
(2007) 04 MP CK 0092
In the Madhya Pradesh High Court
Case No : W.A. No. 182 of 2006

Kailash Prasad Tiwari

APPELLANT

Vs

M.P. Industrial Tribunal and Others

RESPONDENT

Date of Decision : 11-04-2007

Acts Referred:

Citation : (2008) 2 MPJR 222

Hon'ble Judges : S.R. Waghmare, J; Dipak Misra, J

Bench : Division Bench

Advocate : P. Pareek, for the Appellant; Shobhitaditya, for the Respondent

Final Decision : Dismissed

Judgement

Dipak Misra, J.

Oliver Wendell Holmes in Burnet v. Willingham L. & T. Co. 282 US 437 had observed thus:

The fiction that a day has no part is a figurative recognition of the fact that people do not trouble themselves without reason about a nicer division of time.

Time does not have rewinding and backward movement. Fictionally one may sit in the time machine and emotionally one may enter into the realm of nostalgia, but, in reality the fact is that time gets merged in the abysmal of time and the violent torrent of time sweeps away what could have been a possibility at a particular point of time. There may be perpetual possibility in the realm of conception and imagination but such happenstance does not take place in the world of actuality. That is the role and rule of time and there is physically no redemption.

We have begun with the aforesaid prefatory note as Mr. P. Pareek, learned Counsel for the Appellant would contend that his prayer for voluntary retirement was accepted by the employer MP Road Transport Corporation (for short the Corporation) but before it got ripened and concretized and as a consequence of

which the Appellant could have obtained the retrial benefits, the same had been cancelled because the learned single Judge by order dated 01.11.2006 passed in Writ Petition No. 4408/1998 gave the stamp of approval to the order passed by the State Industrial Court which had set aside the order of the Labour Court that had directed reinstatement of the Appellant in service without backwages and further the application for review forming the subject matter of MCC No. 3004/06 also paved the path of dismissal on 17.01.2007.

To elaborate: the Appellant, a conductor in the corporation was dismissed from service on 30.05.1988 for misconduct. Being aggrieved by the aforesaid order he approached the Labour Court which by order dated 22.12.1989 set aside the order of punishment as it did not find him guilty and directed reinstatement without backwages. On an appeal being preferred by the employer the State Industrial Tribunal found that the charges levelled against the Appellant that he was carrying five passengers without ticket on 12.07.1987 had been proved. The tribunal thought it appropriate to dislodge the order passed by the Labour Court and expressed the opinion that interference by the Labour Court as regards the quantum of punishment was absolutely unwarranted. Be it placed on record that the Appellant had also gone up in appeal against non-granting of back wages but the same met with unsuccess. The Appellant approached this Court in the writ petition and there was stay of the order passed by the Industrial Court. By virtue of the order of stay he continued in service. In the meantime the Corporation thought that he is eligible for voluntary retirement because of his completion of period and other concomitant factors and accepted his prayer for voluntary retirement. After the writ petition was dismissed the Corporation realized its mistake and rectified the same by recalling the said order.

Submission of Mr. Pareek, learned Counsel for the Appellant is that the order of the learned single Judge was passed ex parte and had the said order come at a later period of time he would have been entitled to the benefit of voluntary retirement. It is put forth by him that in any case he had worked from 1989 till 2007 and meets the requirement of voluntary retirement and, therefore, the same should have been granted to him. Apart from the aforesaid spacious submission, learned Counsel has also assailed the order of the learned single Judge on the ground that it is illegal and unjustified inasmuch as the Petitioner proffered adequate explanation for not issuing tickets by the time checking had taken place and the said explanation was fundamentally acceptable which has been totally ignored by the appellate forum as well as by the learned single Judge.

Mr. Shobhitaditya, learned Counsel appearing for the Corporation contended that the Industrial Court and the learned single Judge have recorded the finding correctly and no error can be found with the same. It is urged by him that the Appellant once dismissed from service had continued because of the order of stay but when the writ petition has been dismissed the final order has to be given effect to and the factum of dismissal from service has to have due impact.

It is urged by him that the Appellant had drawn the salary for the period he worked and that would be in a different compartment altogether. It is put forth by him that a dismissed employee cannot claim to have the benefit of voluntary retirement unless the order of dismissal is axed.

To appreciate the rivalised submissions raised at the Bar, we have carefully perused the orders of the Labour Court, Industrial Court and that of the learned single Judge. Labour Court has observed in paragraph eight to the effect that the Appellant was not guilty of misconduct on the foundation that all five passengers though were travelling without ticket they had boarded from the same place. Labour Court also observed that it was pleaded by the Appellant that he was about to issue tickets to those passengers but there was no statement in that regard. Looking to the number of passengers travelling without ticket and the fact that they all boarded from the same place it can be said that the Appellant was going to issue tickets to them. Labour Court further held that in view of the aforesaid punishment imposed on the Appellant seems to be excessive and hence, he was eligible to reinstatement and directed his reinstatement within a period of one month without back wages.

The State Industrial Court has not accepted the finding of the Labour Court and came to hold that the inquiry officer in its order clearly stated that the conductor at the time of checking had already completed the calculation of income in the collection-book and in view of the fact that the checking was conducted near Porsa and the said five passengers were travelling to Porsa and hence, the conductor would have misappropriated the amount collected from the passengers travelling without ticket. In view of the aforesaid the tribunal concurred with the finding recorded by the inquiry officer.

Learned single Judge concurred with the finding of the Industrial Court. In this context we may refer to the case of Regional Manager, RSRTC v. Ghanshyam v. Sharma, (2002) 1 LLJ 234 SC wherein it has been held that carrying passengers without ticket in bus is misconduct. It is related to the dishonesty and the conductor as such was not fit to be retained in service inasmuch as non-issuance of ticket ensued into the financial loss to the Corporation. Their Lordships further opined that the Labour Court in that factual matrix should not have interfered with regard to quantum of punishment.

In the case of U.P.S.R.T.C. Vs. Mahendra Nath Tiwari and Another, their Lordships expressed the opinion as under:

When a person like the conductor of a bus, who has the obligation to make proper collection of the charges from the passengers on issuing tickets to them, is found to have passengers in the bus, even if it be only one, to whom he had not issued a ticket, it clearly amounts to a clear violation of the duty imposed on him. It is really a breach of duty cast on the conductor who is acting on behalf of the employer. Whether it be one passenger or ten passengers it would make no difference in principle in the absence of any explanation in that behalf. It was

simply the case of a conductor who had violated the Regulations or the terms of his employment and had betrayed his employer, which in any event, is a grave misconduct justifying a dismissal.

In the case at hand the Industrial Court has recorded a categorical and unequivocal finding that the Appellant was carrying five passengers without tickets. They had travelled a distance of eight kilometers by the time checking was conducted. There is no earthly reason to think why he did not issue the tickets. Explanation given by him was devoid of merit and was unacceptable. The Industrial Court has rightly so held and concurrence to the same by the learned single Judge cannot be found fault with. Learned single Judge has observed as under:

.... The Petitioner was dismissed for two misconduct in one incident dated 12.07.1987 he was found carrying five passengers without ticket and after collection of the money he did not issue the ticket. In another incident dated 12.07.1987 the Petitioner carried 7 passengers without ticket and did not issue tickets.

In view of the aforesaid, the conclusion arrived at by the learned single Judge cannot be found fault with.

The next question that emanates for consideration is whether the grant of stay for a long of period would entitle the Appellant to claim the benefit automatically. Submission of Mr. Pareek is that as there was stay and the Petitioner's prayer for voluntary retirement was accepted the writ petition should have been treated to have been rendered infructuous. The learned Counsel also submitted that the leaned single Judge should not have dismissed the writ petition at such a belated stage. In our considered opinion both the limbs of the aforesaid submission are mercurial in nature. They really do not have substance. Because an order of stay has been passed by a court of law that does not necessarily mean that there would be no adjudication of the lis on merits. Similarly, if there is no order of stay, it cannot be said that there should not be adjudication of the controversy because of passage of time. The matter has to be adjudicated on merits and the same has been done in the case at hand. The Appellant might have got the benefit of stay and thereby received salary component but that would not enure to his benefit for any other purpose. Eventual dismissal has to be given due effect and the Corporation has so done by recalling the order of voluntary retirement. We may hasten to add, as we find no fallacy in the order of dismissal passed by the learned single Judge, the same has to be affirmed and accordingly we so do.

Consequently, the writ appeal, being sans merit, stands dismissed. However, there shall be no order as to costs.