

(2006) 04 AHC CK 0181

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 31525 of 1995

Ramjit Gupta

APPELLANT

Vs

The Labour Court, Uttar Pardesh Rajya Sadak Parivahan
Nigam and Uttar Pardesh Rajya Sadak Parivahan Nigam

RESPONDENT

Date of Decision : 26-04-2006

Acts Referred:

Citation : (2006) 4 AWC 3441 : (2006) 111 FLR 27 : (2006) 2 UPLBEC 1862

Hon'ble Judges : V.K. Shukla, J

Bench : Single Bench

Advocate : M.P. Sarraf and Upendra Nath, for the Appellant; Avanish Mishra, Samir Sharma and M.M. Sahai and C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

V.K. Shukla, J.—Petitioner is questioning the validity of the award passed by Labour Court, Gorakhpur answering the reference in negative holding that services of the petitioner have been rightly dispensed with.

2. Brief background of the case is that petitioner had been discharging his duties as conductor with U.P. S.R.T.C. On two dates, namely, on 24.04.1987 and 12.06.1987 inspection was carried on. On both the occasions, it was found that petitioner had been carrying passengers without tickets. Qua both the incidents, separate charge sheets were issued and inquiry was conducted and thereafter, it was concluded that petitioner was guilty of carrying passengers without tickets. After the said report was submitted, finding the charges proved against petitioner letter dated 29.01.1988 was issued asking the petitioner to show cause as to why punishment of removal from service be not inflicted upon him. Petitioner filed reply to the said show cause notice. On 29.07.1988 order of removal from service was passed. Petitioner represented against the same, and pending representation, petitioner raised industrial dispute, and thereafter matter was referred to the Labour Court for adjudication, which was registered as I.D. Case No. 314 of 1989. Before the Labour Court respective parties filed

their written statements and thereafter preliminary issue was framed as to whether inquiry undertaken against petitioner was fair and proper or not. In the said preliminary inquiry finding was returned that inquiry was fair and proper, and thereafter charges were proved, as such reference made to the Labour Court was answered in negative. At this juncture, present writ petition has been filed.

3. Counter affidavit has been filed and therein the statement of fact mentioned in the writ petition has been rebutted and it has been contended that appeal of the petitioner against dismissal was dismissed on 07.02.1989. It has also been contended that charge sheet dated 04.06.1987 was not issued on the basis of the report submitted by Sri J.N. Sinha, as such there was no infirmity in the appointment of Sri J.N. Sinha as Inquiry Officer qua the said charge sheet, further it has been contended that finding arrived at is not at all liable to be disturbed with.

4. After pleadings aforementioned have been exchanged, the writ petition has been taken up for final hearing and disposal with the consent of the parties.

5. Sri Upendra Math, learned Counsel for the petitioner, assailed the validity of the award on two fronts; (i) inquiry in the present case is vitiated on account of the fact that Sri J.N. Sinha, who himself had carried on inspection has acted as Inquiry Officer and as such he became Judge of his own cause. Reliance in this connection has been placed on the judgment in the case of Committee of Management, Mahatma Gandhi Sainik Intrer College v. U.P. Secondary Education Service Commission, Allahabad (1997) 2 UPLBEC 859, and (ii) punishment which has been awarded is shockingly disproportionate to the charges, as such interference be made. In this connection reliance has been placed on the judgment in the case of U.P. S.R.T.C. v. Mahesh Kumar Mishra, J.T. 2000 (3) 173.

6. Sri Avnish Mishra, learned Counsel appearing for the respondents, on the other hand, contended that finding which has been returned by the Labour Court, warrants no interference, and it was the petitioner, who was holding the position of trust and he has breached the trust, as such no interference be made.

7. After respective arguments have been advanced, the first argument advanced on behalf of petitioner in respect of inquiry being vitiated on account of Sri J.N. Sinha being appointed as Inquiry Officer is being adverted to. On two occasions inspection had been made. Qua inspection dated 24.04.1987 report was submitted on 13.05.1987 and on the basis of the report submitted by the checking staff charge sheet dated 04.06.1987 was issued to the petitioner, and Sri J.N. Sinha was appointed as Inquiry Officer. Another report was submitted against petitioner on the basis of checking conducted by Sri J.N. Sinha on 12.06.1987, and qua the same charge sheet dated 20.07.1987 was issued and, Sri DP. Srivastva was appointed as enquiry Officer. Two separate incidents had taken place, qua which two separate charge sheets had been issued and two separate departmental enquiry had been undertaken. Sri J.N. Sinha at no point of time was appointed as Inquiry Officer qua charge sheet dated 20.07.1987 and

the said inquiry was independent inquiry, and the petitioner has failed to point out any infirmity in the aforementioned inquiry proceedings. Both the inquiries were separate and independent, and merely because in another inquiry Sri J.N. Sinha was member of the checking party, the same in no way vitiates the inquiry. After enquiry had been concluded, then for the purpose of inflicting punishment combined notice had been issued. The judgment of Sita Ram Yadav v. State of U.P. 1997 (2) UPLBEC 65, which has been cited by the petitioner do not come to the rescue of the petitioner, inasmuch here no allegations, whatsoever have been levelled against Sri J.N. Sinha, as such in the present case rightly it has been observed by the Labour Court that inquiry was fair and proper.

8. Now Court comes to the second issue raised in respect of disproportionate punishment. Petitioner has relied upon the judgment in case of U.P. State Road Transport Corporation and Ors. v. Mahesh Kumar Mishra and Anr. (2000) 3 SCC 173 . In the said case passengers were not found travelling without ticket, as has been noted in paragraph 11 of the said judgment, rather it was a case where instead of issuing ticket for Rs. 1.80, ticket of Rs. 1.50 had been issued and there was serious dispute qua place of boarding of bus and as no witness was produced to substantiate, from where they had boarded the bus, in this background, interference was made with the order of punishment. The facts of the said case are-clearly distinguishable, and coupled with this now judicial trend is different in matters wherein conductors have been found carrying passengers without tickets. The Hon''ble Apex Court in the said case of Regional Manager, U.P.S.R.T.C., Etawah and Others Vs. Hoti Lal and Another, has taken the view that that if the charged employee holds the position of trust where honesty and integrity are inbuilt requirements of functioning, the matter should be dealt with iron hands and not leniently, and in the said case termination of service of a bus conductor for carrying ticketless passengers in the SRTC bus has been upheld. Relevant paragraphs 9 and 10 of the judgment are being quoted below:

9. The decision in U.P. SRTC case was really in a different factual background making it distinguishable from the facts of present case, and has no application. In State of Maharashtra Vs. M.H. Mazumdar, it was held that it is misplaced sympathy by courts in awarding lesser punishments where on checking it is found that the bus conductors have either not issued tickets of a lower denomination knowing fully well the correct fare to be charged. It is the responsibility of the bus conductors to collect the fare from the passengers and deposit the same with the Corporation. They act in fiduciary capacity and it would be a case of gross misconduct if knowingly they do not collect any fare or the correct amount of fare. It was finally held that the order of dismissal should not have been set aside. The view was reiterated by a three-judge Bench in Regional manager, Regional Manager, RSRTC v. Ghanshyam v. Sharma, (2002) 1 LLJ 234 SC where it was additionally observed that the proved acts amount either to a case of dishonesty or of gross negligence, and bus conductors who by their actions or inactions cause financial loss to the corporations are not fit to be retained in service.

10. It needs to be emphasized that the court or tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment was not commensurate with the proved charges. As has been highlighted in several cases to which reference has been made above the scope for interference is very limited and restricted to exceptional cases in the indicated circumstances, Unfortunately, in the present case as the quoted extracts of the High Court's order would go to show, no reasons whatsoever have been indicated as to why the punishment was considered disproportionate. Reasons are live link between the mind of the decision taken to the contrary in question and the decision or conclusion arrived at. Failure to give reasons amounts to denial of justice (see *Alexander Machinery (Dudley) Ltd. v. Crabtree* 1974 LCR 120 (NIRC)). A mere statement that it is disproportionate would not suffice. A party appearing before a court, as to what it is that the court is addressing its mind. It is not only the amount involved but the mental set up, the type of duty performed and similar relevant circumstances which go into the decision making process while considering whether the punishment is proportionate or disproportionate. If the charged employee holds the position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable. Judged in that background, conclusions of the Division Bench of the High Court do not appear to be proper. We set aside the same and restore order of the learned single Judge upholding the order of dismissal.

9. Here, in the present case, petitioner has been found guilty of carrying tickless passengers on two occasions, as such the order of dismissal is not liable to be interfered with. Consequently, writ petition is dismissed.