

(2014) 11 MAD CK 0383
In the Madras High Court
Case No : Writ Appeal No. 2286/2013

The Management Tamil Nadu Government Transport
Corporation (Villupuram Division III) Ltd.

APPELLANT

Vs

The Presiding Officer

RESPONDENT

Date of Decision : 07-11-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 11A, 11A, 2A

Citation : (2015) 1 CTC 241 : (2015) 1 LLJ 281 : (2015) 1 LLN 192

Hon'ble Judges : P.R. Shivakumar, J;N. Paul Vasantha Kumar, J

Bench : Division Bench

Judgement

P.R. Shivakumar, J.

1. This writ appeal has been filed against the order dated 11.10.2012 made in W.P.No. 27570/2012 by the appellant herein, who figured as the first respondent in the writ petition confirming the award of the Principal Labour Court, Chennai dated 09.07.2012 made in I.D.No. 528 of 2002 directing reinstatement of the second respondent herein, who had been terminated from service by an order dated 02.01.2001 by the appellant transport corporation.

2. The second respondent herein, namely Susairaj, was a conductor employed under the appellant transport corporation. On 21.06.1999, while he was on duty in the bus plied in the Route No. 103-A between Chennai and Naidupet, it was intercepted by the Checking Inspector of the appellant transport corporation and he found 16 passengers travelling in the bus were without tickets. On enquiry with them, he came to know that they paid the fare to the second respondent for the purchase of their journey tickets, but the second respondent did not issue tickets. The second respondent also had not closed the invoice till the bus was stopped by the Checking Inspector and his party at the stage. The ticketless passengers were travelling in four groups and representatives of those groups gave statements to the above said effect. The second respondent, along with the

driver of the bus, also signed the statements admitting the said facts. Thereafter he was suspended and was issued with a charge memo.

3. In the enquiry before the Enquiry Officer, he denied the charges and contended that he was compelled by the Checking Inspector to sign the statement and out of fear, he and the driver affixed their signatures. The Enquiry Officer, after concluding the enquiry, gave a finding that the charges against the second respondent stood proved. The Disciplinary Authority also, after giving an opportunity to the second respondent, accepted the finding of the Enquiry Officer and taking into account the punishments imposed on him during his past service, imposed penalty of dismissal from service by the impugned order dated 02.01.2001.

4. The second respondent raised an industrial dispute before the Labour Court (first respondent) under Section 2A of the Industrial Disputes Act, 1947 challenging his dismissal from service. The Labour Judge, holding that non-examination of any of the passengers who had allegedly given statements even though their addresses were available with the management, was a flaw, affecting the finding of the Enquiry Officer and also the punishment imposed on the second respondent. Accordingly, the Labour Court, by award dated 23.04.2002 set aside the impugned order dated 02.01.2001 dismissing the second respondent and directed reinstatement of the second respondent with continuity of service and all other benefits except back wages. Since the second respondent had attained the age of superannuation on 05.11.2008 during the pendency of the ID, the Labour Court directed payment of back wages from the date of termination till the date of superannuation and pay all retirement and other benefits to the second respondent counting the period of non-employment as duty period.

5. When the said award was challenged before the learned single Judge, the learned single Judge dismissed the writ petition by order dated 11.10.2012 making the following observation:

"...writ jurisdiction of this court cannot be converted as an appellate jurisdiction. It is not a regular appeal where this court would be free to reappraise the entire evidence. In these kinds of matters, unless it is shown to this court that the conclusion arrived at by the authorities are perverse or it is a case of no evidence, this court cannot exercise its jurisdiction. But, in this case, no such circumstances has been pointed out by the learned counsel for the petitioner. Under such circumstances, I am reluctant to reappraise the entire evidence so as to come to a different conclusion and to substitute the same in the place of the conclusion of the Labour court as the same is not permissible in law."

The above said order of the learned single Judge is challenged in this writ appeal by the employer, namely the appellant transport corporation.

6. The arguments advanced by Mr.S.S.Swaminathan, learned counsel for the appellant and the arguments advanced on behalf of the second respondent were

heard. The materials placed in the form of typed set of papers were also perused.

7. It is the contention of the learned counsel for the appellant that the Labour Court rendered a perverse finding to the effect that the charges framed against the second respondent/delinquent employee were not proved, simply based on the fact that none of the passengers who gave statements to the effect that the second respondent collected the fares but failed to issue tickets, was examined by the Management before the Enquiry Officer and that the non-examination of any of such passengers even though their names and their addresses were found in the report of the Checking Inspector and its annexures would lead to a conclusion that the charges levelled against the second respondent herein/employee were not proved. It is the further contention of the learned counsel for the appellant/employer that the said finding of the Labour Court is perverse, since the Labour Court failed to consider the evidentiary value of the other materials including the admissions made by the delinquent employee, placed before the Enquiry Officer.

8. According to the submissions made by the learned counsel for the appellant, when there are some evidence which are not inadmissible in a disciplinary proceedings, the Labour Court ought to have considered their evidentiary value and ought not to have rendered a crippled finding to the effect that non-examination of any one of the ticketless passengers would disprove the charge against the delinquent employee. The learned counsel for the appellant relied on the judgment of the Hon''ble Supreme Court in U.P. State Road Transport Corporation & Another Vs Suresh Chand Sharma & Others reported in U.P. State Road Transport Corporation Vs. Suresh Chand Sharma, . In the said case, the Hon''ble Supreme Court referring to its earlier judgment in State of Haryana and Another Vs. Rattan Singh, , held that in a domestic enquiry, complicated principles and procedures laid down in the Code of Civil Procedure, 1908 and the Evidence Act, 1872 do not apply and that the only right of a delinquent employee was that he must be informed as to what were the charges levelled against him and he must be given full opportunity to defend himself on the said charges. The following is the further observation made in the said case:

"We cannot hold that merely because statements of passengers were not recorded and the order that followed was invalid. Likewise, the re-evaluation of the evidence on the strength of Co-conductor's testimony is a matter not for the court but for the administrative tribunal."

Following the said ratio decidendi, the Hon''ble Supreme Court in U.P. State Road Transport Corporation's case made an observation that the reasoning given by the High Court could not be sustained in the eye of law, more so when the High Court was under an obligation to give not only reasons, but also cogent reasons while reversing the finding of the fact recorded by a domestic tribunal. Ultimately, the Supreme Court summarised the law on the issue to the effect that while deciding the case, the court is under an obligation to record reasons, however brief the same may be, as it is a requirement of principles of natural

justice and that non-observance of the said principle shall vitiate the judicial order.

9. According to the learned counsel for the appellant, the domestic tribunal dealt with entire evidence and gave cogent reasons for arriving at a conclusion that the charges levelled against the delinquent employee stood proved; that the said finding of the domestic tribunal could not be stated to be perverse as it could not be said that the finding was based on no legally admissible evidence in a domestic enquiry or that from the available evidence no reasonable person could arrive at the same conclusion. It is the further submission made by the learned counsel for the appellant that, on the contrary, it was the Labour Court, which rendered a perverse finding, without appreciating the evidentiary value of other pieces of evidence adduced by the Management before the domestic tribunal and simply pointing out the non-examination of any of the ticketless passengers and that the reluctance shown by the learned single judge to give reasons for not rendering a finding as to the contention raised by the management that the finding of the Labour Court was perverse would go against the law laid down by the Supreme Court in the U.P. State Transport Corporation's case.

10. Per contra, it is the contention of the learned counsel for the second respondent/delinquent employee that the position before the introduction of Section 11A in the Industrial Disputes Act, 1947 has been changed and the Industrial Tribunal/Labour court is enjoined with a duty to reappraise the evidence and to find out whether the finding on the charges rendered by the Enquiry Officer/Disciplinary Authority can be sustained and that such an exercise shall be necessary in order to arrive at a conclusion as to whether the punishment can be justified. It is the further contention of the second respondent that such wider scope of reappraisal of evidence is not available to the writ court and hence order of learned single Judge dealing with the vitiating factor alone cannot be found fault with. In support of the above said contention, the learned counsel for the second respondent/delinquent employee relied on the judgment of the Hon'ble Supreme Court in *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*,

11. In yet another case, namely *State of Haryana and Another Vs. Rattan Singh*, , relied on by the learned counsel for the second respondent which was decided by a Larger Bench consisting of three Hon'ble Judges of the Apex Court, the following observations were made:

"It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative tribunals must be careful in valuating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through

case law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or consideration of observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. However, the courts below misdirected themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The "residuum" rule to which counsel for the respondent referred, based upon certain passages from American Jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. 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 a fair common sense way as men of understanding 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 Chamanlal, Inspector of the flying 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."

12. Learned counsel for the second respondent/delinquent employee also relied on the following judgments:

1) Workmen, employed in Engine Valves Limited and Engine Valves Limited reported in 1993 (2) LLJ 232;

2) U.P. State Road Tpt. Corpn. and Others Vs. Musai Ram and Others, ;

3) U.P. State Road Transport Corporation and Others Vs. Mahesh Kumar Mishra and Others, ;

4) Mavji C. Lakum Vs. Central Bank of India, ; and

5) Commissioner of Police, Delhi and Others Vs. Jai Bhagwan, .

i) In the first of the above cited cases, namely Workmen, employed in Engine Valves Limited and Engine Valves Limited reported in 1993 (2) LLJ 232, a Division Bench of this court held that after the introduction of Section 11A to the Industrial Disputes Act, 1947, the Labour Court should re-appreciate the evidence and find out whether the misconduct alleged has been made out or not. In the said case, the proposition that the appellate court need not state the evidence or reasons given by the trial court in case of its agreement with the view of the trial court and expression of general agreement with the reasons given in the decision appealed against will be enough, has been held to be inapplicable to the Tribunal/Labour court. Subsequent to 15th December, 1971, the date from which Section 11-A of the Industrial Disputes Act, 1947 came into

force. It has also been held that the Labour court/Industrial tribunal shall reappraise the evidence; that reappraisal of the evidence contemplates an elaborate and meticulous consideration of the evidence on record and reasons to be given for upholding the finding rendered in domestic enquiry for the removal of menace of arbitrariness, unreasonable attitude in holding the enquiry, unfair approach made in the conduct of the proceedings etc. Labour Courts are enjoined to scrutinise carefully and find out whether the misconduct alleged has been established or not.

ii) In the second of the cases cited above, namely U.P. State Road Tpt. Corpn. and Others Vs. Musai Ram and Others, , a bus conductor who was facing the charge of failure to discharge his duty properly, misbehaviour and misappropriation of passengers' money, suffered a finding in the domestic enquiry that the charges against him were proved. In the said case, the charges were that when the bus was checked by the Assistant Traffic Inspector, he found that though fare had been collected from five passengers, no tickets were issued to the said passengers and when the Assistant Traffic Inspector demanded from the conductor blank ticket book for issuing tickets to the passengers, he caused hindrance. In the domestic enquiry, the report of the Assistant Traffic Inspector, way bills with checking remarks were relied on by the Management. The Assistant Traffic Inspector was examined on the side of the Management, but the delinquent conductor did not cross examine the Assistant Traffic Inspector or any other witness examined on the side of the Management before the Enquiry Officer. The delinquent conductor wanted to examine two witnesses by names Shri. Tiwari and Shri. Ahluwalia. Both the witnesses were present on several occasions when the enquiry was conducted before the Enquiry Officer. However the delinquent conductor examined only Shri.Tiwari and omitted to examine Shri.Ahluwalia, the Traffic Superintendent. Under the said circumstances, when it was contended by the delinquent conductor therein that the Management itself should have examined the ticketless passengers and afforded an opportunity to the delinquent conductor to cross-examine such passengers since the report of the Assistant Traffic Inspector was based on their statements and that the non-examination of those passengers would be a violation of principles of natural justice, as fair opportunity was not given to him, it was held that the non examination of the passengers would not be a violation of principles of natural justice, since the delinquent conductor did not cross-examine even the Assistant Traffic Inspector and also failed to challenge the reports filed by the Assistant Traffic Inspector.

iii) In the third of the cases cited above, namely U.P. State Road Transport Corporation and Others Vs. Mahesh Kumar Mishra and Others, , the delinquent was a conductor on duty in the bus and when it was checked by the Transport Inspector, 11 persons were found to have been issued short distance tickets. The charge against him was that the passengers had boarded on the bus at High Court stop for proceeding towards Manauri for which the fare was Rs.1.80P but tickets were issued from Zero road to Manauri charging only a sum of Rs.1.50P.

In the said case holding that the same was not a case of failure to issue any tickets to the passengers, but a case of issuing a ticket for a shorter distance to the very same destination even though they had boarded the bus at a place from which the fare to the destination would be more than what was charged, the delinquent conductor was found guilty based on the report of the Transport Inspector alone, without being supported by the evidence of any of such passengers. It was held by the High Court that the delinquency was not proved and also that the punishment was shockingly disproportionate and accordingly, the High Court set aside the order of dismissal and directed reinstatement of the delinquent conductor with 1/4th back wages for the period of non-employment. When the same was challenged before the Supreme Court, the Hon''ble Supreme Court declined interference observing that under the said circumstances, the Supreme Court did not agree with the contention of the Management that the High Court should not have interfered with the order.

iv) In the fourth of the cases cited above, namely *Mavji C. Lakum Vs. Central Bank of India*, , the Hon''ble Supreme Court laid down the following proposition:

"Power under Section 11-A of the Industrial Disputes Act has to be exercised judiciously and the interference is possible only when the Tribunal is not satisfied with the findings and further concluded that punishment imposed by the Management is highly disproportionate to the degree of guilt of the workman concerned. Besides, the Tribunal has to give reasons as to why it is not satisfied with the findings or with the quantum of punishment and such reasons should not be whimsical but should be good reasons."

v) In the fifth of the cases cited above, namely *Commissioner of Police, Delhi and Others Vs. Jai Bhagwan*, , to prove the charge of demanding and receiving a bribe of Rs.100/-, the only evidence adduced was that he was caught when he was returning the said amount to the complainant and the complainant was not examined in the domestic proceedings. In the said circumstances, it was held that the non-examination of the complainant would amount to a denial of opportunity to the respondent to cross-examine him; that except the evidence showing that the delinquent therein returned Rs.100/- to the complainant, there was no evidence to show demand and receipt; that hence there was no evidence to draw a finding of taking illegal gratification and that the non-examination of the complainant was in violation of the departmental Rule, namely Rule 16(3) of Delhi Police (F&A) Rules, 1980.

13. The consideration of the above said judgments cited by the learned counsel for the second respondent in support of his contention that the Labour Court was right in re-appraising the evidence and arriving at a conclusion different from the one arrived at by the Enquiry Officer and that the learned single Judge was correct in not interfering with the said finding of the Labour Court, we are able to discern the following propositions settled:-

i) Before 15.12.1971, on which date Section 11A of the Industrial Disputes Act

was brought into force, the Industrial Tribunal/Labour Court did not have the power of general re-appreciation of evidence to come to a conclusion which shall be different from the one arrived at by the Enquiry Officer/Domestic Tribunal, except for the limited purpose of deciding whether such a finding by the Enquiry Officer/Domestic Tribunal was perverse;

ii) On and from 15.12.1971 i.e. after the introduction of Section 11A of the Industrial Disputes Act, 1947 the Tribunal/Labour Court is enjoined with a duty to re-appraise the evidence not only to satisfy itself that the finding of the Domestic Tribunal is not perverse, but also to find out whether such a finding of the Enquiry Officer/Domestic Tribunal shall be sustainable to arrive at a conclusion whether the order of dismissal or discharge could be justified and in doing so, the Tribunal/Labour Court should keep in mind that strict rules of evidence and provisions of Evidence Act are not applicable to a domestic enquiry;

iii) If the Tribunal/Labour Court finds the domestic enquiry to be defective, then the Tribunal can take fresh evidence to be adduced by the management in justification of the punishment imposed and also the evidence adduced by the delinquent employee to disprove the charge and show that the punishment imposed cannot be justified;

iv) If the Tribunal/Labour Court comes to the conclusion that the enquiry was not defective, it can still re-appraise the evidence on merit to find out whether the finding of the Enquiry Officer regarding the charge can be sustained in order to justify the punishment imposed.

14. In this case, the admitted facts are that when the Checking Inspector checked the passengers at a particular stage, 16 passengers were found travelling without tickets. On an enquiry made with them, they informed the Checking Inspector that they had paid the fare and the conductor who received the fare did not issue the tickets. Those ticketless passengers were said to be travelling in four groups, each group consisting of a number of persons as indicated below:

a) 1st Group consisting of 7 persons and their leader gave statement to the effect that they paid a total sum of Rs.52.50P at the rate of Rs.7.50P per head for their journey from Sulturpet to Naidupet;

b) 2nd Group consisting of 5 Ladies and their leader gave statement to the Checking Inspector that they paid a total sum of Rs.37.50P at the rate of Rs.7.50P per head for their journey from Sulturpet to Naidupet;

c) 3rd group consisting of 2 ladies, one travelling from Sulturpet to Naidupet and the other travelling from Sulturpet to Turaivarichattiram and their leader gave statement to the effect that they paid a total sum of Rs.11.50P; and

d) 4th group consisting of 2 male passengers and their leader gave statement to the Checking Inspector to the effect that they were travelling from Sulturpet to Bol Reddipalayam and they paid Rs.6/- at the rate of Rs.3/- per head.

(Totally Rs.107.50P was collected.)

The fact that at the time of checking there were 36 passengers and out of them 20 alone were issued tickets and the remaining 16 passengers were not issued tickets, has not been disputed. The report of the Checking Inspector is to the effect that a total sum of Rs.107.50P had been received by the conductor as fare from those 16 persons, but the conductor failed to issue tickets to them even though the fare had been collected.

15. The contention of the second respondent/ delinquent conductor is that he had not received fare from those passengers; that since the checking squad stopped the bus at a place, which was not a stage, he was in the process of issuing tickets and had not closed the invoice and that though the said passengers are said to have given statements to the effect that they had paid the fare, but the delinquent conductor failed to issue the tickets, the Checking Inspector failed to check the cash bag to find out whether there was any excess money found in the cash bag over and above the amount covered by the tickets issued by him and whether such excess related to the fare allegedly paid by the ticketless passengers. It is his further contention that all the ticketless passengers were not conversant with Tamil; that their statements were written by the Checking Inspector and the said passengers affixed their signatures without even knowing what was there in the statements; that under the said circumstances, the examination of some of the passengers who gave such statements would have provided an opportunity to the second respondent/ delinquent conductor to prove the said fact and that non-examination of those passengers by the Management could be taken as denial of a reasonable opportunity to the second respondent/delinquent conductor to defend himself in the departmental enquiry and violation of principles of natural justice.

16. On the other hand, it is the contention of the appellant/management that though the ticketless passengers were asked to give their statements in writing, they informed the Checking Inspectors that they did not know to read and write in Tamil and that if their statements were recorded and read over to them, they would affix their signatures; that only on such a representation, their statements were recorded by the Checking Inspector and they were signed by them after having the same read over and after satisfying themselves of the statements as given by them had been correctly recorded. It is the further contention on behalf of the appellant/management that apart from the statements of the passengers recorded by the Checking Inspector, it is also the clear evidence of the Checking Inspector that the statements of the passengers were recorded in the presence of the second respondent/delinquent conductor and that the second respondent/delinquent conductor also, without raising any objection, affixed his signature in those statements. It is also an admitted fact that the second respondent affixed his signature in the statements of the four passengers representing the four groups and also in the report of the misconduct. However, he would state that his signature was obtained after threatening him that he would have to face dire

consequences, if he refused to do it. The second respondent/delinquent conductor had also admitted in his evidence before the Enquiry Officer that the driver of the bus had also affixed his signature in the statements of the witnesses. However he had given an explanation that the driver was also threatened and his signature was obtained by using threat.

17. The contention of the second respondent seems to be that before ever the bus could reach the stage, the checking squad stopped the bus and checked the passengers and the tickets available with them and that the 16 passengers, who had not been issued with tickets, were projected as passengers from whom the second respondent had collected the fare but failed to issue tickets. In this regard, it is the clear evidence of management witnesses, namely the Checking Inspector that the bus was stopped only at Tapal Kudisai, which was admittedly a stage. For a suggestion made to him that the bus was stopped at a place called Glass factory before ever the bus reached the stage, namely Tapal Kudisai, he stoutly denied it and he reiterated his stand that the bus was checked only at the stage Tapal Kudisai. The second respondent/delinquent claims that the bus was stopped in between 17th and 18th stages and hence the invoice was not closed. However, he had admitted that all the said passengers got into the bus at Sulturpet. For a suggestion put to him that though there were minimum number of passengers in the bus, with an ulterior motive he did not issue tickets to 16 passengers even after receiving the fare from them and thereby violated the Transport Corporation Rules, he did not deny the same and gave an evasive answer that it was his duty to issue tickets to the passengers, who got into the bus.

18. Having admitted that he along with driver signed the statements of the four passengers leading the four groups, who were found without tickets and that they had also signed the report of misconduct, he had not chosen to examine the driver in support of his stand that their signatures were obtained by the Checking Inspector using threat. The second respondent clearly admitted that the addresses of the passengers, who gave statements and whose statements were also attested by him were available. But he did not choose to examine any one of them in support of his contention that no such statement was given by them or that they were forced to sign the statements written by the Checking Inspector without disclosing the contents thereon. Though the second respondent/delinquent conductor had sought an opportunity, he did not examine either the driver or any one of the passengers whose statements were recorded by the Checking Inspector. On the other hand, he found fault with the management for not examining the leaders of the ticketless passenger groups. As he himself, along with the driver, chose to affix his signature to evidence that the statements of the passengers were recorded in their presence, the reliance on such statements, supported by the evidence of the checking inspector and also the report of misconduct containing the signature of the Enquiry Officer as well as the signature of the 2nd respondent and the driver, cannot be said to be improper on the sole ground that none of the leaders of the passenger groups

whose statements were recorded was examined by the management in the domestic enquiry. Though there was an opportunity for him to disprove the documents relied on by the management by examining the driver and the authors of the statements, namely the leaders of the passenger groups, he did examine none other than himself.

19. Under such circumstances, the finding of the Enquiry Officer, which was accepted by the management cannot be said to be perverse, as it is not based on no evidence. It cannot also be said that from the available evidence no reasonable person would arrive at a conclusion as the one arrived at by the Enquiry Officer. On the other hand, the Labour Court, in its award dated 23.04.2002, for arriving at a conclusion that the charge against the second respondent/delinquent conductor was not proved, even after referring to the deficiency report and also the statements of the leaders of the four passenger groups and also the evidence of the Checking Inspector, found fault with the Enquiry Officer for not examining the leaders of the passenger groups on the management side and made an observation that the non-examination of at least one of such passengers was fatal to the case of the management. The said approach made by the Labour Court is cryptic and the finding of the Labour Court ignoring the evidence adduced on the side of the Management before the Enquiry Officer and the admissions made by the delinquent would definitely amount to a perverse finding, which will justify the interference of the same by the High Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India.

20. In fact, in a similar case, wherein a conductor was charge-sheeted for not issuing tickets to ten passengers after receiving the fair, the Labour Court's award confirming the finding of the domestic tribunal that the charge against the conductor was proved was upset by the High Court on the sole ground that the passengers found without tickets had not been examined and the cash available with the employee (conductor) was not checked. The said approach made by the High Court was disapproved by the Hon'ble Supreme Court in the said case, namely U.P. State Road Transport Corporation Vs. Suresh Chand Sharma, . From the said decision of the Supreme Court, it is quite clear that the non-examination of the ticketless passengers as witnesses in the domestic enquiry on the side of the management and the non-examination of the cash bag of the Inspector at the time of checking by the checking squad per se cannot vitiate the proceedings and the same would not justify a conclusion different from one that was arrived at in the domestic enquiry, provided such conclusion is supported by other evidence.

21. The Labour Court, in the case on hand, without taking into account the evidentiary value and the effect of pieces of evidence adduced on the side of the management in the domestic enquiry, simply concluded that the charge against a delinquent was not proved since none of the ticketless passengers whose statements were recorded by the Checking Inspector was not examined by the management in the domestic enquiry. As pointed out supra, such a narrow

approach has led to a perverse finding rendered by the Labour Court. The learned single judge, without advertent to the said aspect of perversity on the part of the Labour Court in rendering a finding different from the one rendered by the Enquiry Officer, simply declined interference stating that the writ petition could not be construed to be an appeal wherein re-appreciation of evidence would be possible.

22. In this case, as pointed out supra, at least to the extent of finding whether the finding recorded by the Labour Court was perverse, the learned single judge ought to have referred to the evidence and rendered a finding. As it was not done, we, sitting in the Division Bench in the Writ Appeal, after going through the materials, are satisfied that the finding rendered by the Labour Court that the charge against the second respondent was not proved, is perverse, which cannot stand the scrutiny of this court.

23. As we have held that the finding of the Labour Court regarding the proof of the charge is perverse and that the finding of the Enquiry Officer should be restored and confirmed, we move on to the next question whether the punishment imposed is proportionate to the guilt of the delinquent. Before awarding punishment, the past conduct of the second respondent/delinquent conductor was also taken into consideration by the Disciplinary Authority. He was warned once for the deficiency in the amount collected and again warned when he refused to do the duty allotted to him. On seven occasions he was fined with a fine amount ranging from Rs.5/- to Rs.25/-. Thrice he was placed under suspension and at the end of enquiry, the period of suspension was treated as punishment and on one such occasion, in addition to treating the period of suspension as punishment, his increment was cut for one year with cumulative effect. For another delinquency, his increment was temporarily postponed for three months. He had suffered as many as 12 punishments in addition to two warnings. The particulars are also found in the impugned order of dismissal from service. When the charge of misappropriation stands proved, there cannot be any leniency in the matter of punishment and the punishment of the dismissal from service cannot be construed to be a disproportionate one. Hence the impugned order imposing the punishment of dismissal deserves no interference. For all the reasons stated above, the Writ Appeal shall succeed.

In the result, the Writ Appeal is allowed. The order of the learned single judge dated 11.10.2012 made in W.P.No. 27570 of 2012 and the award of learned Principal Labour Court dated 09.07.2012 made in I.D.No. 528 of 2002 are set aside. The punishment of dismissal from service, awarded to the second respondent by the Disciplinary Authority shall stand restored and confirmed. However, there shall be no order as to costs.