

(2006) 10 P&H CK 0016
In the Punjab And Haryana At Chandigarh

Director, State Transport Punjab and Others	APPELLANT
Vs	
Kulwant Singh and Another	RESPONDENT

Date of Decision : 23-10-2006

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 11A

Citation : (2007) 147 PLR 128

Hon'ble Judges : J.S. Narang, J;Arvind Kumar, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Arvind Kumar, J.—Petitioner has invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, seeking

a writ in the nature of Certioraris for quashing award dated 21.9.2004, Annexure P-2, whereby the learned Labour Court has set aside the order

terminating the services of respondent No. 1-workman and substituted it with an order of stoppage of four annual increments with cumulative effect.

2. The case as set out by the petitioner, namely, Director, State Transport, Punjab (hereinafter referred to the department) in the writ petition, is

that on 2.5.1996, respondent No. 1-workman, Kulwant Singh (hereinafter referred to as the workman) was on duty as conductor with Bus No.

9111 of Punjab Roadways, Amritsar-I. On a checking carried out by the Inspectorate Staff, 14 passengers were found to be without tickets

though due fare of Rs. 104/- had been collected by the respondent-workman. Thus, for embezzlement of said amount, the respondent-workman

was served with a charge-sheet to which he submitted his reply. On finding the

same to be unsatisfactory, an enquiry was ordered against him. In enquiry, he was held guilty and accordingly, order for his removal from service was passed. Appeal preferred by the workman qua that order too came to be dismissed. Respondent-workman raised an industrial dispute which was referred to the Labour Court by the Government for adjudication. A claim statement was filed by him before the Labour Court alleging that the enquiry against him had not been conducted in a fair and proper manner. Petitioner-department contested the claim of respondent-workman before the Labour Court. The learned Labour Court vide the impugned award, Annexure P-2, though held that the enquiry was proper but invoked the provisions of Section 11A of the Industrial Disputes Act, 1947, and substituted the punishment in the manner indicated above. Hence, the present writ petition by petitioner-department.

3. Respondent-workman has not challenged any finding of the Labour Court.

4. No written statement has been filed on behalf of the respondent-workman.

5. We have heard the learned Counsel for the parties.

6. The only argument addressed by the counsel for the petitioner is that the Labour Court should not have invoked its jurisdiction u/s 11A of the Industrial Disputes Act, 1947. The argument is not tenable. When a proper enquiry has been held by the employer and finding of misconduct is

supported from the evidence adduced in the said enquiry, Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an

appellate Authority. Interference with decision is justified only when the enquiry is unfair or findings arrived at in the enquiry are perverse or the

punishment imposed is so disproportionate to the proved charges as to shock the conscience of the Court. Reference in this regard can be made to

a decision of the Supreme court in B.C. Chaturvedi Vs. Union of India and others, .

7. The decision in B.C. Chaturvedi's case (supra) had also been followed in U.P. State Road Transport Corporation Vs. Subhash Chandra

Sharma and Others, and Kailash Nath Gupta Vs. Enquiry Officer, (R.K. Rai), Allahabad Bank and Others, , wherein it was observed that ""in the

background of what has been stated above, one thing is clear that the power of interference with the quantum of punishment is extremely limited.

This exactly had been followed in Director General R.P.F. and Others Vs. Ch. Sai

Babu, wherein It was observed as follows:

Normally, the punishment imposed by a disciplinary authority should not be disturbed by the High Court or a Tribunal except in appropriate cases

that too only after reaching a conclusion that the punishment imposed is grossly or shockingly disproportionate, after examining all the relevant facts

including the nature of the charges proved, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their

sensitiveness, exactness expected and discipline required to be maintained, and the department/establishment in which the delinquent-person

concerned works.

8. In Mahindra and Mahindra Ltd. Vs. N.B. Naravade etc., , it has been observed that the discretion which can be exercised u/s 11A is available

only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the

Court, or the existence of any mitigating circumstances which requires the reduction of sentence, or the past conduct of the workman which may

persuade the Labour Court to reduce the punishment. In the instant case, upon checking it was found that the workman had not issued tickets to

14 passengers, thereby misappropriating a sum of Rs. 104/-. An enquiry had been conducted against him. A bare perusal of the award shows that

the respondent-workman though had filed reply to the charge-sheet but abstained from the enquiry proceedings. The learned Labour Court has

returned a categorical finding that in the enquiry, proper procedure was followed and there is no illegality in the enquiry. There has been no challenge

by the respondent-workman to the said finding. Thus, in the instant case, it is not the amount of money misappropriated that becomes a primary

factor for awarding punishment, on the contrary, it is the loss of confidence which is the primary factor to be taken into consideration. This issue

also came up for consideration before the Supreme Court in Karnataka State Road Transport Corporation Vs. B.S. Hullikatti, wherein it has been

held that in such cases where bus conductors carry passengers without ticket or issue tickets at a less rate than the proper rate, the said acts would

inter-alia amount to either being a case of dishonesty or of gross negligence and such conductors were not fit to be retained in service because such

inaction or action on the part of the conductors results in financial loss to the

road transport corporation. In the said case, their Lordships of the Supreme Court were of the firm opinion that in cases like the one before them, orders of dismissal should not be set aside.

9. Applying the ratio of judgment in B.S. Hullikatti's case (supra) to the facts of the present case, we are of the view that the learned Labour Court has exceeded its jurisdiction by invoking the provisions of Section 11A of the 1947 Act *ibid*.

10. Resultantly, the writ petition is allowed and award dated 21.9.2004, Annexure P-2, is set aside. As a consequence thereof, the claim of the respondent-workman stands dismissed. No costs.