
(2011) 07 AHC CK 0032
In the Allahabad High Court
Case No : C.M.W.P. No. 7521 of 1997

Umesh Chand Sharma

APPELLANT

Vs

U.P.S.R.T.C., Bulandsahar and others

RESPONDENT

Date of Decision : 26-07-2011

Acts Referred:

Industrial Disputes Act, 1947 — Section 6(2)(A)

Citation : (2011) 131 FLR 416

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

A.P. Sahi, J.—This petition arises out of an award of the Labour Court against the petitioner rejecting his claim against the reference of termination of his services on the charge that he had allowed ticket-less passengers to travel on the bus on which he was on duty on the date of the incident i.e. 17.9.1987.

Sri Y.K. Sinha, learned Counsel for the petitioner has raised the following four submissions:--

A. Petitioner could not be charge sheeted or punished for alleged misconduct committed on 17.9.1987 as it was for the earlier period of employment from 4.6.1987 to 18.9.1987 and his re-employment w.e.f. 19.7.1987 condoned the earlier misconduct particularly when from 19.7.1987 to 22.9.1990 there was no misconduct alleged against him.

B. In view of the provisions of section 6 (2) (A) of the U.P. I.D. Act, Labour Court has been given appellate power over the findings recorded by the enquiry officer as such Labour Court was duty bound to frame the issue of enquiry and would have appraised the findings recorded by the Enquiry Officer but the Labour Court has failed to even frame the issue of enquiry and has not appraised the evidence of the enquiry. (Workmen of Firestone 1973 (26) FLR 359 (SC)).

C. In any view of the matter the Labour Court would have considered the question of violation of principles of natural justice which has not been considered. (Cooper Engineering Works v. P.P. Mundhe, 1975 (31) FLR 188 (SC))

D. Findings of the Enquiry Officer are perverse and defence evidence has been wrongly rejected and there was no reliable evidence to find the misconduct proved.

2. Sri Sinha submits that where the passengers were themselves voluntarily not delivering the payment to the extent of the fare demanded, then such an incident would not fall within the definition of misconduct. He further submits that the decision which has been relied upon by the learned Counsel for the Corporation do not apply in cases arising out of the Industrial Disputes Act.

3. The contention is that, if a misconduct is not defined, then in view of the decision in the case of Glaxo Laboratories (J) Ltd. v. Presiding Officer, 1983 (47) FLR 508 (SC) and A.L. Kalra v. Project & Equipment Corporation, 1984 (49) FLR 119 (SC) the petitioner could not have been punished. To distinguish the proceedings in a service matter, and the case arising out of an award of Industrial Tribunal, learned Counsel relies on the case of U.P. Power Corporation Ltd. and another v. Bijli Majdoor Sangh and others, 2007 (113) FLR 821(SC) and the Maharashtra State Road Transport Corporation and Another Vs. Casteribe Rajya P. Karmchari Sanghatana,

4. Replying to the submissions of the learned Counsel for the petitioner Sri Samir Sharma for the Corporation submits that the petitioner was working on daily wages and it was never the case of the Corporation that he had been re-employed as alleged in the writ petition. Not only this, the charges of serious misconduct stood proved in the departmental enquiry and the Tribunal has independently gone into the allegations of violation of principles of natural justice. He contends that the members of the checking party Mr. Saghir Ahmed and Sri Kehar Singh appeared as witnesses and led evidence to prove the charges against the petitioner. On the contrary, the petitioner heavily relying on the statement of one of the witnesses, did not produce the driver of the bus who could have possibly corroborated the stand taken by the petitioner about the request made by the petitioner to stop the bus or take it to the Police Station. He further submits that the claim of re-employment has been specifically denied in Paragraph 14 of the counter affidavit and he was put to strict proof about his reemployment.

5. Sri Sharma submits that under the Roadways Manual, the duties, functions and responsibilities of a conductor have been defined and he has to follow the principle of "Pay and Board". The petitioner had not issued tickets to 22 passengers and therefore having violated the said principle his punishment is justified. Learned Counsel relied on the decision in the case of Regional Manager, R.S.R.T.C. v. Ghanshyam Sharma, 2002 (92) FLR 12 (SC) and three other unreported judgments referred to in the written submissions.

6. The Labour Court itself has gone into the procedure of the enquiry proceedings and has itself considered the evidence on record. Hence to say that the Labour Court failed to discharge its obligations as provided u/s 6(2) (A) of the U.P. Industrial Disputes Act, is an argument in futility.

7. Sri Sinha reiterating his stand in rejoinder has also filed written submissions.

8. Having considered the aforesaid arguments and having perused the records, the contention, that the Tribunal did not discharge its duty in probing into the matter itself does not appear to be correct. The award categorically records every fact that was brought before the Enquiry Officer and it has been independently assessed. Not only this, the Labour Court has also taken notice of a document which was filed by the petitioner alleged to have been signed by some of the passengers protesting that they would pay 50 Paise and not Rupee One, which was refused by the petitioner. This was also informed to the Checking Officer.

9. The Labour Court has come to the conclusion that the document itself indicates that 22 passengers themselves were prepared to pay at the rate of 50 Paise when the rate was Rupee One per passenger. This fact establishes that these passengers were ticket-less, from Samota to Secundrabad, which needs no further proof.

10. The Labour Court has further concluded that on this evidence, it was the duty of the petitioner to have established facts to the contrary which he failed to do, and the defence taken by him that he asked the driver to stop the bus could not be proved in the absence of the production of the driver who was the most important witness. It is therefore clear that the Tribunal has gone into the evidence on record and this is not a case of no evidence having been either discussed or enquiry having been probed by the Tribunal itself.

11. The contention raised that the Labour Court did not frame a formal issue of enquiry for appraising the findings recorded by the Recording Officer, is therefore, of no avail when the said issue has been dealt with in detail and the evidence has been taken into account.

12. Apart from this, the plea of violation of principles of natural justice would not be available, inasmuch as, before the Labour Court the petitioner had led his evidence and he had been given full opportunity to do so. Even though, there was no such deficiency before the Enquiry Officer, nonetheless the petitioner had the opportunity to lead his evidence which has been considered and findings have been recorded by the Tribunal.

13. One of the major arguments advanced by Sri Sinha is about the status of re-employment. Even if it is assumed that the petitioner was re-employed, then too even as explained by Sri Sharma the principle of "Pay and Board" having been violated during the course of his employment had to be explained. This charge was brought forth when the petitioner was in employment.

14. Even if the petitioner was re-employed, the same does not amount to condoning the earlier misconduct, inasmuch as, the sequence of re-employment does indicate that the petitioner's services were continued by the employer on his request. His capacity of employment even though may have remained temporary yet his misconduct was in relation to his employment and therefore the alleged break in between would in no way condone the petitioner of his misconduct. As a matter of fact, such a misconduct would not entitle him for reemployment.

15. Accordingly, in the opinion of the Court, there is no merit in the petition. It is accordingly dismissed.