

(2002) 02 GUJ CK 0083

In the Gujarat High Court

Case No : Special Civil Application No. 4231 of 1986

Gujarat State Road Transport Corporation

APPELLANT

Vs

Harshad M. Joshi

RESPONDENT

Date of Decision : 13-02-2002

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 11A
Road Transport Corporations Act, 1950 — Section 45
Road Transport Corporations Regulations — Regulation 80

Citation : (2002) 02 GUJ CK 0083

Hon'ble Judges : K.M. Mehta, J

Bench : Single Bench

Advocate : M.D. Pandya, for the Appellant;

Final Decision : Allowed

Judgement

K.M. Mehta, J.—Gujarat State Road Transport Corporation (hereinafter referred to as the Corporation) the petitioner herein has filed this petition challenging the judgment and award dated 21.9.1984 passed by the Presiding Officer, Labour Court, Rajkot in Ref.(LCR) No.951 of 1982. The Labour Court by the impugned judgment and award has set aside the order of dismissal of the respondent-workman Harshad Mansukhlal Joshi. The Labour Court, Rajkot further directed the Corporation to reinstate the workman to any other post carrying the identical pay scale to that of conductor in the initial pay with continuity of service but without back wages. In case of default the opponent workman will be entitled to full back wages from the date of default till reinstatement.

2. The facts giving rise to this petition are as under:

2.1 Harshad Mansukhlal Joshi the respondent herein has been working as a conductor with the petitioner Corporation . During the relevant time he was attached to Dhrol Depot under Rajkot Division of the petitioner Corporation. On 27.6.1982 the opponent was in charge as a conductor of the S.T.Bus which was on its route from Rajkot to Khambla.

2.2 A surprise checking of the said bus was made by Assistant Traffic Inspector Shri P.N.Jadeja and his party at Khodapipar bus stand at about 4.15 p.m. It was revealed during the checking that there were 39 passengers travelling by the said bus with tickets and 29 passengers were found travelling without tickets and it was noticed that the opponent workman had not closed the way bill of the tickets of Rs. 1.75 denomination only. It was further noticed that the workman had collected the fare in advance but had not issued tickets to 1-1/2 (one and half) passengers going from Khakhdabela to Khodapipar and it was further found that the opponent had also collected fare in advance from 25 Adult passengers and two children of different groups travelling from Khakhdabela to Latipur but had not issued tickets to them. Thus the said checking disclosed serious misconduct, irregularity on the part of the opponent in discharge of his duties as a conductor. It appeared that he had been dishonest and had malicious intention while discharging his duties. It was noticed that the opponent had committed misconduct falling under clause 7A, 12B of Schedule "A" of "Discipline and Appeal Procedure" prescribed under Regulation 80 of Gujarat State Transport Corporation Employees Service Regulations. The said regulations have been framed under sec. 45 of the Road Transport Corporation Act 1950.

2.3 It is stated that on the basis of the report from the checking squad of what was notice at the time of surprise checking the petitioner Corporation charge sheeted the opponent for misconduct falling within the aforementioned clauses by charge sheet dated 1.7.1982. The above facts and contents were raised in the charge sheet exh.7. The opponent workman filed his reply to the charge sheet on 2.7.1982 vide exh.47. The opponent in his reply to the charge sheet submitted that 3-4 days prior to the aforesaid incident he had severe stomache ache and he was undergoing treatment from the Government dispensary Paddhari. On 27.6..1982 the date of the surprise checking also the opponent had severe pain and so he has taken treatment at Padhari dispensary and therefore this act of not giving tickets has has happened.

2.4 An oral inquiry was conducted against the opponent workman by the Corporation. . The reported stated in the inquiry report that there were 39 passengers were with tickets and 29 passengers without tickets in the bus at the time of checking. The opponent workman had not closed the way bill of the tickets of Rs 1.75 p. only. The reporter was also cross examined by the opponent workman. The opponent workman examined Bhikhabhai Karnabhai as his defence witness. He stated that there were 13 persons in his group and one Gangadasbhai paid fare to the opponent workman and issued tickets to Bhikhabhai and that at the time of checking he could not find the tickets and so on on account of nervousness he falsely stated that the workman had not issued tickets. The workman was cross examined in which he stated that one Laljibhai was to pay the fare of the tickets and after the checking squad left the bus the opponent workman incurred him about the tickets to him and on search he found out the tickets from the cloth bag. After this witness Assistant Ticket Inspector H.S.Jadeja was examined. He has also been cross examined by the workman.

The driver of the bus in question was also examined.

2.5 The inquiry officer after considering the charge sheet of the opponent workman , reply to the charge sheet and oral statement in the inquiry , held that it cannot be believed that this witness would find out the the tickets only after checking party left. It was further observed by the inquiry Officer that the workman credited full amount of fare and thus it cannot be said that passengers had not paid him the fare. A second show cause notice was then issued on 17.7.1982 requiring the opponent to show cause as to why he should not be dismissed from service. The opponent workman gave reply on 19.7.1982 stating that the cashier at the depot asked for full payment as per way bill and that as he was in shortage of funds he raised a loan of Rs. 50/from his relative and credited the same at the depot.

2.6 The the competent authority after appreciating the various documents, way bill, unpunched tickets came to the conclusion that the opponent was guilty of misconduct falling under clause 7A,12B of the Schedule A of Discipline and Appeal Procedure prescribed under Regulation 80 of Gujarat State Transport Employees Service Regulations. The opponent was found guilty of failure to issue any tickets without reasonable cause and thereby permitting the ticketless travel fraud and non issue of tickets to passengers after recovery of fares.;

2.7 The competent authority also rejected the explanation given by the opponent workman and it was held by the authority to dismiss the opponent workman from service as a conductor in the petitioner corporation and ana order was accordingly passed in that behalf on 6.9.1982.

3. The opponent workman thereafter raised an industrial dispute between himself and the petitioner corporation demanding that he should be reinstated with full back wages. The Assistant Labour Commissioner made a Reference to the Labour Court,Rajkot u/s 10(1)(c) of the industrial Disputes Act which was numbered as Ref.(LCR) No. 951 of 1982 on the file of that Court.

4. Before the Labour Court, Rajkot the opponent workman filed his statement of claim at exh.3. The opponent workman stated in the statement of claim that he was not given opportunity to cross examine the reporter. The petitioner Corporation filed its reply to the statement of claim filed by the opponent workman. After considering the evidence on record, the Labour Court, Rajkot came to the conclusion that the finding of the inquiry officer cannot be said to be baseless or perverse. Thus the workman collected fare but did not issue tickets at atleast some of the passengers concerned. However, the workman has proved that he was sick since 3 days before the incident and even on the date of the incident and therefore, it was held that the opponent workman can be reinstated in alternative post. However, the Labour Court came to the conclusion that the misconduct is of serious in nature and therefore the Labour Court directed that the workman should be reinstated in service without back wages to any other post carrying identical pay scale to that of the conductor in the initial pay with

continuity of service.

5. Mr. M.D.Pandya learned advocate for the petitioner has made the following submissions.

A) That the Labour Court has no jurisdiction, authority or power to direct the employer to reinstate a workman to a post other than that from which he had come to be dismissed from service when such a post is not a post to which the workman could have been posted on demotion.

6. In support of the aforesaid submission the learned advocate for the petitioner has relied upon the the judgment of this Court in the case of Gujarat State Road Transport Corporation vs. Amirkhan Jamiyatkhan Aagvar reported in 2001 (3) GLH 100. After considering the judgments of the Honourable Supreme Court, this court in paras 5.3 and 6 of its judgment has observed as under:

" 5.3. Similar other judgment has also relied upon by the learned Counsel for the respondent. However, in my view, in view of the decisions of the Honourable Apex Court in the case of Janatha Bazar (South Kanara Central Co.operative Wholesale Stores Ltd. vs. Secretary Sahakari Noukarara Sangh (supra) and Division Bench judgment in the case of Parikshatbhai Madhavbhai Patel (supra) which I have referred earlier the subsequent Division Bench judgment of this Court it is not possible to agree with the findings of the Labour Court in this behalf and in my view looking to the grave misconduct committed by the respondent employee, the tribunal is not justified in awarding the punishment and giving 35% back wages to the respondent in this behalf. The Tribunal was also not justified in reinstating the respondent on the post of peon/helper

6. Learned advocate for the petitioner Corporation submitted that in this behalf the Tribunal has not considered whether the vacancy is available or not, without considering the Tribunal has passed that order and therefore, this order is required to be quashed and set aside."

My conclusion

7. I have considered the contentions raised by the learned advocate for the petitioner and also the judgment of this Court in Amirkhan's case (supra). In view of the aforesaid judgment the contentions of the learned advocate for the petitioner are required to be accepted.

8. In my view in this view of the matter also the order of the nature passed by the Presiding Officer in case of reduction of punishment is not only in fact and in law not an order in the nature of punishment and as such not warranted but is an order which disregards effect of such an order upon the efficient functioning of the business of the Corporation.

9. I have considered the award of the Labour Court. I have also considered the judgments of the Honourable Apex Court in the case of U.P.State Road Transport Corporation (supra) and Janatha Bazar (South Kanara Central Co.op.Wholesale

Stores Ltd.) (supra). In my view, the Labour Court has no jurisdiction or authority or power to direct the employer to reinstate a workman to the post other than that from which he had come to be dismissed from service when such a post is not a post to which the workman could have been posted on demotion. The Labour Court has jurisdiction only to alter punishment imposed by the disciplinary authority if it is found to be disproportionate to the charges held proved and such alternative punishment must fall within the punishments complemented by the Discipline and Appeal Procedure governing the workman. In my view every post carries with it certain qualifications and contemplates different abilities on the part of workman to discharge duties pertaining to different posts and holder of one post for which he might be qualified and passed may not be found fit to discharge duties pertaining to a different post either because the workman lacks in qualification to hold the post or ability to perform duties pertaining to such other posts.

10. In my view though the Labour Court has not referred to section 11A of the Industrial Disputes Act, in fact the Labour Court has exercised the power u/s 11A of the Industrial Disputes Act and though the Labour Court has observed that non giving of tickets is a serious misconduct, the Labour Court has reinstated the workman on any other post equal to that of conductor without back wages. In support of this contention, the learned advocate for the petitioner has relied upon the judgments of the Honourable Supreme Court in the case of U.P. State Road Transport Corpn. and Others Vs. A.K. Parul, , in the case of Janatha Bazar (South Kanara Central Co.op.Wholesale Stores Ltd.) etc. vs. Secretary, Sahakari Noykarara Sangh reported in 2000 AIR SCW 3439 In view of the same, the order of the Labour Court is without jurisdiction and liable to be quashed and set aside. In my view the order of nature as passed by the Presiding Officer might require even creation of post which is not what is warranted while exercising power u/s 11A. In my view looking to the gravity of misconduct held established, the Presiding Officer should have held that dismissal from service was appropriate punishment and no lesser punishment was justified. In my view the Presiding Officer has not correctly exercised the powers u/s 11A of the Act.

11. In my view , the Presiding Officer ought to have seen that once the misconduct is held established the burden lies upon the delinquent workman to satisfy the labour court by leading proper evidence and placing proper material that the punishment imposed is disproportionate in light of such facts and circumstances as may be brought on record. In my view the opponent workman had not brought out on record any such extenuating or mitigating facts and circumstances so as to warrant showing any leniency or awarding lesser punishment. In my view there was sufficient material on record of the case on the basis of which any reasonable man can justifiably come to the conclusion that charges levelled are proved and as such also the interferences with the action of the employer was uncalled for and just justified at law.

12. In my view from the evidence on record including the unpunched tickets and

way bill, that the opponent workman had come forward with a false explanation at the time of the enquiry of his ill health on the checking day which did not enable him to issue tickets to the 29 passengers in the S.T.bus. In my view, if the fare could be collected tickets could have been simultaneously issued and the ground of ill health is clearly an after thought. In view of the aforesaid facts and circumstances of the case, it is not proper for the Labour Court to exercise its discretion by which the Labour Court has directed the petitioner corporation to reinstate the workman to any other post carrying identical pay scale to that of conductor in the initial pay with continuity of service. If the honesty and integrity of the workman has been doubted, it will not be proper for the petitioner corporation to reinstate the workman and allowing him to work in any other capacity also.

13. In the circumstances, present petition is required to be allowed and the same is allowed. The judgment and award of the Labour Court, Rajkot dated 21.9.1984 passed in Ref.(LCR) No.951 of 1982 is quashed and set aside. Rule made absolute. No order as to costs.