

(1991) 11 AHC CK 0060

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 9527 of 1998

Sabir Husain

APPELLANT

Vs

Assistant Regional Manager, U.P. State Road Transport
Corporation and Others

RESPONDENT

Date of Decision : 23-11-1991

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Industrial Disputes Act, 1947 — Section 4K

Citation : (1991) 2 AWC 530

Hon'ble Judges : R.B. Mehrotra, J

Bench : Single Bench

Advocate : R.K. Jain, for the Appellant;

Final Decision : Dismissed

Judgement

R.B. Mehrotra, J.—The Petitioner was appointed as a conductor in the U.P. State Road Transport Corporation (hereinafter referred as the Corporation} on 21-7-1973 and was confirmed on the said post. On 16-9-1982, the Petitioner was on duty in bus No. U.P.O. 5684 in route Shahjahanpur to Bunda. On the said date the bus was checked by Sri Bal Govind Awasthi, Senior Station Incharge, Sri Jagdish Chandra Mishra, and Sri Jai Ram Singh, Asstt. Traffic Inspectors at 16.40 hours. According to the Department's case the bus was got stopped at Sabli Kesar which is situated between Bangawan and Daulatpur. The way bill was found in the hands of the conductor and after looking to the inspection authorities, the Petitioner hurriedly started issuing all the tickets. At the time of inspection, 54 passengers were found travelling in the bus out of which there were no tickets with 36 passengers. The conductor had only 36 tickets from Daulatpur to Bunda. The entries in the way bill were incomplete which shows the mala fides of the Petitioner. The passengers who were not carrying any ticket told that they have boarded the bus from Powayan and they have paid the fare to to the conductor from Powayan to Runda. The conductor did not permit the passengers to give their statements. The passengers were given a collective

ticket No. 6046 for 36 passengers for an amount of Rs. 68.40 P. The substance of the inspection was noted on the way-bill and for verification purposes was got signed by the conductor. The original way bill was taken in custody by the inspecting staff which shows incomplete entries and which also shows that the total amount collected was also not entered in the way-bill.

2. On the basis of the aforesaid charge, a charge-sheet was given to the Petitioner and a domestic enquiry was conducted and on the basis of the domestic enquiry, the Petitioner was punished and removed from service.

3. The Petitioner raised an industrial dispute challenging his removal u/s 4-K of the U.P. Industrial Disputes Act. The State Government referred the dispute to the Labour Court, Bareilly in the following terms:

Whether the services of the workman Sabir Husain, son of Sri Jumman Bux have been validly terminated by the employer, vide their order, dated 9-12-1982? If not, to what relief the workman is entitled to and with what direction?

The Labour Court, vide its award, dated 30-10-1987 have answered the reference in favour of the employer holding that the order of removal passed against the Petitioner was in accordance with law.

4. Sri R.K. Jain, learned Counsel for the Petitioner has challenged the aforesaid award and made the following submissions:

(i) That the only question which the Labour Court was required to decide according to the award itself was as to whether the bus was booked between Dalelpur and Bunda or between Powayan and Dalelpur and the said question has not been decided by the Labour Court and as such the award of the Labour Court did not bring home the guilt of the Petitioner and is liable to be set aside.

(ii) That the labour court has erred in law in upholding the extreme punishment of termination of service of the Petitioner on the basis of past records of the Petitioner whereas on the file of the labour court there was no evidence on record to establish that the Petitioner's past records was bad.

(iii) That three persons checked the bus whereas only one person has been examined, namely, Sri Bal Govind Awasthi, S.S.I. whereas Sri Jagdish Chandra Singh and Sri Jai Ram Singh who were Assistant Traffic Inspectors were not examined. According to Sri Jain it was the primary duty of the Asstt. Traffic Inspectors to have checked the bus and actually they were real persons who should have been examined for bringing home the charge against the Petitioner. The Department having failed to examine the aforesaid two witnesses, the charge against the Petitioner cannot be said to have been proved.

(iv) That no passenger was examined in support of the Department's case. Even the names of the passengers were not noted. No effort was made to prove the Department's case through any independent evidence. The punishment given to the Petitioner only on the basis of the statement of Sri Bal Govind Awasthi

without being supported by any independent evidence is wholly unjustified in law.

(v) That the Petitioner was not supplied with the copy of the enquiry report which has caused severe prejudice to the Petitioner in his defence and on the said basis the Petitioner's removal is liable to be set aside.

5. In reply to the aforesaid submissions, Sri S.K. Sharma, the learned Counsel for the U.P. State Transport Corporation (hereinafter referred to as the Corporation) has submitted that the Petitioner has categorically admitted in his statement before the labour court that in 36 tickets he has filled the place of destination i.e., from which place to which place and has filled the amount of fare but had not filled the date in the tickets. The entries in the tickets are incomplete because he hurriedly issued the tickets on looking into the checking party as the Inspectors can check the bus at any time. Sri Sharma has contended that from the statement of the Petitioner himself he has admitted that the tickets were not issued to the passengers and he issued tickets looking to the checking staff. Sri Sharma has contended that on the basis of the aforesaid statement, a categorical finding of fact has been recorded by the labour court holding that under the U.P. State Road Transport Corporation Labour Tribunal it is the duty of the conductor to issue correct tickets and make their entries in the way bill and only thereafter permit the bus to leave the station. Sri Sabir Husain had not only failed to perform his duties but illegally prepared the incomplete tickets and waybill with the object of keeping the passengers' fare with himself. He had been caught red handed by the checking staff and the punishment which has been given to the Petitioner is perfectly justified. Sri Sharma has relied upon a Division Bench decision of this Court in Civil Misc Writ Petition No. 9102 of 1980 *Shri Kishan Sharma v. The Asstt. Regional Manager U.P.S.R.T.C. and Ors.* Delhi, decided on 26-2-1988 wherein this Court held:

From instructions issued by Transport Department it is clear that duties, functions and responsibilities of roadways conductor are mentioned in paragraph 21. It is clearly provided that passengers shall be picked up on "pay and board" system. It is true that in exceptional circumstances a conductor is required to issue tickets even after start of journey. But none of the circumstances is made out in case of the Petitioner. If a passenger entered into bus and he did not have a ticket then responsibility was of conductor and, therefore, inference drawn by opposite party cannot be said to be erroneous. Since the Petitioner failed to perform duties as provided in the rules, it was misconduct and his services could be dispensed with. In the end learned Counsel urged that the punishment of removal is not commensurate with the guilt found. In our opinion, argument is not available in this case Charges against Petitioner were not only of carrying passengers without tickets but even obstructing checking squad and preventing them from taking statements of passengers. All this has been found to be correct. In the circumstances, this Court shall not be justified in interfering with the order of punishment.

6. Sri Sharma also contended that even if the labour court has casually made

observation in the award that the real issue to be decided is as to which place the bus was checked, the said observation is wholly irrelevant and on the basis of only that casual observation the award should not be set aside.

7. In reply to the second submission Sri Sharma has pointed out that in the written statement filed by the Corporation in paragraphs "2" to "10", the Petitioner's performance in the past was given in detail and the Petitioner was found guilty previously atleast in half a dozen occasions. All the necessary details regarding the date of the order, the number of the order and the details for which the Petitioner was punished at earlier occasions was given in the aforesaid paragraphs of the written statement filed by the Corporation before the labour court. In reply to the aforesaid specific charges, the Petitioner in his rejoinder affidavit has simply denied the aforesaid charges. The denial of the Petitioner is in the following terms:

Para No. 2 of the written statement is wrong and not admitted. It is further submitted that this allegation finds no place in the charge sheet dated 4-10-1982 on the basis of which the impugned order dated 9-12 1982 was passed.

8. Subsequently in paragraphs 2 to 10 in the rejoinder affidavit filed by the Petitioner before the labour court only this much is mentioned that the statement made in paragraphs 3 to 10 of the written statement is wrong and not admitted. Reasons are given under para "2". According to Sri Sharma, the aforesaid denial was just a vague denial which is not a denial at all. The Petitioner did not rebut the statement in the written statement that the specificintances for which the Petitioner was shown to have been punished was wrong. Therefore, according to Sri Sharma the labour court was justified on coming to the conclusion on the basis of the pleading of the parties that the past records of the Petitioner was not good or on the basis of the aforesaid material the labour court was justified in coming to the conclusion that the punishment of removal from service given to the Petitioner was justified as the past records of the Petitioner was not good.

9. In reply to the third and fourth submissions Sri Sharma has relied upon the decision of the Supreme Court in *State of Haryana and Another Vs. Rattan Singh*, wherein the Hon'ble Supreme Court has ruled that the evidence of the Inspector of the Flying Squad is also an evidence on the basis of which the domestic tribunal can arrive at a conclusion that the bus conductor was guilty of the charge for which he was tried. On the basis of the aforesaid decision, Sri Sharma has contended that the Inquiry Officer as well as the labour court has believed the evidence of Sri Bal Govind Awasthi and there is no occasion for the court to interfere in the aforesaid finding recorded by the labour court.

10. In reply to the last submission that no enquiry report was supplied to the Petitioner Sri Sharma has contended that no such grievance has been raised before the labour court that the Petitioner has been prejudiced in any way by not supplying the enquiry report. In the present case, it was open to the Petitioner to have raised the said grievance before the labour court itself and the labour court

would have examined as to whether the Petitioner was prevented in any way in giving his defence before the punishing authority. Moreover, the labour court has examined the merits of the dismissal order and the Petitioner has full opportunity to place his case. The labour court has justified the dismissal of the Petitioner on the basis of the evidence on record. In these circumstances, merely on the ground that the enquiry report was not supplied to the Petitioner, the order of termination passed against the Petitioner cannot be said to be vitiated in law.

11. I have given a careful consideration to the submissions made by the counsel for the parties. It is true that the labour court in its award has at one place recorded that the only dispute in the matter is as to on which place the three officers have checked the bus. Whether the bus was checked between Hangawan to Dalelpur or between Dalelpur to Bunda, and has further held that if the bus was checked between Dalelpur to Bunda then the conductor will not be liable for the charge but if the bus was checked between Bangawan to Dalelpur then the conductor will be found guilty. Thereafter the labour court has not recorded a finding as to which place the bus was checked but the labour court went on to record a specific finding that the way bill was with the conductor in which according to the conductor himself, it was not mentioned that 36 passengers boarded the bus from which place but only this was mentioned to which place they were going. The conductor has failed to explain as to how the aforesaid incomplete entries have been made in the way bill as in the way bill first it is mentioned that from which place the passengers had boarded the bus and thereafter it is mentioned to which place the passengers will go. Neither any fare was mentioned in the way bill and the conductor has willfully omitted to mention the aforesaid entries so that he may make the necessary entries after reaching Bunda. The labour court further recorded a finding that undoubtedly the fare of the passengers was not mentioned in the waybill. The 36 tickets were found in possession of the conductor himself wherein the entries were also incomplete. In all the tickets only Dalelpur to Bunda was noted and the fare was not noted. How these incomplete entries have been made, the conductor has failed to show. That shows the mala fides of the conductor. All this clearly shows that the tickets were prepared in advance so that the fare up to Dalelpur can be kept by the conductor in his pocket. In the concluding part the labour court further recorded a categorical finding that under the U.P. State Road Transport Corporation Manual, it is the duty of the conductor to prepare the correct tickets and make its entries in the way bill and only thereafter permit the bus to move and instruct the driver accordingly. The Petitioner has not discharged his duties and has also tried to keep the passengers' money with himself by intentionally issuing incomplete tickets and incomplete way bill and by a surprise checking had been caught red handed. Sri Sabir Husain, the Petitioner, has been rightly punished.

12. These findings clearly make out that the Petitioner has been found guilty for not preparing the complete way bill and for carrying the bus without issuing the proper tickets and without preparing the proper way bill. This was a clear case where the Petitioner tried to misappropriate the fare of the passengers and he

was caught red handed. In view of these findings recorded by the labour court, it can hardly be said that the labour court has not address itself to the correct problem posed before it can in view of these findings no useful purpose would be served by sending back the case to the labour court for recording a finding as to which place the bus was checked. Assuming the submission of Sri Jain | is correct that the labour court has not recorded a finding on the question to whether the bus was cheked between Dalelpur to Bunda or between Powayan to Dalelpur, the said question would not have altered the main charge against the Petitioner that he allowed the bus to move without issuing the tickets to the passengers and without preparing the way bill. In the Division Bench case, cited by Sri Sharma, it has been clearly held that if the conductor allows the bus to move without issuing the tickets and without preparing the way bill, the conductor fails in performance of his duties properly. The Petitioner has been found guilty clearly by the labour court any a categorical finding has been recorded to the said effect. No interference on the said count is called for and the first submission of Sri Jain accordingly fails.

13. The second submission of Sri Jain has also no substance In the written statement filed by the Corporation, in paragraphs 2 to 10, nine instance have been mentioned in the past where the Petitioner was found guilty of not issuing tickets and similar charges were framed and at least six times, the Petitioner was awarded minor punishments All these facts were stated in the written statement with meticulous details. In reply to the aforesaid statement, the Petitioner has only made a blatant denial. No specific denial of these statements have been made. The Petitioner has no where stated in the rejoinder affidavit that he has not been punished for the charges mentioned in paragraphs 2 to 10. The Petitioner has only said that since the charges do not find place in the charge-sheet, then fore, they are denied. In the charge-sheet it was not necessary to mention that the Petitioner has been previously punished for several charges. The denial is absolutely vague and on the basis of the aforesaid pleading, if the labour court came to the conclusion that the Petitioner?s past record was bad, it cannot be said that the labour court has committed any illegality in recording the said finding.

14. In the case of Statement of Haryana (supra) the Hon"ble Supreme Court held:

The simple point is, was there some evidence or was there no evidence-not in the sense of the technical rules governing regular court proceedings but in fair common sense way as men of the under standing and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. We find in this case that the evidence of Chammnanlal Inspector of the thing squad, is some evidence which has relevance to the charge levelled against the Respondent. Therefore, we are

unable to hold that the order is invalid on that ground.

15. Admittedly in the present case Sri Bal Govind Awasthi, Senior Station Incharge was examined. The Assistant Traffic Inspectors were only working under him. He was the prosecuting officer. His evidence has been believed both by the enquiry officer as well, as by the labour court the labour court has also recorded findings on the basis of the statement made by the Petitioner himself before the labour court. In view of the fact that the labour court has believed the evidence of Sri Bal Govind Awasthi and has recorded a finding on the statements made by the Petitioner himself before the labour court, the contention of Sri R.K. Jain that the findings recorded by the labour court are vitiated in law since two Asstt. Inspectors were not examined and also that no attempt was made to examine them is not tenable as that court cannot go into the sufficiency of the evidence and the labour court having held the Petitioner guilty on the basis of evidence on record, it does not call for any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

16. Now remains the last submission that the Petitioner was not supplied with the copy of the enquiry report before passing the order of removal against him. The Petitioner has raised the industrial dispute and on a reference the labour court has examined the witnesses from both the sides and Ins itself considered as to" whether the charge for which the Petitioner has been punished has been proved or not. The labour court after affording due opportunity to both the parties has recorded a finding that on the basis of the evidence produced the labour court the Petitioner has been rightly punished for the charge framed against him. In view of the fact that the labour court has itself considered the evidence and has recorded an independent finding holding that the Petitioner was guilty for the charge framed against him, it is not open to the Petitioner to urge that the order of removal was vitiated for non-supply of the enquiry report. Moreover, the Petitioner should have raised the aforesaid point before the labour court itself that the Petitioner was prejudiced in his defence due to non-supply of the enquiry report. The Petitioner has not raised any such contention before the labour court. In this view of the matter it is not open to the Petitioner to raise this point for the first time before this Court. It is settled law that in a writ of certiorari, only the legality of the impugned order is to be looked into. If the Petitioner did not chose to raise the point of non-supply of the enquiry report before the labour court, the Petitioner cannot be permitted to agitate the said point in this Court while challenging the findings of the labour court.

17. All the points raised by Sri R.K. Jain, learned Counsel for the Petitioner, fail.

18. The writ petition is accordingly dismissed. In the circumstances of the case, parties shall bear their own costs.