

Rani Devi and ors Vs. D.T.C. and anr.

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Court : Delhi

Decided On : Aug-26-2013

Judge : A. K. Pathak

Appellant : Rani Devi and ors

Respondent : D.T.C. and anr.

Judgement :

\$~18 * IN THE HIGH COURT OF DELHI AT NEW DELHI + W.P.(C) 6749/2012
Decided on 26th August, 2013 RANI DEVI AND ORS Through Petitioners : Mr. Sudhansu Palo, Adv. versus D.T.C. AND ANR. Through Respondents : Ms. Manisha Tyagi, Adv. CORAM: HON'BLE MR. JUSTICE A.K. PATHAK A.K. PATHAK, J.

(ORAL) 1. Petitioners are legal representatives of Late Shri Mam Chand workman, who was working as a Bus Conductor with the respondents right from 1976. Workman died during the proceedings before Labour Court and the petitioners were brought on record.

2. Workman raised an industrial dispute with the labour department, which was referred to Labour Court by the Secretary (Labour), Government of N.C.T. of Delhi with the following terms of reference: Whether the punishment order of removal of Sh. Mam Chand from his service imposed by the management vide order dated 1.7.92 is illegal and unjustified and if so, to what relief is he entitled and what

directions are necessary in this respect? 3. Workman was removed from service vide order dated 1st July, 1992 passed by the respondents, after holding an enquiry on the charges that on 14th September, 1991, while working as Conductor, workman had collected fare from 21 passengers but did not issue tickets to them. During the raid, 21 passengers were found travelling in bus without ticket. Workman alleged that he had unblemished record of service and was removed from service illegally. Enquiry was not conducted in a fair manner, inasmuch as principles of natural justice were violated. Enquiry Officer was subordinate to the competent authority and had acted mechanically with a biased mind. Only interested witnesses were examined, who were not competent to depose about the incident. No independent witness, much less the passengers was examined. He was charge-sheeted on the basis of a false story fabricated by the checking staff.

4. In the written statement, respondents denied averments made in the statement of claim. It was stated that on 14th September, 1991 checking staff found 21 passengers travelling without ticket in the bus on which workman was on duty as a Conductor. Workman was charge-sheeted rightly for his misconduct. Enquiry was conducted in a fair and proper manner, wherein workman was given full opportunity to defend himself.

5. Industrial Adjudicator framed following issues on 9 th November, 2001:(i) Whether a proper and fair enquiry was not conducted in accordance with principles of natural justice? (ii) 6. As per terms of reference. Vide order dated 14th September, 2006 Industrial Adjudicator decided first issue in favour of respondent. It was held that enquiry was conducted in a fair and proper manner, inasmuch as, principles of natural justice were duly followed. Workman was afforded full opportunity to defend himself. Accordingly, vide Award dated 4th October, 2006 it was held that workman was not entitled to any relief. It was held that workman was found guilty of allowing about 21 passengers to travel in the bus without ticket after collecting the fare from them.

7. I do not find the view taken by the Industrial Adjudicator to be perverse or suffering from any error of law or jurisdiction. Findings of facts returned by the

Industrial Adjudicator are not based on no evidence. There is no gainsaying that scope of interference in the award passed by the Industrial Adjudicator by the High Court in exercise of its power of judicial review under Article 226 of the Constitution of India, is limited. High Court has not to re-appreciate the evidence to take a view other than what has already been taken by the Industrial Adjudicator upon scrutiny of evidence. In case award is based on no evidence, the High Court would step in. High Court will also interfere with an award in case it is shown that it suffers from manifest error of law. An award based on same evidence cannot be interfered. Industrial Adjudicator has returned a categorical finding that there was no violation of principles of natural justice. Workman was given ample opportunity to defend himself. During the enquiry, he was asked to avail assistance of his co-workers but he declined. Witnesses examined by the respondents, were duly cross-examined by the workman. His closing statement was also taken separately. Shri Raj Singh, Traffic Inspector has categorically stated that there were 21 passengers found travelling without ticket and they told that they had paid full fare to the Conductor. Other witnesses had also corroborated this statement. Workman had also failed to specify any document, if any, supplied to him. By placing reliance on Delhi Transport Corporation vs. N.L. Kakkar &Anr. 2004 LLR 449.Delhi High Court, it was held that examination of passengers in such cases is not necessary as it is highly impractical to trace them during the enquiry. Industrial Adjudicator negated the plea of workman that enquiry was vitiated, since it was held by a subordinate officer to the competent authority. Reliance was placed on Divisional Manager, Plantation Division, Andaman & Nicobar Islands vs. Munnu Barrick and Others, 2005 I LLJ, Supreme Court 557. The misconduct was serious in nature. It was his duty to issue tickets, collect fare from the passengers and deposit the same with respondent. Petitioner violated the trust reposed in him by the respondent, thus, misconduct was grave in nature thus, punishment of removal was justified and was not disproportionate to the misconduct of workman. Reliance was placed on Divisional Controller, N.E.K.R.T.C. vs. H. Amaresh, 2006 VII AD (SC) 474 and Regional Manager, U.P.S.R.T.C., Etawah & Ors. Vs. Hoti Lal & Anr. 2003 LLR 344.to conclude that punishment was not disproportionate to the misconduct of workman.

8. I do not find any perversity in the view taken by the Industrial Adjudicator. Merely because Enquiry Officer was subordinate to the competent authority by itself would not be sufficient to vitiate the enquiry in absence of any specific allegation of bias against him. As regards to nonproduction of passengers, the same is also of no consequence. Traffic Inspector was duly examined. Findings returned by the Industrial Adjudicator cannot be said to be based on no evidence nor the petitioners counsel could point of any error of law or jurisdiction. Workman was found guilty of misappropriation of funds of the respondents and his misconduct is serious in nature. Thus, it cannot be said that the punishment of termination was disproportionate to his misconduct.

9. In Regional Manager, RSRTC vs. Ghanshyam Sharma, (2002) 10 SCC 330.it was held that the proved acts of misconduct either to a case of dishonesty or of gross negligence by bus conductors who by their actions and inactions cause financial loss to the Corporation ought not to be retained in service. In Karnataka SRTC vs. B.S. Hullikatti (2001) 2 SCC 574.it was held that misappropriation of funds to the tune of `360.95 by the delinquent employee was found to be sufficient to impose punishment of termination from service. In Divisional Controller, KSRTC (NWKRTC) vs. A.T. Mane (2005) 3 SCC 254.the Supreme Court held thus, when a person is found guilty of misappropriating the Corporations funds, there is nothing wrong in the Corporation losing confidence or faith in such a person and awarding punishment of dismissal. In Hoti Lals case (supra), it was held that penalty of dismissal from service of a Conductor was found justifiable facts as he allowed 16 passengers to travel without ticket after receiving fare from them.

10. In the light of the above discussions, I do not find any merits in this writ petition and the same is dismissed. A.K. PATHAK, J.

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