
(2009) 02 BOM CK 0111

In the Bombay High Court

Case No : Writ Petition No. 3515 of 1997

Maharashtra State Road Transport Corporation

APPELLANT

Vs

Aasram Reybhan Kolhe and another

RESPONDENT

Date of Decision : 16-02-2009

Acts Referred:

Citation : (2009) 121 FLR 601

Hon'ble Judges : S.A. Bobde, J

Bench : Single Bench

Advocate : G.A. Karmalkar, instructed by G.S. Hegde, for the Appellant; Prasad Kulkarni, instructed by P.S. Dani, for the Respondent

Final Decision : Dismissed

Judgement

S.A. Bobde, J.—The Petitioner has challenged the award of the Labour Court, Nasik, dated 25.3.1997 setting aside the order of dismissal of the Respondent No. 1 and directing reinstatement.

Mainly, the Respondent No. 1 was charged with the following acts which amount to misconducts, viz., (i) he had issued used tickets to the passenger; and (ii) excess amount of Rs. 105/- was found with him. The Inquiry Officer came to the conclusion that both the charges are proved. The Labour Court has held that the charge of having excess amount is not proved because there was no documentary evidence on record.

2. Mr. Karmalkar, the learned Counsel appearing for the Petitioner, submitted that the Labour Court has held that the charge of issuing a used ticket is not proved because the passenger to whom such used ticket was issued was not examined in the inquiry. According to the learned Counsel, it is neither feasible nor necessary as a matter of law to examine such a passenger. The submission on behalf of the Petitioner is correct. In paragraph 13, the Labour Court has held that the finding of the Inquiry Officer on the charge that the Respondent No. 1 issued a used ticket is liable to be set aside because the passenger was not

examined. This finding of the Labour Court is contrary to the law laid down by a learned Single Judge of this Court, Srikrishna, J., as he then was, in *P.K. Wani v. Divisional Controller. M.S.R.T.C., Dhule and others*, 1995 (1) CLR 1052 wherein his Court held as follows:

Mr. Kochar made two points. He urged that some of the statements of the passengers recorded contemporaneously were used as evidence at the inquiry without actually producing the passengers affirming the said statements for cross-examination. This, according to him, was breach of the principle of natural justice. I am unable to agree. Each statement of the passenger clearly showed that the statement itself as recorded in the presence of the Petitioner who made an endorsement at the footing of each statement and also put his signature. I am unable to accept the contention that the statements were taken behind the back of the Petitioner. It is doubtless true that the passengers were not called at the domestic inquiry and permitted to be cross-examined. But that is hardly a circumstance warranting an inference of breach of natural justice. The Supreme Court in *State of Haryana and Anr. v. Rattan Singh*, 1977 (34) FLR 264 : (1977) 14 SCLJ 188 has pointed out that in a domestic enquiry that strict and sophisticated rules of evidence under the Evidence Act may not apply and all materials which are logically probative for a prudent mind are permissible. The Supreme Court specifically considered an identical question in that case of a Transport Authority in Haryana. In that case a bus conductor of the Transport Undertaking had been charge-sheeted for not collecting due fares from certain passengers. On the basis of statements of the passengers which were used at the inquiry without actually examining the passengers. The Supreme Court declined to hold that the said circumstance by itself amounts to a breach of principles of natural justice and pointed out that it could not be said that merely because statements of passengers were not recorded by the Inspector of the Flying Squad, the order that followed was invalid. I am, therefore, unable to accept the contention of Mr. Kochar that as the passengers whose statements were recorded were not examined at the inquiry, it would per se vitiate the inquiry.

The finding of the Labour Court that because the passenger was not examined, it cannot be said that the Respondent issued a used ticket is vitiated. It appears that the finding of the Labour Court that it cannot be said that excess money was found with the Respondent No. 1 is also vitiated. The Inquiry Officer and that there was no substance in the Respondent No. 1's story that one PSI Bange had handed over Rs. 250/- to him for handing over to his relatives and that is why excess money was found with him. This PSI Bange was also examined in the inquiry. However, the Inquiry Officer disbelieved the Respondent No. 1's story because the Respondent No. 1 had not informed the post Manager that he was carrying excess money as was required by the rules and, more over, the money which he was carrying at the personal request of PSI Bange was found in the official money bag where the money from the tickets is kept. Another thing which is admitted is that what was found in excess in the money bag was a sum of

about Rs. 105/-. There is no reason why a person who was requested to carry money should keep some portion of it in the official money bag and the other in his pocket. On the whole, there is nothing incorrect or perverse in the finding of the Inquiry Officer. The Labour Court ought not to have interfered with the finding.

3. In the result, is clear that the award of the Labour Court suffers from an error of law apparent on the face of the record. The Labour Court mis-directed itself in law and developed unnecessary sympathy for the delinquent. In fact, the learned Counsel for the Petitioner points out from the additional affidavit that the Respondent No. 1 has committed several misconducts subsequent to the misconduct in question. The Petitioner has had to punish the Respondent about seven times. In this view of the matter, I am of the view that, disregarding the subsequent punishments, the punishment in question cannot be said to be shockingly disproportionate and the impugned order of the Labour Court is set aside. The order of the Petitioner dismissing the Respondent No. 1 from service is hereby upheld.

4. Rule is made absolute in the aforesaid terms.