

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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W.P.(C) 8983/2003

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Date of decision: 1st July, 2010

HARYANA ROADWAYS

..... Petitioner

Through: Mr. Manish Bishnoi, Advocate.

Versus

SHRI LOCHAN SINGH

..... Respondents

Through: Mr. Praveen Sharma & Mr. D.M. Sharma, Advocates.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. Whether reporters of Local papers may be allowed to see the judgment? | NO |
| 2. To be referred to the reporter or not? | NO |
| 3. Whether the judgment should be reported in the Digest? | NO |

RAJIV SAHAI ENDLAW, J.

1. The petitioner in this writ petition impugns the award dated 17th January, 2003 of the Labour Court holding the termination by the petitioner of the services of the respondent workman to be bad for the reason of the domestic inquiry conducted prior to such termination being vitiated. The domestic inquiry was held to be vitiated in the earlier order dated 27th April, 2002 of the Labour Court for two reasons; firstly because the Inquiry Officer admitted that the respondent workman was not given the list of documents and was also not supplied the list of witnesses and secondly because the Inquiry Officer acted also, as the Presenting Officer. The award directs the petitioner to reinstate the respondent workman with full back wages and continuity of service.

2. The respondent workman was employed with the petitioner as a conductor. On 16th May, 1987 the bus of the respondent workman was checked by inspectors of the petitioner at Ambala Cantt and it was found that the respondent workman had from four of the passengers charged Rs.25/- only against the prescribed fare of Rs.35.50p and issued tickets to them of Rs.18/- only. Two other passengers were found sleeping on the roof and claimed to be there with the permission of the respondent workman. The respondent workman was as such charged with causing loss to the petitioner of the fare of a total sum of Rs.75.50p and having embezzled the same. The explanation of the respondent workman having not been found satisfactory, an Inquiry Officer was appointed. The respondent workman participated in the inquiry; the Inquiry Officer submitted a report finding the charges to have been made out and the Disciplinary Authority of the petitioner imposed the punishment of dismissal from service on the respondent workman. The respondent workman thereafter raised a dispute and on which the award aforesaid was made.

3. The petitioner, aggrieved from the award preferred the present petition. This Court vide *ex parte* order dated 23rd April, 2004 while issuing notice of the petition stayed the operation of the award subject to the petitioner depositing with the Asstt. Labour Commissioner the amount sought to be recovered; however the amount was not permitted to be disbursed to the respondent workman. The respondent workman applied under Section 17B of the ID Act and vide order dated 22nd March, 2006 the said application was allowed.

4. The only question requiring adjudication is with respect to the finding of the Labour Court of the domestic inquiry preceding the termination of the services of the respondent workman being vitiated for the two reasons aforesaid. It being the contention of the petitioner that the finding of the Labour Court of the list of documents and list of witnesses having not been supplied to the respondent workman is contrary to the record, the file of the Labour Court was also requisitioned and has been perused.

5. The respondent workman before raising the dispute had also preferred a departmental appeal, though to the wrong authority. The memorandum of the said appeal is found on the file of the Labour Court. In the said departmental appeal, though the respondent workman had complained about non-supply of the report of the Inquiry Officer but is not found to have complained of non-supply of list of documents or list of witnesses accompanying the chargesheet. Only, generally it has been stated that the inquiry has not been done in accordance with the principles of natural justice.

6. I have also perused the claim petition filed by the respondent workman before the Labour Court. There is no complaint therein also, of the list of documents & list of witnesses accompanying the chargesheet having been not supplied to the respondent workman. The respondent workman has however complained that the day to day proceedings of the inquiry were not given to him and the report of the Inquiry Officer had also not been given to him.

7. I have also perused the affidavit by way of examination-in-chief of the respondent workman before the Labour Court. The position therein is also the

same. Though, it has been deposed that the day to day proceedings of the inquiry and the inquiry report were not supplied but there is no grievance of non-supply of list of documents and list of witnesses accompanying the chargesheet.

8. Though strict rules of pleadings and evidence do not apply to the proceedings before Industrial Adjudicator but in the face of the respondent workman making express grievance of non-supply of day to day proceedings of the inquiry and the report of the Inquiry Officer, had the list of documents and list of witnesses accompanying the chargesheet been not supplied to the respondent workman and/or had the respondent workman considered himself prejudiced therefrom, grievance in that respect would also have certainly been made. When the respondent workman has neither in his pleadings nor in his evidence complained of non-supply of list of documents and list of witnesses accompanying the chargesheet, the Labour Court, of its own, ordinarily ought not to have held the inquiry to be vitiated on the said ground.

9. Interestingly, the respondent workman in his cross examination admitted that his bus was checked as aforesaid; that he had participated in the inquiry proceedings and had also examined one witness therein.

10. The petitioner examined the Inquiry Officer as its witness before the Labour Court. The said Inquiry Officer in his cross examination deposed "As per the record no list of documents was given to the workman along with the chargesheet. Copies of the documents were not supplied to the workman before conducting inquiry as same are not given as a practice. I cannot tell whether copies of the documents given during the inquiry to the workman or not". The earlier

Inquiry Officer was also examined as a witness and similarly deposed that he did not give any list of documents, list of witnesses and documents to the workman before or during the inquiry. The Labour Court on the basis of the said cross examination reached the conclusion of the list of documents and list of witnesses accompanying the chargesheet having not been supplied and the inquiry being vitiated for the said reason.

11. The counsel for the petitioner in this regard has drawn attention to the chargesheet which has been signed by the respondent workman at the bottom in token of receipt. It is also shown that the list of witnesses is contained at the bottom of the chargesheet itself and as such the question of non-furnishing thereof to the respondent workman does not arise. He also draws attention to the reply by the respondent workman to the chargesheet and which also does not complain of non-furnishing of list of documents or list of witnesses. Attention is also invited to the notice sent by the Inquiry Officer of hearing to the respondent workman and wherein also the names of witnesses are mentioned. It is urged that the respondent workman not only cross examined the witnesses of the petitioner but produced his own witnesses before the Inquiry Officer and all of which would not have been done had the respondent workman been not fully aware of the scope of the inquiry and the case/charge against him.

12. I may add that the perusal of the Labour Court record also shows that the respondent workman was represented by legal practitioners.

13. The counsel for the petitioner has also contended that the Inquiry Officer is not required to furnish the list of witnesses and documents accompanying the

chargesheet to the delinquent workman unless demanded from the Inquiry Officer in as much as the chargesheet is served on the delinquent workman prior thereto. It is urged that thus the statement in cross examination of the Inquiry Officer of having not supplied/delivered list of documents and list of witnesses is of no avail; if the same had not been delivered, the respondent workman would have demanded the same from the Inquiry Officer. It is also contended that in three years' service, 17 warnings had been meted out to the respondent workman. Reliance is placed on:-

- i. ***Karnataka State Road Transport Corporation Vs. B.S. Hullikatti***
AIR 2001 SC 930 laying down that misplaced sympathy in cases when, on checking, the bus conductors are found to have either not issued tickets or having issued tickets of lower denomination should not come in the way of meting out appropriate punishment;
- ii. ***U.P.State Road Transport Corporation Vs. Ram Chandra Yadav***
2000 VII AD (S.C.) 304 laying down that rules of natural justice are not violated by examination of witnesses on an unscheduled date, particularly when the names of such witnesses were already known from prior thereto.

14. The counsel for the respondent has per contra urged that the finding of the list of documents and list of witnesses having not been supplied is a finding of fact and incapable of interference in the exercise of writ jurisdiction. Reliance is placed on ***Filmistan Exhibitors Ltd. v. N.C.T., thr. Secy. Labour*** 131 (2006) DLT 648.

15. The finding of the Labour Court of the domestic inquiry being vitiated for the reason of non-supply of list of documents and list of witnesses is in the aforesaid facts and circumstances found to be perverse. The Labour Court has not at all considered that neither was any grievance made by the respondent workman in this regard nor was it the case of the respondent workman. The proceedings before an Industrial Adjudicator, even though not governed by technical rules of Civil Procedure Code and Indian Evidence Act, nevertheless are judicial proceedings. A party ought to know what case it is required to meet of the other. Without the petitioner knowing that the domestic inquiry was challenged for the said reason, an answer in cross examination to a stray question cannot form the basis of the order/award of the Labour Court. The petitioner in the present case did not produce any evidence to establish that the list of documents and list of witnesses had been furnished. The Inquiry Officers were examined not in proof of the said fact but to prove the proceedings in the inquiry. There is merit in the contention of the counsel for the petitioner that the chargesheet had been delivered to the respondent workman prior to the Inquiry Officers coming into picture and the answer of the Inquiry Officer of having not delivered the list of documents and list of witnesses cannot mean that the list of documents and list of witnesses accompanying the chargesheet were not delivered to the respondent workman. The said reasoning given by the Labour Court is thus set aside.

16. The only other ground on which the inquiry has been held to be vitiated is that of the Inquiry Officer also acting as the Presenting Officer. The counsel for the petitioner relies on the Division Bench judgment of this Court in ***Ramesh Chand Vs. DTC*** 2007 (96) DRJ 399, where also an argument was raised of the

inquiry being vitiated in the absence of the Presenting Officer. The Division Bench found that no such contention was ever raised at any stage prior thereto before the Labour Court or the Single Judge and held that the plea being factual and no foundation therefor having been made could not be permitted to be taken at the stage of argument of the appeal. Reliance was placed on *Workmen in Buckingham & Carnatic Mills, Madras Vs. Buckingham & Carnatic Mills, Madras* 1970 (1) LLJ 26 SC holding that principles of natural justice are not violated when the Presiding Officer asks questions, elicits answers and clarifications from the witnesses.

17. A domestic inquiry is an inquisitorial and not adversarial proceeding. The Inquiry Officer is not to weigh the case of two sides and to adjudicate which one of them is right, but to enquire whether the charge against the delinquent workman is made out or not. In the absence of any plea of bias, the admission of the Inquiry Officer in cross examination, and which Inquiry Officer is also a colleague and has fraternity affiliations to the respondent workman, that there was no Presenting Officer and he was acting in both the capacities cannot vitiate the inquiry.

18. Again, it was not the case of the respondent workman that the domestic inquiry was vitiated for this reason. The Labour Court has also not recorded any prejudice to have been caused to the respondent workman for the said reason. Even if the Inquiry Officer acted as the Presenting Officer, in so far as the same has not resulted in any prejudice to the respondent workman, the said factor cannot be held to have vitiated the inquiry.

19. The award of the Labour Court, on this account also, is thus found to be perverse and contrary to the settled legal position.

20. Though the counsel for the respondent workman has during the hearing also contended that the Inquiry Officer did not examine the passengers but since the same does not form the basis of the award, need is not felt to go into the said aspect. Moreover in *State of Haryana Vs. Rattan Singh* AIR 1977 SC 1512 followed in *Divisional Controller, KSRTC Vs. A.T. Mane* (2005) 3 SCC 254 and *DTC Vs. N.L. Kakkar, Presiding Officer* MANU/DE/0135/2004, the Courts have held that there are inherent practical difficulties in examination of passenger witnesses; that the production of passengers either in a domestic inquiry or before the Labour Court in an industrial dispute is not at all necessary and their non examination cannot be fatal.

21. The respondent workman in the present case has not made out any case of victimization/motives on the part of the petitioner to be wanting to remove him from the services. The disciplinary proceedings against the respondent workman commenced pursuant to an inspection of the bus of the respondent workman and there is no reason for this Court to not believe the same. Once the same is to be believed, the finding of the Inquiry Officer against the respondent workman cannot be disturbed particularly when the principles of natural justice are found to have been complied with.

22. The petition is allowed. The award 17th January, 2003 is set aside/quashed. The domestic inquiry conducted prior to the order of termination of the respondent workman is found to be valid and legal and in compliance of the principles of natural justice. Resultantly, the termination of services of the respondent workman

is found to be legal and justified and the respondent workman is not found entitled to any relief.

The petition is disposed of.

No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

1st July, 2010
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