
(1995) 04 PAT CK 0027
In the Patna High Court
Case No : L.P.A. No. 157/1991 (R)

Kameshwar Singh

APPELLANT

Vs

Bihar State Road Transport Corporation and Others

RESPONDENT

Date of Decision : 04-04-1995

Acts Referred:

Citation : (1995) 04 PAT CK 0027

Final Decision : Allowed

Judgement

B.L. Yadav, A.C.J.

1. The instant Letters Patent Appeal is directed against the Judgment and Order dated May 2, 1991 passed by the learned Single Judge of this Court allowing in part C. W.J.C. No. 1844 of 1989 (R). The learned Single Judge recorded finding substantially in favour of the petitioner/appellant, a bus conductor but instead of directing reinstatement directed the petitioner to be entitled to 3.33 years wages last drawn by him.

2. The relief claimed in the present Letters Patent Appeal is that it may be allowed and the Judgment and Order of the learned Single Judge be modified to the extent that the petitioner/appellant may be reinstated with the entire back wages.

3. The factual matrix of the case is that the petitioner/appellant was appointed by the Bihar State Road Transport Corporation (Respondent No. 1) as a bus conductor. He was appointed on substantive vacancy, whereas according to the respondents he was appointed as a casual employee. The appellant was, however, charge-sheeted in 1985. A departmental proceeding followed and he was found guilty by an order dated June 4, 1986 (Annexure-7 to the writ petition) and was dismissed from services. The order of dismissal was, however, challenged before the Appellate authority. By an order dated September 14, 1988 (Annexure-4). Respondent No. 2, the Chairman-cum-Managing Director, Bihar State Road Transport Corporation, directed the Appellant to be re-engaged

on the same terms and conditions as he was earlier holding. It was, however, made clear that he would not be entitled to any regular salary from the date of his dismissal till the date of his re-engagement.

4. Thereafter fresh disciplinary proceedings were initiated against the appellant for the same period in which the earlier disciplinary proceeding was initiated. To be precise subsequent disciplinary proceedings were initiated for an alleged misconduct committed on May 11, 1986, whereas as stated above, he was dismissed from services on June 4, 1986. Against that order he preferred an appeal which was dismissed. The principal charge against him in subsequent disciplinary proceeding was, that there were passengers on the roof of the bus and he has not pre-realised the fare. In respect of these charges the petitioner/appellant has given sufficient explanation. Particularly, he emphasises that for the period prior to his dismissal he was charge sheeted and subsequently initiating the proceedings for the same period and misconduct would amount to violation of Doctrine of Double Jeopardy and by re-engagement the earlier misconduct, if any, was condoned or wiped out. In respect of this defence a mention was also made in the finding of the Enquiring Officer (Annexure-2 to the writ petition). The mention has been made in Para-7 of the Judgment of the learned single Judge. The learned Single Judge after recording the finding in favour of the petitioner/appellant, instead of directing the re-instatement, directed that wages for the period of 3.33 years to be paid to him.

5. Ms. M.M. Pal, the learned counsel for the appellant contended that as the petitioner/appellant was dismissed from services on certain charges for a period to June 4, 1986, the date of his dismissal. Thereafter, he was re-engaged which connotes that the earlier misconduct was condoned or wiped out. But after re-engagement he was again charge-sheeted for the period and some misconduct prior to his dismissal. The charges were so flimsy and lacking in substance that even if proved they would not constitute misconduct. The basic charges were that there were a number of passengers sitting on the roof of the bus, and he (the Appellant) did not charge pre-paid fare. The subsequent charge-sheet after re-engagement for the same period and pertaining to almost the same old charges for which punishment of dismissal was already awarded, could not be served nor twice punishment could be awarded as it would be in violation of the Doctrine of Double Jeopardy. This amounts to violation of fundamental rights under Article 20(2) of the Constitution of India. In any case the punishment awarded was not proportionate to the misconduct and the Hon''ble Single Judge of this Court erred in awarding back wages only for a period of 3.33 years, instead of reinstating the appellant with entire back wages, deducting, however, the amount already paid.

6. Learned counsel for the respondents, on the other hand, refuted the submissions of the learned counsel for the appellant, and urged that the charges levelled against the Appellant would not be said to be flimsy in nature and the punishment awarded was correct. The subsequent charges for the same period

prior to dismissal would not amount to violation of the Doctrine of double Jeopardy. The punishment awarded was proportionate to the misconduct. There was no error in the judgment of the learned Single Judge.

7. Having scrutinised the submissions of the learned counsel for the parties the short, but significant, questions for our determination in this appeal are as to whether carrying some passengers on the roof of the bus and carrying the passengers without pre-paid fare, would constitute misconduct and whether Doctrine of Double Jeopardy as envisaged under Article. 20(2) of the Constitution of India was operative and as to whether the punishment awarded and the consequential order for reinstatement with back wages for a period of 3.33 years was proportionate to the misconduct?

8. Before grappling with the questions posed it would not be inapt to notice certain elementary rules of interpretation pertaining to the Industrial Disputes. What requires emphasis is that it would be idle for a party to assume or suggest that in the matter of industrial administration the concept of social justice as envisaged in the Preamble to the Constitution can be ignored. The sweep of social justice is very comprehensive. It is based on socio-economic equality. It is with a view to remove socio-economic disparity. Dealing with such matter like justice between the employer and the workers, the Court need not adopt a doctrinaire approach rather it must make a realistic, pragmatic and justice oriented approach. The object must be to establish harmonious relations between the capital and labour. The industrial adjudication is not one sided affair but it is with a view to have sufficient growth and progress of the national economy. It is an adjudication on principles of fair-play and justice. [See *Crown Aluminum Works v. Their Workmen* 1958 I LLJ I and *The State of Mysore Vs. The Workers of Gold Mines*, and *The Patna Electric Supply Co., Ltd., Patna Vs. The Patna Electric Supply Workers' Union*, .

9. The concept of justice after the enforcement of the Statute is not to be left to remain in abstract or intangible. It has put a hard reality particularly in the matters of relations of capital and labour which tends to the growth of national economy.

10. Justice-Socio economy & political is Preamble to our Constitution. It can no longer be just protector of legal rights but must whenever be possible dispenser of social justice. We have to keep in mind what Bentham, long ago emphasised the Doctrine of greatest happiness of greatest number. In administering justice the jurisprudence has sifted from fine spun technicalities and abstract rules to recognition of human needs. In case this object can be attained without depriving any person from his legal rights, the Court must lean towards that [See *Deokinandan Prasad Vs. State of Bihar and Others*, .

11. We are reminded of an old maxim *statute pro public late inter pretatur* which connotes that Statute made for public good should be liberally construed. In the present case the interpretation of the provisions of the Industrial Disputes Act

must be liberally construed [K. Veeraswami Vs. Union of India (UOI) and Others,].

12. In respect of first question suffice it to say that in this State it is not unusual phenomena, rather a judicial notice can be taken of the facts that in this State passengers are sitting on the roof of every bus. This may appear at the first sight a startling state of affair but it is not an unusual circumstance to carry passengers on the roof of the bus. No specific rule has, however, been brought to our notice indicating that carrying passengers over the roof of the bus or permitting the passengers to sit on the roof of the bus would amount to misconduct. It was not shown as to what was the financial loss of the State Government and the Transport Corporation in case the passengers were carried on the roof of the bus. Unless there is some indication about the financial constraints the matter cannot form the basis of the charge. In totality of the circumstances, it was just trifling state of affair and for that we are reminded of an old Latin Maxim "de minimis non curat lex" which connotes that law does not concern itself with trifles. In this view of the matter the passengers being carried on the roof of the bus, in our opinion would not be a decisive factor for any misconduct.

13. The second charge that the appellant did not charge pre-paid fare which obviously indicates that before permitting the passengers to enter the bus the fare must have been charged, and ticket issued to them, but the charge was also not that he was carrying the passengers having no tickets or having paid no fare at all, rather the charges were that he did not charge pre-paid fare. It is, thus, evident that the passengers have paid the fare but not exactly at the time before entering the bus or taking their seat, if available. In our opinion, as the passengers have paid fare, may be not exactly before entering the bus, hence this also would not constitute such an irregularity which should form the basis of charge or the misconduct. In our opinion, this charge was of no consequence. The learned Single Judge was not justified in assuming the misconduct to have been proved.

14. Reverting to the next limb of arguments as to whether punishment was proportionate to misconduct, the learned Single Judge instead of directing reinstatement has directed that in lieu of reinstatement wages of only 3.33 years be paid. The punishment must be proportionate to the misconduct proved.

15. In *Gulzar Singh v. State of Punjab*, 1986 Supp. S.C.C 738, a bus conductor failed to issue a ticket for Rs. 51- to a child up to 1/2 years old, a misconduct was held to be proved and the punishment was dismissal from services, their Lordships of the Apex Court held that punishment must be proportionate to the misconduct proved and in that case it was ruled that the order of dismissal to such a charge and misconduct totally disproportionate. Consequently their Lordships directing reinstatement with continuity in service but for some reason the back wages were not awarded. It was not proved that certain passengers were being taken without issuing ticket and without charging the fare.

16. The learned Single Judge, however, relied on *O.P. Bhandari Vs. Indian Tourism Development Corpn. Ltd. and Others*, where the employee was holding Managerial post, in that event their Lordships of the Supreme Court took view that in case certain employees held managerial post, which is pivotal to the successful implementation of the policy of the Rural Banking undertaken to be achieved by the bank, there must be satisfactory discharge of the duty which was of trust and confidence of the administration. Consequently, the reinstatement was not granted.

17. *M.K. Agarwal v. Gurgaon Gramin Bank* : AIR 1988 S.C. 286, was also a case pertaining to the employee of the high level managerial cadre. In such matters entirely a different perspective and approach is required. The case of the public undertaking has been taken into account and the posts must be managed by capable and efficient personnel with integrity and the requisite vision. The Apex Court granted reinstatement with only half of the back wages.

18. In the instant case, the appellant is not holding the managerial post where different matter has been reviewed from different angle and perspective. The Appellant was just a bus conductor and the charge was that he was carrying passengers on the roof of the bus with no allegation that he did not issue tickets to them. The other charge was that some of the passengers inside the bus were not having pre-paid ticket. It appears that the passengers entered the bus and thereafter ticket was supplied to them after obtaining requisite fare. It means the passengers sitting inside the bus were also having tickets and they were not travelling without ticket. We have perused the facts and circumstances of the case and, in our opinion, a bus conductor is the most humble employee of a Transport Corporation. No Rules were pointed out as to how the passengers need not be carried on the roof of the bus, particularly in this State. It is not an unusual phenomena that passengers are permitted to sit on the roof of the bus. In our opinion, passengers were not travelling without ticket. Under these circumstances, the case for reinstatement with full back wages has been made out. The learned Single Judge was not justified in recording findings without examining the facts of the cases i.e., *O.P. Bhandari* and *M.K. Agarwal* (supra) 3.33 years" past wages were directed to be paid. In our opinion, there is no justification nor any special circumstance has been pointed out for granting only 3.33 years" back wages.

19. Reverting to the last point about the doctrine of Double- Jeopardy. The proceedings were initiated for the second time for the period for which misconduct has earlier been proved, and for the same charges or misconduct. The petitioner/appellant was reemployed after first misconduct. In this way earlier misconduct was condoned. Initiation of proceedings for the second time in respect for same period and charges of misconduct was barred. This was now a fundamental right that nobody would be punished twice for the same charges or misconduct. It is the Doctrine of Double-Jeopardy as envisaged under Article 20(2) of the Constitution of India. The Respondents were, therefore, not justified

in initiating the proceedings for the second time for the similar period and for the same misconduct. Further the punishment was not proportionate to the misconduct if any.

20. In view of the premises aforesaid the Appeal is allowed and the Judgment of the learned Single Judge is modified to the extent that the petitioner/appellant is directed to be reinstated with full back wages minus the amount already paid. There shall be no order as to costs.