
(2009) 05 DEL CK 0061

In the Delhi High Court

Case No : Writ Petition (Civil) No. 16784 of 2006

Gaje Singh

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 13-05-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(2)

Citation : (2009) 6 ILR Delhi 78

Hon'ble Judges : V.K. Shali, J

Bench : Single Bench

Advocate : Kadambri Puri, for the Appellant; J.B. Malik, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Shali, J.—This is a writ petition filed by the petitioner for quashing of the orders dated 5th November, 2005 and 21st July, 2004 passed by the Industrial Tribunal, Karkardooma Courts, Delhi in ID No. 130/94 as well as the orders dated 30th May, 2001 and 21st November, 2001 passed by the learned Labour Court on the application filed by the respondent/management u/s 33(2)(b) of the Industrial Disputes Act, 1947 granting approval for the imposition of punishment of removal of the petitioner/workman from the post of Conductor.

2. Briefly stated facts of the case are that the petitioner was employed as a Conductor with the respondent/management on 19th January, 1979. The petitioner was on duty on bus No. 9458 route No. 828. The bus of the petitioner was checked by the checking staff headed by TI Shiv Narain at Kher Khari Jatmal about 8.00 AM. It was noticed that three passengers alighted from the bus but they were not having valid tickets. On checking the passengers, it was learnt that the Conductor had collected the due fair of Rs. 1.50 paisa from them but had not issued them tickets. The cash of the respondent was found in excess by Rs. 132.85 paisa. On the basis of the report of the checking staff, the Depot Manager of D.K. Depot issued chargesheet dated 30th April, 1991 to the respondent for committing misconduct within the meaning of para 4(ii) & 19 (b, h & m) of the

Standing Orders governing the conduct of the DTC employees.

3. An inquiry was held and the petitioner was given a full opportunity to defend himself. The inquiry was conducted according to the rules and regulations and the principles of natural justice and the report of the Inquiry Officer held that the petitioner has misconducted himself. The petitioner was thereafter visited with the punishment of removal.

4. By virtue of the order dated 30th May, 2001 the learned Industrial Tribunal-II upheld the validity of the inquiry on the ground that the same was in accordance with principle of natural justice and full opportunity was given to the petitioner to defend himself. The petitioner was visited with the punishment of removal. The removal of the petitioner was approved by the learned Industrial Tribunal u/s 33(2)(b) of the Industrial Disputes Act, 1947 holding that there was a ground for imposition of punishment of removal and the management had complied with the statutory provision by dispatching a monthly salary also to the petitioner.

5. Simultaneously, the petitioner had also on account of removal got a reference made to the learned Labour Court on the following terms:

Whether the removal of Shri Gaje Singh from service is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?

6. This reference was decided after framing of issues and so far as the management is concerned, it simply approved the earlier order of the Industrial Tribunal holding the inquiry to be inconsonance of the principles of natural justice, and accordingly, it came to the conclusion that the domestic inquiry was fair and proper in accordance with the principles of natural justice. It decided the reference against the petitioner in favour of the management vide order dated 21st July, 2004 in ID No. 130/94. In the same ID the quantum of punishment of removal was also challenged.

7. On this reference also the learned Labour Court-II on 5th November, 2005 upheld the imposition of punishment of removal of the petitioner.

8. Feeling aggrieved by the aforesaid impugned orders/award the petitioner has challenged the same by way of present writ petition.

9. I have heard the learned Counsel for the parties and perused the record.

10. The first contention of the learned Counsel for the petitioner has been that merely on account of the fact that the cash was found in excess by Rs. 132.85 did not mean that the petitioner had misconducted himself by not issuing the tickets, and therefore, the learned Industrial Tribunal as well as the learned Labour Court have faltered on this score.

11. I do not agree with this contention of the learned Counsel for the petitioner that the petitioner has not misconducted on account of cash being found in excess. The question which arises for consideration is whether the finding of the

cash in excess with the petitioner constitutes misconduct as has been held by the learned Labour Court. It is not open to this Court to sit as Court of appeal to go into this aspect of the matter and reassess the evidence and come to its own conclusion, which if contrary to the one arrived by the Labour Court below and then substitute the same. The parameters of the judicial review are that the quality of decision is not to be seen but only the process in which it is arrived is to be seen.

12. Secondly, the very fact that cash was found in excess and on spot enquiry the checking staff had given a report that three of the passengers had alighted without ticket who had admitted having paid a fair and yet not got the ticket is sufficient to establish that the petitioner had misconducted himself, therefore, this contention of the learned Counsel for the petitioner does not have any merit.

13. Another contention which has been made by the learned Counsel for the petitioner is to the effect that the punishment which has been imposed on the petitioner is grossly disproportionate to the proved misconduct. The learned Counsel for the petitioner also referred to the same judgments which have been cited before the learned Labour Court and dealt with in the order dated 5th May, 2005.

14. I have gone to the said authorities. I do not find that any straight jacket formula can be laid down with regard to the imposition of punishment especially in cases where there are allegations of financial bungling, embezzlement, defalcation of accounts, breach of trust and misuse of the cash handed over to a delinquent employee. It is not a question of quantum of money which may have been defalcated, misused or collected on behalf of the management yet not of unaccounted for. It is the factum of loss of trust which has been imposed by the management in the delinquent which warrants very stringent punishment so that not only it is deterrent to the delinquent employee but also to others who handle public money, that public money cannot swindled by persons by misusing their position. The Hon'ble Supreme Court in Depot Manager, A.P.S.R.T.C. Vs. Raghuda Siva Sankar Prasad, has held that having admitted the guilt before the inquiry officer and having returned the property would not warrant showing of sympathy to the delinquent in the matter of punishment. What is important in such cases is not the value of the article, which is the subject matter of theft but the question of loss of confidence by the employer, and accordingly, the removal of the workman was not interfered with.

15. Keeping in view this principle, this Court feels that the punishment of removal which has been imposed on the petitioner in the instant case where he was acting in a capacity of Conductor and was issuing tickets he was supposed to issue tickets on collection of money, but by misusing the same position and by collecting the money and yet not issuing the tickets he has breached the faith reposed in him by the employer. He deserves a stringent punishment which has been imposed on him and this Court, accordingly, feels that punishment which was imposed on the petitioner is not shockingly disproportionate.

16. Keeping in view the facts of the case, accordingly, this Court feels that there is no merit in the writ petition so far as the challenge of the orders/awards dated 5th November, 2005, 21st July, 2004, 30th May, 2001 and 21st November, 2001, accordingly, the writ petition is dismissed as being without merit.

No order as to costs.