

(2009) 02 RAJ CK 0073
In the Rajasthan High Court

Rajasthan State Road Transport Corporation and Another	APPELLANT
Vs	
Satya Narain Soni and Another	RESPONDENT

Date of Decision : 12-02-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (2009) 02 RAJ CK 0073

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Judgement

Mohammad Rafiq, J.—This writ petition has been filed by the petitioners-RSRTC against the award dt. 13.12.1989 passed by Labour Court, Jaipur whereby the Labour Court substituted the penalty of removal by that of stoppage of five annual grade increments without cumulative effect and also awarded 50% back wages to the respondent-workman.

2. An industrial dispute was referred by the appropriate Government to the Labour Court on the question whether removal of the respondent-workman by the writ petitioner-Corporation from their services was valid and if not, what relief the workman was entitled to? Respondent was appointed on temporary basis by the petitioner on 24.03.1979 and he was made regular on 11.12.1979. He was placed under suspension vide order dt. 27.12.1979 in contemplation of enquiry and charge-sheet was served upon him on 05.01.1980. He submitted reply to the charge sheet on 22.01.1980. Petitioners removed the respondent from their services vide order dt. 29.07.1980. This writ petition was earlier allowed vide judgment of this Court dt. 20.09.1995. Respondent-workman however filed appeal challenging the aforesaid judgment in special appeal before the Division Bench. The Division Bench allowed the appeal setting aside the award of the Labour Court on the ground that writ petition was decided in the absence of counsel for respondent and even without supplying him copy of the writ petition and remanded the matter back to the Single Bench. This is how, the present writ petition has been heard again for final disposal.

3. Shri Mukesh Verma, learned Counsel for the petitioner-Corporation submitted that the learned Labour Court erred in law in substituting the penalty of removal by that of stoppage of five annual grade increments without cumulative effect. Penalty of removal was wholly justified in view of the fact that respondent was found carrying 11 passengers without ticket. Respondent was working with the petitioner as Conductor and there was fiducial relationship of master and servant between them. Out of 11 passengers, respondent collected fare from 5 passengers but did not issue any ticket to them. Learned Counsel submitted that Supreme Court in number of judgments has held that in such like cases, penalty of dismissal was warranted. When the Labour Court has held the charges as proved, there was no justification for it to substitute the penalty of removal and also awarding 50% back wages. Shri Mukesh Verma, learned Counsel for the petitioner has invited attention of the Court to the additional affidavit filed on 30.04.2008 showing that even after reinstatement, respondent-workman was found carrying 1 passenger without ticket on 30.11.1997, two passengers without ticket on 07.08.1998 and again two passengers without ticket on 08.02.2007. Apart from this, there was one complaint against him for 04.02.2004 for loss of ticket book and for short of income. It was argued that in two of these cases wherein he was found carrying passengers without ticket, he was once awarded penalty of stoppage of one annual grade increment without cumulative effect and another time penalty of stoppage of one annual grade increment without cumulative effect with fine of Rs. 500/-. Fine was imposed on him on earlier two occasions too for earning less income. Learned Counsel relied on Division Bench judgment of this Court in R.S.R.T.C. and Anr. v. Shanker Lal and Anr. DBSAW No. 872/2007 decided on 23.11.2007 rendered at Principal Seat of this Court and argued that in the said case, Division Bench taking note of similar allegations against Conductor who had been reinstated pursuant to the award of the Labour Court on 05.01.1996 and who was thereafter again found to be carrying passengers without ticket on as many as three occasions, held that no interference in the quantum of penalty was called for by this Court.

4. Shri Rajendra Soni, learned Counsel for the respondent-workman has opposed the writ petition and submitted that the learned Labour Court had set-aside the order of removal and substituted said penalty of removal by stoppage of five annual grade increments without cumulative effect on consideration of totally of circumstances including the fact that respondent workman had the responsibility to maintain a big family. Learned Counsel cited the judgment of Supreme Court in U.P.S.R.T.C. Vs. Mahendra Nath Tiwari and Another, and argued that in that case also, Supreme Court refused to interfere with the reinstatement order of the Conductor facing similar charges because such reinstatement was made pursuant to the award of the Labour Court which was implemented long ago. Learned Counsel also cited the Division Bench judgment of this Court in R.S.R.T.C v. Sajjan Kumar and Ors. DBSAW No. 22/2006 decided on 03.10.2007 and argued that Division Bench refused to interfere with the direction of reinstatement of the workman by the learned Single Judge and modified the order by directing that

workman shall not be paid any back wages. Learned Counsel also cited the judgment of this Court in R.S.R.T.C. v. Judge Industrial Tribunal. Rajasthan SBCWP No. 4024/1997 decided on 13.10.2008 and argued that in that case, this Court refused to interfere with the award of the Labour Court in the year 1991 taking note of the circulars issued by the R.S.R.T.C. dt. 02.05.2008, 23.05.2008 and 21.06.2008 whereby they decided to impose stoppage of one annual grade increment with cumulative effect upon such Conductors with the directions that Conductors who are found carrying passengers up to five passengers without ticket, they shall be charged Rs. 2000/- as penalty per passenger, where number of passengers is more than five and less than 10, they will be awarded penalty of Rs. 2000/- for each of such passengers and where number of passengers exceeds 10 to 15, apart from the aforesaid fine, they will be awarded penalty of stoppage of one annual grade increment with cumulative effect. Liberty was given to the RSRTC to proceed against the workman in accordance with those circulars.

5. Shri Mukesh Verma, learned Counsel for the petitioner has rejoined and submitted that the aforesaid three circulars were issued by the R.S.R.T.C. because of the fact that there was shortage of Conductors and number of Conductors were facing departmental enquiries on charges of carrying passengers without ticket and that such circulars were meant to be applied to pending enquiry or otherwise concluded the departmental proceeding, in accordance with the guidelines laid down at the level of the Corporation itself but such circulars could not be applied to the cases pending before the Court and could not be relied on by the delinquent against whom already order of penalty was passed by the Corporation in the past. Learned Counsel cited the last circular dt. 21.06.2008 and submitted that all the previous circulars have been qualified by stating that they shall apply to the cases in which charge-sheets have been issued prior to 15.07.2008. It was argued that in so far as cases pending before the Courts are concerned, same should be decided in terms of the propositions of law laid down by the Supreme Court in various judgments as are referred to in Division Bench judgment of this Court in Shanker Lal (supra).

6. I have given my anxious consideration to the arguments aforesaid and perused the impugned-award as also the material on record. I have also carefully studied the cited judgments.

7. What is evident from the facts is that respondent-workman though was initially appointed on temporary basis on 24.03.1979 and was made regular in the services of the petitioners-R.S.R.T.C. on 11.12.1979 but thereafter he was removed from services on 29.07.1980. Labour Court in the award passed on 13.12.1989 substituted the penalty of removal by that of stoppage of five annual grade increments without cumulative effect but at the same time, directed that respondent-workman shall be entitled to continuing in service but he would get only 50% of the back wages. Respondent-workman was reinstated in service on 02.02.1990 pursuant to the aforesaid award. When this writ petition was earlier

allowed by the Single Bench of this Court vide judgment dt. 20.09.1995, petitioner Corporation terminated services of the respondent on 06.02.1996 but when respondent filed appeal against the aforesaid judgment, Division Bench passed an interim order directing continuation of the respondent workman in services and in compliance thereof, the respondent was again reinstated in service on 29.02.1996. It is thus clear that though petitioner has continued in service from the date of his initial appointment on 24.03.1979 till the date of removal on 29.07.1980 and after his reinstatement, he actually served the petitioner Corporation from 02.02.1990 till 06.02.1996 and thereafter from 29.02.1996 till date. Except for the period of 23 days in between from 06.02.1996 to 29.02.1996, respondent has thus for all practical purposes actually served the petitioner-Corporation from 02.02.1990. He has thus in any manner completed almost 19 years of service from the date of his reinstatement. The delinquency of the respondent was pertaining to an incident which took place on 03.12.1979. A period of 29 years has gone by since then. Division Bench of this Court in Shanker Lal supra however refused to show any leniency to the respondent in that case to the appellant who too was working as Conductor inspite of the fact that he was reinstated in service on 05.01.1996 and appeal was stood decided on 23.11.2007. That was because he was found carrying two passengers on 23.03.1998, five passengers on 15.10.1988 and five passengers on 05.10.2001 without tickets. Apart from this, there were three more adversities reported against him. They were that he caused 100% loss on 15.10.1999 when the trip of the bus was cancelled for the route covering distance of 250 kms., due to his absence on 30.03.2003 and again on similar allegation on 13.05.2003 and each time he was awarded fine of Rs. 1750/-. Division Bench held that inspite of observations by the Supreme Court in Mahendra Nath Tiwari supra, the ratio of the other subsequent judgment of Supreme Court in Shanker Lal supra in the said judgment and in another judgment of U.P. State Road Transport Corporation, Dehradun Vs. Suresh Pal, , the charge against the delinquent was proved. Neither the Labour Court nor the High Court was justified in interfering with the order of dismissal. Because basic issue remains as to whether interference by the Labour Court u/s 11-A of the Industrial Disputes Act, 1947 was warranted in cases of misconduct where Conductor was found carrying passengers without ticket.

8. Supreme Court in Mahendra Nath Tiwari (supra) was dealing with a case where respondent was found in possession of 12 used tickets for which he offered no explanation and one passenger was found without ticket and further that he was found driving the bus at the relevant time when he was not authorized to do so. It was held that respondent did not deserve the award of back wages and that such misconduct justified dismissal of Conductor but did not interfere with the reinstatement because notice of SLP was issued only on the question of back wages. Appeal was allowed and the back wages was denied to the respondent. In para 5 of the judgment, it was observed by the Supreme Court as under:

XX
XX
XX But for the purpose of this case and at this distance of time, we do not think that it is necessary to do so. Therefore, somewhat reluctantly, we refrain from adopting that course, though according to us, this is a fit case where neither the labour Court nor the High Court had any justification in interfering with the order removing the respondent from service.

Supreme Court in para 6 of the judgment further observed as under:-

XX
XX
XX We have no hesitation in coming to the conclusion that the respondent did not deserve the award of back wages to him. In fact, he must consider himself lucky to have been reinstated and that we are not interfering with that reinstatement.

9. Judgment of Supreme Court was followed by the Division Bench of this Court in Sajjan Kumar (supra). In the present case, the question which comes up for consideration of this Court is whether delinquencies reported against the respondent during the period subsequent to reinstatement are such that inspite of his actual working for last 19 years, this Court should interfere so as to now allow the petitioner to discontinue him from service. On 30.11.1997 and 07.08.1994, he was found carrying two passengers without ticket and for both occasions, he was awarded penalty of stoppage of one annual grade increment without cumulative effect each, of course with additional penalty of Rs. 500/- for a later incident. Third time on 08.02.2007 he was found carrying two passengers without ticket for which enquiry is said to be still pending. As against this, number of delinquencies against the respondent-Conductor in Division Bench judgment of Shanker Lal supra were three in so far as allegation of carrying passenger without ticket is concerned when once he was found carrying two passengers and twice five passengers. There is additional factor which needs to be noticed. Respondents themselves have issued four circulars on 02.05.2008, 23.05.2008, 16.06.2008 and 21.06.2008. In each case, penalty amount for per passenger was raised to Rs. 2500/- and it was directed that delinquent shall be awarded penalty of stoppage of one annual grade increment with cumulative effect. Strangely enough, Circular dt. 21.06.2008 has further raised the limit of passengers without tickets from 20 to 25 with stipulation that maximum realizable fair amount from such passengers should not exceed to Rs. 1500/- and for each of such passengers, delinquent shall be awarded penalty of Rs. 3500/- with stoppage of one annual grade increment with cumulative effect.

10. Learned Counsel for the petitioners argued that while the Corporation on its own can deal with its Conductors in such a fashion in accordance with the aforesaid circulars and penalize the delinquent by awarding such penalty as per the guidelines referred to therein but when it comes to the Courts, they cannot

apply the said circular even for the purpose of analogy. Petitioner want to rely on Supreme Court judgments wherein it has been held that in such like cases, orders of dismissal/removal should not be interfered with specially when there is relationship of master and servant between Corporation and Conductor. But in the present case, there is a difference that respondent is actually continuing in services of the petitioner for last 19 years. With continuity of service granted to him by the Labour Court, he would be treated as continuous in service for last 29 years. In view of the observations of the Supreme Court and Division Bench of this Court in Sajjan Kumar supra and taking over all view of the matter specially the circulars issued by the petitioner Corporation itself, where under they are, on their own, seeking to apply a somewhat different yardstick to identical cases in pending departmental enquiries against the Conductors facing similar charges, it is not considered appropriate to interfere with the award passed by the Labour Court in so far as the direction of the Labour Court for reinstatement of the respondent-workman is concerned because this Court can safely assume that number of Conductors facing charges carrying passengers without tickets ranging from 1 to 25 may have been punished in terms of the circulars referred to above. At the same time, however, I consider it appropriate to set-aside that part of the award whereby 50% back wages have been awarded to the respondent-workman.

11. The writ petition is accordingly allowed in part. There shall be no order as to costs.