

# SUPREME COURT OF INDIA

Depot Manager, APSRTC

Vs.

B. Swamy

C.A.No.1766 of 2007

(B.P. Singh and P.K. Balasubramanyan JJ.)

03.04.2007

## ORDER

Special Leave granted.

It is not in dispute that on 23rd May, 2000 the respondent was a conductor performing his duties as Conductor in the bus belonging to APSRTC. When the vehicle was checked, it was detected that 16 illiterate lady passengers had been issued tickets of 0.50 paise denomination instead of Rs.4/-. The respondent is alleged to have collected an extra amount from each of them which he pocketed. The checking staff had recorded the statement of the passengers whereafter a charge memo was issued to the respondent. After holding an inquiry, the management removed the respondent from service.

The respondent moved the Labour Court under Section 2A(2) of the Industrial Disputes Act, 1947 for setting aside the order of removal from service passed by the Management. The Labour Court on a perusal of the evidence on record concluded that 16 lady passengers had in fact been given tickets of lower denomination of 0.50 paise each instead of Rs.4/-. Had there been no checking of the vehicle, the respondent would have pocketed Rs.52/- without being detected. It did not find any substance in the submission of the respondent that since the bus was over loaded he had issued those tickets under a mistake. Negating the contention of the respondent, the Labour Court held that the management having reposed confidence in the respondent as a conductor, since it found that he was not performing his duties with honesty and sincerity, it was justified in removing him from service. If such acts on the part of conductors are condoned, the ultimate sufferer will be the APSRTC.

The Labour Court also took into account the fact that this could not be an accidental slip in issuing tickets of lower denomination because such tickets were not issued to one or two passengers but to as many as 16 passengers. Considering all aspects of the matter, the Labour Court held that the misconduct was proved and the management was justified in removing the respondent from service.

The order of the Labour Court was impugned by the respondent before the High Court of Andhra Pradesh at Hyderabad in Writ Petition No. 25369 of 2004. The learned Judge after hearing the parties dismissed the writ petition filed under Article 226 of the Constitution of India and upheld the findings of the Inquiry Officer. The learned Judge also noticed that the respondent had not examined himself to establish that the findings of the Inquiry Officer were bad or perverse. He found no basis in the allegation that the proceeding conducted by the Inquiry Officer was not fair. The Writ Petition

was, therefore, dismissed.

The respondent thereafter preferred Writ Appeal No.1484 of 2005. The Division Bench which heard the appeal has virtually disposed it of in one paragraph which reads as follows :-

"Having heard the learned counsel on either side and on perusal of the material available on record, it is seen that the appellant is a senior employee and the incident appears to be an accidental one in his entire service. Nothing was brought on record by the respondents to show that at any time the appellant was involved in such irregularity. Having regard to the same and especially in view of the 16 passengers overloaded the bus, we feel that the order of termination is quite unjustified and gave excess gravity to the offence.

The Writ Appeal is accordingly partly allowed to the extent that the award dated 19.4.2004 is set aside and in its place, we direct the second respondent to give fresh appointment to the appellant."

We fail to understand how the incident could be characterized as accidental. The mere fact that this was the first occasion when the respondent was caught, is no ground to hold that it was accidental. What weighed with the learned Judges was the fact that the respondent had not been found to be involved in such irregularities earlier. In our view that is not very material in the facts of this case. A conductor of a bus enjoys the faith reposed in him. He accepts the responsibility of honestly collecting fares from the passengers after issuing proper tickets and is obliged to account for the money so collected. If conductors were to be dishonest in the performance of their duties, it would cause serious pecuniary loss to the employer. The High Court was therefore, not justified in observing that the management gave "excess gravity" to the offence. We are constrained to observe that the High Court was not justified in characterizing the order of the management as one induced by exaggeration of the gravity of the offence. The conductor performs only the duty of issuing tickets to the passengers and accounting for the fare collected from the passengers to the management. If he is dishonest in the performance of his duties, he is guilty of serious misconduct and the gravity of the misconduct cannot be minimized by the fact that he was not earlier caught indulging in such dishonest conduct. There is no guarantee that he had not acted dishonestly in the past as well which went undetected. Even one act of dishonesty amounting to breach of faith may invite serious punishment.

We are, therefore, satisfied that there was no justification for interfering with the order of the management which had been upheld by the Labour Court. We, therefore, allow this appeal, set aside the judgment and order of the Division Bench of the High Court impugned in this appeal and restore the order of learned Single Judge dismissing the Writ Petition.