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Court : Madhya Pradesh

Decided On : Mar-01-1990

Reported in : 1990MPLJ653

Judge : Faizanuddin and ;P.C. Pathak, JJ.

Acts : Madhya Pradesh Industrial Relations Act, 1960 - Sections 107A;
[Constitution of India](#) - Articles 226 and 227

Appeal No. : Misc. Petition No. 2063 of 1987

Appellant : Devkinandan Tiwari

Respondent : State Industrial Court and ors.

Advocate for Def. : A.G. Dhande, Adv. for respondent Nos. 2 and 3

Advocate for Pet/Ap. : P.D. Pathak, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Faizanuddin, J.

1. The petitioner was employed as a Conductor in Madhya Pradesh State Road Transport Corporation, respondent No. 2 (hereinafter referred to as 'respondent

Corporation'). On 10-9-1983 when Bus No. 8093 belonging to the respondent Corporation in which the petitioner was on duty as Conductor on Kishangarh-Harpalpur route, was checked at about 9-15 a.m. by the Flying Squad of the respondent-Corporation and it was found that out of 53 total passengers, the respondent (petitioner herein) was carrying 20 passengers without tickets in the said bus. The checker realised double fare from the said 20 passengers and issued tickets to them, The petitioner was charge sheeted for the aforementioned misconduct and domestic enquiry was held against him. The petitioner took the defence that those 20 passengers had just boarded the bus at the place where chekers arrived and checked the bus. In the domestic enquiry, the Enquiry Officer on appreciation of evidence rejected the defence set up by the petitioner and recorded the conclusion that the misconduct was fully. established and the petitioner was found guilty for carrying 20 passengers without tickets. Consequently, by order dated 17th December, 1983 (Annexure-IV) the petitioner was dismissed from service. The petitioner challenged the domestic enquiry as well as the order of his dismissal before the Labour Court under section 31(3) of the M. P. Industrial Relations Act, 1960. The Labour Court did not find any error or defect in the domestic enquiry and found that it was just and proper but took the view that the punishment of dismissal from service awarded to the petitioner was harsh and excessive. In the opinion of the Labour Court, the punishment of withholding back wages and a fine of Rs. 100/- (Rs. One Hundred) would be adequate punishment in the facts and circumstances of the case. The Labour Court, therefore, directed reinstatement of the petitioner without back wages and also imposed a fine of Rs. 100/-. The respondent Corporation preferred an appeal under section 65 of the M. P. Industrial Relations Act before the State Industrial Court. The Industrial Court by its judgment dated 20th April, 1987 (Annexure VIII) set aside the order of the Labour Court and restored the order of dismissal from service of, the petitioner passed by 'the appropriate authority of respondent-Corporation holding that the misconduct established against the petitioner was of a grave and serious nature and there was no scope for any interference with the punishment. It is this order passed by. the State Industrial Court (Annexure-VIII) which has been challenged in this petition.

2. Learned counsel for the petitioner first contended that the Labour Court in exercise of its powers under section 107-A of the M. P. Industrial Relations Act, had found the punishment of dismissal from service as harsh and excessive and, therefore, it was justified in reinstating the petitioner withholding the back wages and imposing fine of Rs. 100/- as punishment, with a view to give an opportunity to the petitioner to improve himself in future. Relying on the decisions in the case of Management of Hindustan Machine Tools Ltd. v. Mohd. Usman. AIR 1984 SC 321. Ved Prakash Gupta v. M/s. Delton Cable India (P.) Ltd. AIR 1984 SC 914. Jitendra Singh Rathore v. Shri Baidynath Ayurved Bhawan Ltd., AIR 1984 SC 976. and Scooter India Ltd. v. Labour Court. Lucknow, AIR 1989 S.C. 149, it was urged that there was no justification or any propriety for the Industrial Court to interfere with the punishment awarded by the Labour Court. It is clear from the decision referred to above, that in the case of Mohd. Usman (supra) the Labour Court after considering the nature of misconduct, held that the punishment of termination of service was disproportionately heavy and, therefore, reduced the punishment to stoppage of the increments for two years. But from the facts of the aforesaid case, it is not clear as to what was the nature of misconduct said to have been committed by the employee by reason of which a lenient view in respect of award of punishment was taken. In the case of Ved Prakash (supra), the industrial employee was dismissed on a charge of abusing to some workers and Officers of the Management and it was on these facts that the charge was found not to be serious one so as to result in total loss of confidence of the Management and, therefore, punishment of dismissal was held to be disproportionate. Similarly, the facts in the case of Jitendra Singh (supra) are also distinguishable from the facts of the present case. In the case of Scooter India Ltd. (supra), the misconduct said to have been committed was rough behaviour, bordering only on rudeness and it was for this reason that the punishment of dismissal from service was substituted by the Labour Court by punishment of withholding of 75 percent back wages. Thus, on facts the decisions relied on by the learned counsel for the petitioner are distinguishable, while in the instant case having regard to the gravity and seriousness of misconduct the interference by the Industrial Court cannot be said to be improper or unjustified.

3. It may be pointed out that relying on certain decisions of the Supreme Court, a Division Bench of this Court in *Vaidyanath v. M. P. State Road Transport Corporation*, 1974 MPLJ 671, 1975 JLJ 297 took the view that the punishment imposed by the Management when misconduct is proved in a proper domestic enquiry cannot be interfered with except in cases where it is so harsh as to suggest victimisation or unfair labour practice. Similarly in *Baldev Singh v. P. O.*, Labour Court, AIR 1987 SC 104 it was observed that when it is found by the Tribunal that the enquiry was held fairly and properly and there was no violation of principles of natural justice, the punishment of termination of service must be upheld. In the present case, in, the domestic enquiry held against the petitioner, the major misconduct of carrying 20 passengers without tickets was found to be fully established and the Labour Court also clearly found that the enquiry was held fairly and properly and the same was not vitiated by violation of any principles of natural justice and, therefore, there was no justifiable reason to interfere with the punishment of termination by the Management in a case where there were reasons to show that the Management had totally lost confidence in the petitioner. The respondent Corporation was satisfied from the conduct of petitioner that no confidence can be reposed in him. The facts prima facie indicated that the termination was neither colourable exercise of power by the employer nor an act of victimisation. But having found an established act of dishonesty which had shaken the confidence of the employer, the Industrial Court was justified in reversing the order of the Labour Court. The reasoning of the Labour Court in reducing the punishment on the ground that the petitioner should be given an opportunity to improve himself is ridiculous and fallacious. To afford a chance of improvement at the cost of the employer after an act of major misconduct of a grave and serious nature was established, would be very unfair and unreasonable from the point of view and interest of the employer. This misconduct in itself was sufficient to dispense with the service of the petitioner and it is not necessary to look to his past records. In the facts and circumstances of the case it could not be said that there was any lack of jurisdiction or want of jurisdiction in making the impugned order by the Industrial Court. We find no infirmity far less any illegality in the same.

4. At the risk of repetition it may be mentioned that when the Bus in which the petitioner was working as Conductor, was checked by the Flying Squad, as many

as 20 passengers were found without tickets in one trip for which the petitioner was charge-sheeted and domestic enquiry was held. In his reply to the charges levelled against him (Annexure 3) the petitioner admitted that while he was on duty as conductor, the bus was checked on 11-9-1983 but took the plea that the bus had halted at village Dharampura where the passengers boarded the bus and while it was so halting at village Dharampura, the checkers also arrived and checked the bus. This plea of the petitioner was found to be false in the domestic enquiry. At the time when 20 passengers were found travelling without tickets, the checkers had prepared a Panchnama marked as Ex. D.24, which was produced and relied on in the domestic enquiry as well as before the Labour Court. The said Panchnama (Ex. D.-24), admittedly bears the signature of the petitioner. The contents of Panchnama revealed that those 20 passengers who were found travelling without tickets had boarded the bus not at village Dharampura but at different places and the bus had covered a distance of 25 kms. when it was checked yet the petitioner had not issued tickets to any of them though he had more than sufficient time to do so. From the aforesaid facts what inference other than that of dishonest intention can be drawn.

5. Rule 12(1) and (d) of the M. P. Industrial Employment (Standing Orders) Rules, 1963 with which the petitioner is governed, amongst other things, contemplates that dishonesty in connection with the business or property of the undertaking or wilful disobedience of any lawful or reasonable order of a superior involving property shall amount to major misconduct. In this connection here a reference to G.M.O. 847 may also be made which requires a conductor to issue tickets to the passengers at the place where they board the bus. But in the present case, as seen above, the petitioner did not issue the tickets to 20 passengers even after the bus had travelled a distance of about 24 kms.

6. It was vehemently urged by the learned counsel for the petitioner that the petitioner had not received fare from the 20 passengers and, therefore, no inference of dishonest intention can be drawn against him but at best it would be a case of negligence amounting to minor misconduct only for which penalty of termination of service would be too harsh and excessive. The question, therefore, arises what is dishonesty, when and under what circumstances an inference of

dishonesty may legitimately be drawn. It may be noted that whoever does any thing with the intention of causing wrongful gain to one person or wrongful loss to another, it amounts to dishonesty. In other words the term 'dishonesty' is relatable to an advantage to which a party perpetrating a deceit is not legally entitled to. There can be no dispute that it is difficult to establish dishonesty by any direct evidence. The question whether a person had any dishonest intention or not while doing or omitting to do an act has to be judged and inferred from the facts and circumstances of each case. The intention is a internal and invisible act of mind which could be judged or ascertained only from external and visible acts. In our opinion, therefore, the mere fact that the conductor recovered or did not recover the fare from passengers would not by itself be enough and a deciding factor to draw an inference this way or that way but an inference of dishonesty has to be drawn on consideration of totality of all the attending facts and circumstances appearing in a given case. For example, if the bus had travelled only a very short distance from where the passengers boarded and the checkers arrived and the conductor was in process of issuing the tickets and in fact had issued tickets to some of them, then in that event inference of dishonesty may not be drawn and it may be regarded as an act of negligence or carelessness amounting to minor misconduct. But in a case as one in hand where the conductor was found carrying a large number of passengers without tickets, the bus had travelled a long distance and yet the tickets were not issued though the conductor had ample time to do so and the explanation given by the conductor/petitioner was found to be totally baseless and false, the inference of dishonesty would be reasonable and fully justified, as dishonesty may also be inferred from false accounting of fact or an incident, as well, as from absence of bona fides. The observation and experience enable the Court to judge intention from men's conduct and behaviour and there does not arise much difficulty in inferring from his conduct as to what was his real intention upon any given occasion.

7. It may also be pointed here that the expression that if the bus conductor had not recovered the fare from passengers found travelling without tickets, then the inference of dishonesty cannot be drawn, has in fact, instead of having the effect of improving the bus-conductor and discipline as honest employees of the Corporation, has on the contrary, provided them an inducement and a safeguard

inasmuch as they have now developed a practice not to recover the fare from passengers who are allowed to travel in the bus without tickets, at the time of their entrance in the bus or mid way but at the place where they step down from the bus at the end of their journey so as to evade and exclude the danger of being checked after recovery of fare and if ultimately checked, at some point then to come forward with the usual defence that since he had not recovered the fare no intention of dishonesty can be attributed to him and thus escape safely or at the most with a punishment for minor misconduct. Thus after engaging our serious thought and on overall consideration of the matter, we find that there is absolutely no merit in this petition and it deserves to be dismissed.

8. While parting with the petition it may not be out of place to mention that the very object of employing a conductor and giving charge of the bus on a particular route is to safeguard and promote the prospects and interest of the employer a public undertaking in its venture of transport business. The conductor is expected to be vigilant enough and see that no passengers travel without tickets. If the conductor is unable to discharge this sacred trust reposed in him by the employer and on the contrary deliberately permits as many as 20 passengers to travel without tickets in a single trip, then he does not deserve to be retained as conductor. One can well imagine the consequence when the protector or the care-taker himself starts eating away the fence. This Court is dealing day in and day out the cases of misconduct by bus conductors of respondent-Corporation for carrying passengers without tickets in varying numbers and the experience shows that this conduct of the bus-conductors is writ large with the result, the Corporation is sinking under the weight of losses incurred by it on various counts, the carrying of passengers without tickets being the major factor. Contrary to this, a private Bus-Operator in a short interval makes fortune out of the transport business and becomes multi-vehicle owner, out of a single transport vehicle, while the respondent-Corporation with a large fleet of transport buses spread over throughout the length and breadth of the State is running in losses, the reason is obvious.

9. In the result, the petition fails and is hereby dismissed but without any order as to costs.

