

(1977) 04 MP CK 0009

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 832 of 1976

Nand Kumar Singh

APPELLANT

Vs

The State Industrial Court, Indore and Others

RESPONDENT

Date of Decision : 30-04-1977

Acts Referred:

Madhya Pradesh Industrial Relations Act, 1960 — Section 66, 67

Citation : AIR 1977 MP 254 : (1977) JLJ 545 : (1977) 22 MPLJ 438 : (1977) MPLJ 438

Hon'ble Judges : Shiv Dayal Shrivastava, C.J;C.M. Lodha, J;B.R. Dubey, J

Bench : Full Bench

Advocate : Gulab Gupta, for the Appellant; P.S. Nair, for the Respondent

Final Decision : Dismissed

Judgement

Lodha, J.

This case has been referred by a Division Bench of which one of us (Shivdayal C. J.) was & member, to a larger Bench with the following observations made at the time of admissions

"In view of the decision of this Court in Navalkishore Narayan Bhargava v. M. P. Road Transport Corporation, 1975 MPLJ 251, which, in our opinion, requires a re-consideration, we direct that this case be placed before the Chief Justice for constituting a larger Bench for hearing this petition.""

The facts giving rise to this petition are these: The petitioner Nandkishore Singh was employed as a Conductor by the M.F.S.R.T. Corporation (which will hereinafter be referred to as "the Con-poration"). On 15-8-74, when he was on (sic) in Stage Carriage No. 9259 plying on Raipur-Konda route, the Flying Squad composed of Shri S. C. Mukerji and Shri Jimnani checked the vehicle and found 56 passengers travelling without tickets even though the Conductor had charged fare from them. Accordingly, the petitioner was charge-sheeted in due course and after Departmental Enquiry was dismissed from service on 10-12-74.

Aggrieved by the order of his dismissal the petitioner filed an application u/s 31(3) of the Industrial Relations Act, 1960 (which will hereinafter be referred to as "the Act"), before the State Labour Court, Raipur, and prayed that he may be ordered to be reinstated and back wages may be awarded to him. The Corporation resisted the petitioner's application. After recording the evidence produced by the parties the Labour Court held by its order dated March 19, 1976, that the Departmental Enquiry conducted against the petitioner was illegal and hence vitiated and that the charges preferred against the petitioner were not proved. Therefore, it directed that the petitioner be reinstated with full back wages. A copy of the order D/- 18-3-76 has been placed on the record and marked Annexure "A".

Dissatisfied with the order of the Labour Court, the Corporation filed a revision petition u/s 66 of the Act before the Industrial Court, Indore, which by its order dated 4-5-76 (Annex. "B") allowed the revision application and set aside the order of the Labour Court, Raipur.

By this petition under Article 226 of the Constitution the petitioner has prayed that the order of the Industrial Court be quashed and that of the Labour Court be restored. The petition has been opposed on behalf of the Corporation.

Mr. Gupta, learned counsel for the petitioner, has strenuously urged that the Industrial Court had no jurisdiction to disturb the findings of fact arrived at by the Labour Court inasmuch as u/s 66 of the Act, the Industrial Court can reverse the order of the Labour Court only if it is satisfied that the Labour Court has exercised jurisdiction not vested in it by law, or has failed to exercise the jurisdiction so vested or has acted in exercise of its jurisdiction illegally or with material irregularity. It is submitted that none of these conditions was satisfied in the present case and, therefore, the impugned order of the Industrial Court is patently illegal and is liable to be set aside in exercise of the extraordinary jurisdiction of this Court under Article 226 of the Constitution.

We may state at once that the revisional powers of the Industrial Court are undoubtedly circumscribed by the conditions laid down in Section 66 of the Act which reads as under:

"Section 66 -- Revision -- (1) The Industrial Court, may on the application by any party to a case which has been finally decided by a Labour Court other than a case decided under para (D) of Sub-section (1) of Section 61 call for and examine the record of such case and may pass such order in reference thereto as it thinks fit:

Provided that the Industrial Court shall not vary or reverse any order of the Labour Court under this Section unless -

(i) it is satisfied that the Labour Court has -

(a) exercised jurisdiction not vested in it by law; or

(b) failed to exercise a jurisdiction so vested or

(c) acted in exercise of its jurisdiction illegally or with material irregularity;

(ii) notice has been served on the parties to the case and opportunity given to them for being heard.

(2) No application under Sub-section (1) shall lie to the Industrial Court unless it is made within thirty days of the date on which the case has been finally decided by the Labour Court:

Provided that in computing the period of thirty days the period requisite for obtaining a copy of the order shall be excluded."

The only question, therefore, which falls for determination is whether any of the conditions laid down in the aforesaid section was satisfied in the present case so as to justify interference with the order of the Labour Court by the Industrial Court.

For a proper appraisal of the contentions advanced by the learned counsel for the parties, it would be necessary to summarise the findings arrived at and the reasons given in support thereof by the Industrial Court in the impugned order. It has been held by the Industrial Court that there was no basis for the finding of the Labour Court that Shri S. C. Shrivastava, Depot Manager, who held the Departmental Enquiry against the petitioner was not competent to do so. The reason given by the Industrial Court in support of its conclusion is that there was neither pleading new proof to that effect. The case of the petitioner before the Labour Court was that the Divisional Manager alone was competent to hold the enquiry and not the Depot Manager. In his deposition the petitioner took a different stand and stated that Shri Shrivastava had been appointed as Inquiry Officer, without proper notice to him, while in the course of the enquiry before the Labour Court his objection was that Shri Shrivastava was prejudiced against him. In our opinion, the Industrial Court was right in coming to the conclusion that the finding arrived at by the Labour Court that Shri Shrivastava held the Enquiry without authority was based on no material and the Industrial Court was justified in setting it aside.

The second ground relied upon by the petitioner before the Labour Court was that Inquiry Officer Shri Shrivastava was prejudiced against him. It is remarkable that no details of prejudice were mentioned at any stage of the proceedings. Even when we called upon the learned counsel for the petitioner in the course of arguments to tell us what bias Shri Shrivastava had against the petitioner, he frankly expressed his inability to lay his hand on any material on the file of the Labour Court or the Industrial Court which would show the least prejudice of Shri Shrivastava against the petitioner. Consequently the finding arrived at by the Labour Court on this score was also based on no evidence but was arbitrary. The Industrial Court, therefore, was justified in observing that the finding was perverse and no man acting reasonably could come to such a finding.

The third ground on which the domestic enquiry was struck down by the Labour Court was that the witnesses Shri Mukherji and Shri Jimnani were not allowed to be cross-examined by the petitioner. The statements of these two witnesses marked Exs. D. 2 and D. 3 respectively in the file of the Labour Court contained identical endorsements by the Inquiry Officer that the petitioner adopted an obstructionist attitude and left the room as soon as the examination-in-chief of the witnesses was over and even refused to put his signatures on the statements. The learned counsel for the petitioner was at pains to show that the endorsements on these statements are contradictory inasmuch as in Shri Mukherji's statement it was written that the petitioner had left the room after the examination-in-chief of Shri Mukherji was over and therefore, there was no occasion for making a similar endorsement in the statement of Shri Jimnani which was recorded after that of Mukherji. It has been urged that, as a matter of fact, the petitioner was forcibly driven out of the room at the time of recording the statements of these witnesses. We do not find any substance in this contention. It appears to us that when the petitioner left the room after Shri Mukherji's examination-in-chief was over the endorsement which was made on the statement of Shri Mukherji was repeated in the statement of Shri Jimnani also, which was recorded immediately thereafter. There is no contradiction in the two endorsements and there was absolutely no justification for the Labour Court to have come to the conclusion that the petitioner had not been given an opportunity to cross-examine the aforesaid witnesses.

From the aforesaid discussion it would be clear that all the findings on the basis of which the Labour Court held the domestic inquiry to be illegal were based on no material and the Industrial Court was not unjustified in holding that the findings were perverse. It was consequently not open to the Labour Court to arrogate to itself jurisdiction to decide the case on merits by wrongly holding that the Departmental Enquiry conducted by the Inquiry officer was illegal.

There is ample authority in support of the proposition that if the findings of the Labour Court are based on no material and/or they are perverse or arbitrary, the Industrial Court has jurisdiction under Sections 66 and 67 of the Act to set aside the order of the Labour Court,

In *Awadesh Kumar Bhatnagar Vs. The Gwalior Rayon Silk Mfg. Weaving Ltd. and Another*, it was held that where serious mistakes had been committed by the Labour Court, the Industrial Court acted well within its jurisdiction u/s 66 and Section 67 of the Act in setting aside the order of the Labour Court. It was observed that in such circumstances the Industrial Court cannot be said to have exceeded its jurisdiction in any manner u/s 66 of the Act

In a Bench decision of this Court in *Sit'al Kumar v. J. B. Mangharam & Co.* 1973 MPLJ 324 : (1973 MPLJ 986) it was held that where the Court acts arbitrarily in contravention of settled principles of law or rules of procedure resulting in gross miscarriage of justice, it acts illegally or with material irregularity in exercise of its jurisdiction within the meaning of Section 66 (1) (c) of the Act. Such an error,

it was observed, pertains to jurisdiction and can be rectified in exercise of the revisional powers. In that case the Labour Court wrongly placed the burden of proof on the question whether an employee had completed six months' satisfactory service, on the employer and held that as the burden had not been discharged the employee was entitled to a finding in his favour. This finding, it was held, was vitiated by an erroneous and illegal approach and was manifestly unreasonable and as such could be interfered with by the Industrial Court in exercise of its revisional powers.

In *Mahendralal Vs. Hindustan Steel Ltd., Bhilai Steel Project* (by General Manager) and Another, where the Labour Court had given no reasons for reckoning the seniority of the petitioner w.e.f. 13-9-58 contrary to the circular governing the subject, it was held that it had usurped the jurisdiction which it did not possess i.e. it was a case of illegal assumption of jurisdiction. It was further observed on the basis of AIR 1949 239 (Privy Council) that if an erroneous decision results in the Labour Court exercising jurisdiction not vested in it, a case for revision does arise.

Again in *P. G. Paul v. Union of India* 1970 MPLJ 280, where the Labour Court passed an order staying the transfer of a supervisor by improper assumption of jurisdiction, and the Industrial Court modified that order in exercise of its powers u/s 66 (1) (c) of the Act, it was held that the order passed by the Industrial Court was not without jurisdiction, Apart from that, the order of the Industrial Court was held to be valid also in exercise of its powers of superintendence over the Labour Court u/s 67 of the Act.

We do not consider it necessary to multiply authorities, as in our view, the law is well settled that perverse or arbitrary findings or findings based on no material fall within the ambit of the phrase "exercise of jurisdiction illegally and with material irregularity" justifying interference in revision. Similarly, if a Court illegally assumes jurisdiction by giving a patently erroneous decision on jurisdictional facts, the case would fall within the clause "exercised jurisdiction not vested in it by law". The present is a case which squarely falls within the mischief of this Clause as the Labour Court has assumed jurisdiction to interfere with the Departmental Enquiry by wrongly holding without any material that the inquiry was illegal and was therefore vitiated. In this view of the matter, the Industrial Court was justified in interfering with the Labour Court's order in exercise of its revisional powers.

Now coming to *Navalkishore Nara-yan Bhargava v. M. P. S. R. T. Corporation, Indore* 1975 MPLJ 251, it may be pointed out that it was a case u/s 67 of the Act dealing with supervisory jurisdiction of the Industrial Court. The findings of fact arrived at by the Labour Court have not been mentioned in the judgment. But it was observed that the conclusion arrived at by the Labour Court about the domestic inquiry being improper was at best a question of inference to be drawn from the facts proved in the case. It does not appear from the judgment that any perverse or arbitrary findings had been arrived at by the Labour Court or the

findings of the Labour Court were based on no material. Moreover, that was a case under S, 67 of the Act and is distinguishable from the facts and circumstances of the present case.

It is a well-recognised principle of law that a finding of fact based on pure appreciation of evidence cannot be interfered with either in revision or in exercise of supervisory jurisdiction. However, if Navalkishore's case (1975M.P.L.J. 251) (supra) is understood to mean that an order of a Labour Court even when based on serious and palpable mistakes cannot be set aside by an Industrial Court in exercise of its jurisdiction under Ss. 66 and 67 of the Act, then it must be deemed to be not a good law in view of the observations made by their Lordships of the Supreme Court in Awadesh Kumar Bhatnagar Vs. The Gwalior Rayon Silk Mfg. Weaving Ltd. and Another, . But it does appear to us that the learned Judges who decided Navalkishore's case (supra) did not mean to lay down such a broad proposition.

The result is that we do not see any force in this petition and hereby dismiss it. But in the circumstances of the case we make no order as to costs. Security amount be refunded to petitioner.