SUPREME COURT OF INDIA

Divisional Controller, KSRTC (NWKRTC)

Vs.

A.T. Mane

C.A.No.1720 of 2002

(N. Santosh Hegde and S.B.Sinha JJ.)

27.09.2004

JUDGMENT

N.Santosh Hegde, J.

1. The appellant by way of special leave petition is challenging the judgment of the High Court of Karnataka whereby the High Court dismissed the writ appeal filed by the appellant-corporation confirming the judgment of the learned single Judge as well as the award of the Additional Labour Court Hubli whereby the appellant-corporation was directed to reinstate the respondent in service with fill back wages and continuity of service and other consequential benefits. Brief facts necessary for the disposal of the case are as follows:-

2. The respondent was working as a conductor in the Chikodi depot of the appellant-corporation. On 31st May 1999 when the bus in which he was on duty returned back to the depot after its trip from Haragiri to Chikodi on a surprise check he was found be in possession of unaccounted money of Rs.93/- over and above the amount equivalent to the tickets issued by him. Under Regulation applicable to the respondent, the respondent was not to carry more than Rs. 5/- as his personal money while on duty so as to obviate the defence of the delinquent conductors that the excess money was their personal money. Basing on these facts the appellant drew an inference that this excess amount of Rs. 93/- was the amount collected by the respondent from the passengers without issuing any tickets or issuing tickets of lesser denomination than that was issued. On the said investigation report, the departmental enquiry was instituted against the respondent and having found guilty of the said charge, the disciplinary authority awarded the punishment of dismissal.

3. Being aggrieved by the said order, respondent preferred a claim before the Additional Labour Court, Hubli praying for setting aside the order of dismissal and for reinstatement with consequential benefits. The Labour Court after hearing the parties concerned came to the conclusion that the inquiry conducted by the management was fair and proper. However, it came to the conclusion that the only charge against the respondent was being in possession of Rs.93/- which was in excess of the sale of tickets, no presumption could be drawn that it was on amount received by non-issuance of tickets to passengers. It held that the corporation

ought to have examined the passengers from whom such amount was collected without issuing tickets or issuing tickets of lesser denomination. Since, the same was not done, the Labour Court came to the conclusion that the order of dismissal was uncalled for and as also highly disproportionate compared with the smallness of the amount. Hence, it made the award directing the reinstatement of the respondent with full back wages and continuity of service and other consequential benefits.

4. As stated above, aggrieved corporation preferred a writ petition before the High Court of Karnataka. The learned single Judge who heard the writ petition agreed with the Labour Court that since the corporation failed to examined the passengers from whom the said excess amount was collected, the charge of non-issuance of tickets or issuance of tickets of lesser denomination could not be upheld. The learned single Judge also agreed with the Labour Court that the punishment awarded was also excessive however it thought fit to reduce the back wages to 75% as compared to the full back wages awarded by the Labour Court.

5. On appeal filed against the said judgment before the Division Bench of the High Court of Karnataka came to be dismissed by the Division Bench on two grounds firstly it held that there was a delay of 16 days in preferring the appeal. However, the court observed that it would have certainly condoned the said delay had there been any merit in the appeal. Having said so the Division Bench held that do not find any merit in the appeal and agreed with the single Judge that the order of reinstatement with reduced back wages was a just order.

6. In this appeal, the Shri R.S. Hegde learned counsel appearing for the appellant corporation contended that the Labour Court having come to the conclusion that the inquiry was just and fair could not have come to the conclusion that it was necessary for the corporation to have examined the passengers for the purpose of establishing its charge against the respondent. He also contended that the corporation had produced before the Labour Court a list of prior such misconduct committed by the respondent on similar charges. A copy of the said list is annexed to this appeal as annexure P-1 wherein it is noticed the respondent prior to the order of dismissal in this case was charged number of times for offences of non-issuance of tickets or issuance of tickets of lesser denomination and collecting the correct fare from the passengers and not remitting the same to the corporation. The list shows for the above said offences the respondent has been given various punishments including censure, reprimand, fine, stoppage of increment etc. Learned counsel also submitted that the view of the Labour Court and the learned single Judge that the misconduct alleged against the respondent could only be established by the examination of passengers is impracticable because as in the present case and quite often the misconduct comes into light only when the vehicle comes back to the depot after dropping the passengers and at the time of depositing the collection for the day if surprise check is made at that time and such misconduct is detected and it is next to impossible for the corporation to trace the passengers and bring them before the inquiry officer to establish their case that is why the corporation has from its regulation made it mandatory that the conductor should at no point of time carry more than Rs.5/- as their personal money and if they are found in excess of that same will indicate that the excess money in question was collected by non-issuance of tickets or issuance of tickets of lesser

denomination. In such circumstances, it was not necessary or possible for the appellant-corporation to have examined the passengers to establish the guilt of the respondent. He also submitted that the finding of the Labour Court and the learned single Judge that the punishment is disproportionate to the misconduct is wholly misconceived. Learned counsel relied on a judgment of this Court in support of this contention of his in the case of Karnataka State Road Transport Corpn. vs. B.S. Hullikatti. That was also a case where a conductor concerned had committed similar misconduct 36 times prior to the time he was found guilty and bearing that fact in mind this Court held thus:-

> "Be that as it may, the principle of res ipsa loquitur, namely, the facts speak for themselves, is clearly applicable in the instant case. Charging 50 paise per ticket more from as many as 35 passengers could only be to get financial benefit, by the Conductor. This act was either dishonest or was so grossly negligent that the respondent was not fit to be retained as a Conductor because such action or inaction of his is bound to result in financial loss to the appellant corporation."

7. On the above basis, the Court came to the conclusion that the order of dismissal should have been set aside. In our opinion, the facts of the above case and the law down therein applies to the facts of the present case also.

8. The fact the respondent was carrying Rs.93/- in excess of the amount is a fact proved. This itself is a misconduct over and above that the courts below ought not to have insisted on examination of the passengers. Since the respondent did not have any explanation for having carried the said excess amount, this omission also is was sufficient to hold the respondent guilty.

9. This Court in the case of State of Haryana & Anr. vs. Rattan Singh which is also a case arising out of non-issuance of ticket by a conductor held thus:-

> "In a domestic enquiry all the strict and sophisticated rules of Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible, though departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Evidence Act. The essence of judicial approach is objectivity, exclusion of extraneous materials or considerations, and observance of rules of natural justice. Fair play is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment, vitiate the conclusion reached, such a finding, even of a domestic tribunal cannot be held to be good. The simple point in all these cases is, was there some evidence or was there no evidence - not in the sense of the technical rules governing Court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny by court, while absence of any evidence in support of the finding is an error of law apparent on the record and the court can interfere with the finding.

* In the present case evidence of the inspector is some evidence which has relevance to the charge and the courts below had misdirected themselves in insisting on the evidence of ticketless passengers. Also merely because the statements were not recorded. the order for termination cannot be invalid. In fact, the inspector tried to get their statements but the passengers declined. Further, it was not for the court but the tribunal to assess the evidence of the conductor."

10. From the above it is clear once a domestic tribunal based on evidence comes to a particular conclusion normally it is not open to the appellate tribunals and courts to substitute their subjective opinion in the place of the one arrived at by the domestic tribunal**.** In the present case, there is evidence of the inspector who checked the bus which establishes the misconduct of the respondent. The domestic tribunal accepted that evidence and found the respondent guilty. But the courts below misdirected themselves in insisting on the evidence of the ticketless passengers to reject the said finding which, in our opinion, as held by this Court in the case of Rattan Singh (supra) is not a condition precedent. We may herein note that the judgment of this Court in Rattam Singh's (supra) has since been followed by this Court in *Devendra Swamy vs. Karnataka State Road Transport Corporation*[1].

11. Since the only ground on which the finding of the domestic tribunal has been set aside being the ground that concerned passengers are not examined or their statement were not recorded, in spite of there being other material to establish the misconduct of the respondent, we are of the opinion, the courts below have erred in allowing the claim of the respondent. In our opinion, the ratio laid down in the above case of Rattan Singh (supra) applies squarely to the facts of this case.

12. In the instant case also there is the evidence of the inspector who conducted the checking which establishes the misconduct of the respondent based on which a finding was given that the respondent was guilty of the misconduct alleged. Based on the said finding, the disciplinary authority has punished the respondent by an order of dismissal. But the Labour Court, and the learned single Judge rejected the said finding and set aside the punishment imposed solely on the ground that the evidence of the passengers concerned was not adduced and their statements were not recorded by the inspector which as stated in the Rattan Singh's case is not a condition precedent. Therefore, we are of the opinion that the courts below have erred in interfering with the finding of fact on an erroneous basis.

13. Coming to the question of quantum of punishment, one should bear in mind the fact that is is not the amount of money misappropriated that becomes a primary factor for awarding punishment, on the contrary, it is the loss of confidence which is the primary factor to be taken into consideration. In our opinion, when a person is found guilty of misappropriating corporation's fund, there is nothing wrong in the corporation losing confidence of faith in such a person and awarding a punishment of dismissal.

14. This Court in the case of B.S. Hullikatti (supra) held in a similar circumstances that the act was either dishonest or was so grossly negligent that the respondent therein was not fit to

be retained as a conductor. It also held that in such cases is no place for generosity or misplaced sympathy on the part of the judicial forums and thereby interfere with the quantum of punishment.

15. As noted above, the Division Bench of the High Court did not dismiss the petition on the ground of delay but held it is not worthwhile condoning the delay because there was no merit in the appeal. Since, we have come to the conclusion that the findings of the Labour Court and that of the learned single Judge are unsustainable in law, the finding of the Division Bench also is liable to be set aside.

16. For the reasons stated above, this appeal succeeds. Impugned orders are set aside. We restore the dismissal order made by the disciplinary authority against the respondent herein. The appeal is allowed accordingly.

[1]*2000 (9) SCC 644*