlikely that within that one minute the Conductor was supposed to book those four passengers as that one minute time might have passed in the passengers occupying their seats, therefore, the view of the checking party was not rational and practical; (vi) that the evidence of T.I. and A.T.I. had been recorded on a printed form by striking out other portions of the deposition which were not applicable, which made a mockery of norms of recording deposition of witnesses in a disciplinary proceeding; (vii) that the checking party had not mentioned the names and brief statement of allegations of the passengers from whom it was alleged that the Workman had realized fare but had not issued the ticket; (viii) that the checking party had not taken precaution in examining the cash bag carried by the Workman and compared the cash with the tickets and P.V. issued by him; (ix) that in view of the categorical stand of the Workman from the very beginning that 5 passengers had been booked from Munger Counter and in respect of 18, tickets and vouchers had been issued by him, the Management did not produce any evidence from Munger Counter or other materials to belie the said stand; (x) that the way bill on which admittedly there was signature of T.I. was not produced in the enquiry to establish the correctness of checking report; (xi) that except for checking report, no document or material was seized by the checking party at the time of checking of Bus and hence checking report only, which was not signed by the Workman, could not be accepted as a conclusive proof of misconduct of the Workman and its contents could not be accepted as a gospel truth in absence of the signature of the Workman, etc.

16. In the circumstances, the Court below came to the conclusion that on a critical analysis of materials, it was not satisfied that charge against the Workman of carrying four unbooked passengers on the bus, after realizing fare from three of them, had been proved by cogent and convincing evidence. Hence, the Court below found that discharge of the Workman was not justified in the facts and circumstances of the case. This Court finds that approach of the Court below in analysing the evidence produced by the Management in the domestic enquiry against the Workman in support of charge is rational, objective and judicious. It is true, as submitted by learned Counsel for the Petitioner-Corporation, relying upon a judgment of the Apex Court, in the case of Employers Management West Bokaro Colliery of TISCO Ltd. Vs. Concerned Workman, Ram Pravesh Singh, that if two views are possible on the evidence on record, the Tribunal should be slow in coming to a conclusion, other than the one arrived at by the Domestic Tribunal. But in the present case, as noticed above, the Labour Court has come to a definite conclusion, on the basis of the materials

on record, that, there was no cogent and convincing evidence on record in support of finding of misconduct on the part of the Workman. Hence, clearly the Court below found that on the evidence on record, no two views were possible, which this Court finds as correct. Learned Counsel for the Petitioner-Corporation has also not been able to make out any case for interference in the matter by this Court in exercise of its power under Articles 226 and 227 of Constitution of India. The Award of reinstatement with half back wages was strictly within the scope of Reference made by the Government and hence this Court does not find any error committed by the Court below in submitting that Award without separate issue framed in that respect. In any case, learned Counsel for the Petitioner-Corporation did not elaborate his submissions in this regard during his arguments with support of any authority.

17. It is true that in terms of Section 17B of the Act, during the pendency of a proceeding, preferred by an employer against an award of reinstatement, the Workman is entitled to payment of wages at the rate last drawn by him, subject to final orders in the proceeding before this Court. However, the Workman becomes entitled to this interim relief only after he files an affidavit in the pending proceeding before this Court that he had not been employed in any establishment during such period. This affidavit was filed by the Workman in this case along with his counter affidavit filed in 1994 itself. The same remained on record and the Management did not take care to take steps for payment of his wages in terms of Section 17B of the Act, or to get operation of the impugned order of learned Court below stayed by this Court. Section 17B creates liability on the employer to pay wages of a workman at the rate last drawn by him if he chooses to challenge the Award of reinstatement passed by the court below in favour of a workman. As rightly pointed out by learned Counsel for the Workman, the Petitioner-Corporation has not discharged its liability in this case in spite of the required affidavit filed by the Workman in 1994 itself.

18. As a result, this Court does not find any merit in this writ application. The same is, therefore, dismissed. Petitioner-Corporation shall be obliged to execute the impugned Award passed by the Labour Court in favour of the Workman as per its terms and conditions. The Workman shall also be entitled to all pecuniary benefits in accordance with law flowing from the Award of the Court below.