

# MADHYA PRADESH HIGH COURT

Nandkumar

Vs.

State Ind. Court, Indore

Misc. Petn. No. 832 of 1976

(Shiv Dayal, C.J., C.M. Lodha and B.R. Dube, J.)

30.04.1977

## JUDGMENT

**Lodha, J.**

1. This case has been referred by a Division Bench of which one of us (Shivdayal C. J.) was a member, to a larger Bench with the following observations made at the time of admission: "In view of the decision of this Court in *Navalkishore Narayan Bhargava v. M. P. Road Transport Corporation*,<sup>1</sup> which, in our opinion, requires a re-consideration, we direct that this case be placed before the Chief Justice for constituting a larger Bench for hearing this petition."

2. The facts giving rise to this petition are these: The petitioner Nandkishore Singh was employed as a Conductor by the M.P.S.R.T. Corporation (which will hereinafter be referred to as "the Corporation"). On 15-8-74, when he was on duty in Stage Carriage No. 9259 plying on Raipur-Konda route, the Flying Squad composed of Sri S. C. Mukerji and Shri Jimnani checked the vehicle and found 56 passengers travelling without tickets even though the Conductor had charged fare from them. Accordingly, the petitioner was charge- sheeted in due course and after 'Departmental Enquiry was dismissed from service on 10-12-74.

3. Aggrieved by the order of his dismissal the petitioner filed an application under Section 31 (3) of the Industrial Relations Act, 1960 (which will hereinafter be referred to as 'the Act'), before the State Labor Court, Raipur, and prayed that he may be ordered to be reinstated and back wages may be awarded to him. The Corporation resisted the petitioner's application. After recording the evidence produced by the parties the Labor Court held by its order dated March 19, 1976, that the Departmental

Enquiry conducted against the petitioner was illegal and hence vitiated and that the charges preferred against the petitioner were not proved. Therefore, it directed that the petitioner be reinstated with full back wages. A copy of the order D/- 18-3-76 has been placed on the record and marked Annexure-'A'.

4. Dissatisfied with the order of the Labor Court, the corporation filed a revision petition under Section 66 of the Act before the Industrial Court, Indore, which by its order dated 4-8-76 (Annex. 'B') allowed the revision application and set aside the order of the Labor Court. Raipur.

5. By this petition under Article 226 of the Constitution the petitioner has prayed that the order of the Industrial Court be quashed and that of the Labor Court be restored. The petition has been opposed on behalf of the Corporation.

6. Mr. Gupta, learned counsel for the petitioner, has strenuously urged that the Industrial Court had no jurisdiction to disturb the findings of fact arrived at by the Labor Court inasmuch as under Section 66 of the Act, the Industrial Court can reverse the order of the Labor Court only if it is satisfied that the Labor Court has exercised jurisdiction not vested in it by law, or has failed to exercise the jurisdiction so vested or has acted in exercise of its jurisdiction illegally or with material irregularity. It is submitted that none of these conditions was satisfied in the present case and, therefore, the impugned order of the Industrial Court is patently illegal and is liable to be set aside in exercise of the extraordinary jurisdiction of this Court under Article 226 of the Constitution.

7. We may state at once that the revisional powers of the Industrial Court are undoubtedly circumscribed by the conditions laid down in Section 66 of the Act which reads as under:

"S. 66 - Revision - (1) The Industrial Court, may on the application by any party to a case which has been finally decided by a Labor Court other than a case decided under para (D) of sub-section

(1) of Section 61 call for and examine the record of such case and may pass such order in reference thereto as it thinks fit:

Provided that the Industrial Court shall not vary or reverse any order of the Labor Court under this Section unless

(i) it is satisfied that the Labor Court has-

- (a) exercised jurisdiction not vested in it by law; or
- (b) failed to exercise a jurisdiction so vested or
- (c) acted in exercise of its jurisdiction illegally or with material irregularity;
- (ii) notice has been served on the parties to the case and opportunity given to them for being heard.

(2) No application under sub-section (1) shall lie to the Industrial Court unless it is made within thirty days of the date on which the case has been finally decided by the Labor Court:

Provided that in computing the period of thirty days the period requisite for obtaining a copy of the order shall be excluded."

8. The only question, therefore, which falls for determination is whether any of the conditions laid down in the aforesaid section was satisfied in the present case so as to justify interference with the order of the Labor Court by the Industrial Court.

9. For a proper appraisal of the contentions advanced by the learned counsel for the parties, it would be necessary to summarize the findings arrived at and the reasons given in support thereof by the Industrial Court in the impugned order. It has been held by the Industrial Court that there was no basis for the finding of the Labor Court that Sri S. C. Shrivastava, Depot Manager, who held the Departmental Enquiry against the petitioner was not competent to do so. The reason given by the Industrial Court in support of its conclusion is that there was neither pleading nor proof to that effect. The case of the petitioner before the Labor Court was that the Divisional Manager alone was competent to hold the enquiry and not the Depot Manager. In his deposition the petitioner took a different stand and stated that Sri Shrivastava had been appointed as Inquiry Officer, without proper notice to him, while in the course of the enquiry before the Labor Court his objection was that Sri Shrivastava was prejudiced against him. In our opinion, the Industrial Court was right in coming to the conclusion that the finding arrived at by the Labor Court that Sri Shrivastava held the Enquiry without authority was based on no material and the Industrial Court was justified in setting it aside.

10. The second ground relied upon by the petitioner before the Labor Court was that Inquiry Officer Sri Shrivastava was prejudiced against him. It is remarkable that no details of prejudice were mentioned at any stage of the proceedings. Even when we called upon the learned counsel for the petitioner in the course of arguments to tell us what bias Shri Shrivastava had against the petitioner, he frankly expressed his inability

to lay his hand on any material on the file of the Labor Court or the Industrial Court which would show the least prejudice of Sri Srivastava against the petitioner. Consequently the finding arrived at by the Labor Court on this score was also based on no evidence but was arbitrary. The Industrial Court, therefore, was justified in observing that the finding was perverse and no man acting reasonably could come to such a finding.

11. The third ground on which the domestic enquiry was struck down by the Labor Court was that the witnesses Sri Mukherji and Sri Jimnani were not allowed to be cross-examined by the petitioner. The statements of these two witnesses marked Exs. D. 2 and D. 3 respectively in the file of the Labor Court contained identical endorsements by the Inquiry Officer that the petitioner adopted an obstructionist attitude and left the room as soon as the examination-in-chief of the witnesses was over and even refused to put his signatures on the statements. The learned counsel for the petitioner was at pains to show that the endorsements on these statements are contradictory inasmuch as in Shri Mukherji's statement it was written that the petitioner had left the room after the examination-in-chief of Sri Mukherji was over and therefore, there was no occasion for making a similar endorsement in the statement of Sri Jimnani which was recorded after that of Mukherji. It has been urged that, as a matter of fact, the petitioner was forcibly driven out of the room at the time of recording the statements of these witnesses. We do not find any substance in this contention. It appears to us that when the petitioner left the room after Shri Mukherji's examination-in-chief was over the endorsement which was made on the statement of Shri Mukherji was repeated in the statement of Sri Jimnani also, which was recorded immediately thereafter. There is no contradiction in the two endorsements and there was absolutely no justification for the Labor Court to have come to the conclusion that the petitioner had not been given an opportunity to cross-examine the aforesaid witnesses.

12. From the aforesaid discussion it would be clear that all the findings on the basis of which the Labor Court held the domestic inquiry to be illegal were based on no material and the Industrial Court was not unjustified in holding that the findings were perverse. It was consequently not open to the Labor Court to arrogate to itself jurisdiction to decide the case on merits by wrongly holding that the Departmental Enquiry conducted by the Inquiry officer was illegal.

13. There is ample authority in support of the proposition that if the findings of the Labor Court are based on no material and/or they are perverse or arbitrary the Industrial Court has jurisdiction under Sections 66 and 67 of the Act to set aside the order of the Labor Court.

14. In *Awdesh Kumar Bhatnagar v. Gwalior Rayon Silk Mfg. (Weaving) Co. Ltd.*<sup>2</sup> it was held that where serious mistakes had been committed by the Labor Court, the Industrial Court acted well within its jurisdiction under Section 66 and Section 67 of the Act in setting aside the order of the Labor Court. It was observed that in such circumstances the Industrial Court cannot be said to have exceeded its jurisdiction in any manner under Section 66 of the Act.

15. In a Bench decision of this Court in *Sital Kumar v. J. B. Mangharam and Co.*<sup>3</sup> it was held that where the Court acts arbitrarily in contravention of settled principles of law or rules of procedure resulting in gross miscarriage of justice, it acts illegally or with material irregularity in exercise of its jurisdiction within the meaning of Section 66 (1) (c) of the Act. Such an error, it was observed, pertains to jurisdiction and can be rectified in exercise of the revisional powers. In that case the Labor Court wrongly placed the burden of proof on the question whether an employee had completed six months' satisfactory service, on the employer and held that as the burden had not been discharged the employee was entitled to a finding in his favor. This finding, it was held, was vitiated by an erroneous and illegal approach and was manifestly unreasonable and as such could be interfered with by the Industrial Court in exercise of its revisional powers.

16. In *Mahendralal v. General Manager, Hindustan Steel Ltd. Bhilai Steel Project*<sup>4</sup> where the Labor Court had given no reasons for reckoning the seniority of the petitioner w.e.f. 13-9-58 contrary to the circular governing the subject, it was held that it had usurped the jurisdiction which it did not possess i. e. it was a case of illegal assumption of jurisdiction. It was further observed on the basis of *Joy Chand Lal Babu v. Kamalaksha Chaudhury*,<sup>5</sup> that if an erroneous decision results in the Labor Court exercising jurisdiction not vested in it, a case for revision does arise.

17. Again in *P. G. Paul v. Union of India*,<sup>6</sup> where the Labor Court passed an order staying the transfer of a supervisor by improper assumption of jurisdiction, and the Industrial Court modified that order in exercise of its powers under Section 66 (1) (c)

of the Act, it was held that the order passed by the Industrial court was not without jurisdiction, Apart from that, the order of the Industrial Court was held to be valid also in exercise of its powers of superintendence over the Labor Court under Section 67 of the Act.

18. We do not consider it necessary to multiply authorities, as in our view, the law is well settled that perverse or arbitrary findings or findings based on no material fall within the ambit of the phrase "exercise of jurisdiction illegally and with material irregularity" justifying interference in revision. Similarly, if a Court illegally assumes jurisdiction by giving a patently erroneous decision on jurisdictional facts, the case would fall within the clause "exercised jurisdiction not vested in it by law". The present is a case which squarely falls within the mischief of this Clause as the Labor Court has assumed jurisdiction to interfere with the Departmental Enquiry by wrongly holding without any material that the inquiry was illegal and was therefore vitiated. In this view of the matter, the Industrial Court was justified in interfering with the Labor Court's order in exercise of its revisional powers.

19. Now coming to *Navalkishore Narayan Bhargava v. M. P. S. R. T. Corporation, Indore*,<sup>7</sup> it may be pointed out that it was a case under Section 67 of the Act dealing with supervisory jurisdiction of the Industrial Court. The findings of fact arrived at by the Labor Court have not been mentioned in the judgment. But it was observed that the conclusion arrived at by the Labor Court about the domestic inquiry being improper was at best a question of inference to be drawn from the facts proved in the case. It does not appear from the judgment that any perverse or arbitrary findings had been arrived at by the Labor Court or the findings of the Labor Court were based on no material. Moreover, that was a case under Section 67 of the Act and is distinguishable from the facts and circumstances of the present case.

20. It is a well-recognized principle of law that a finding of fact based on pure appreciation of evidence cannot be interfered with either in revision or in exercise of supervisory jurisdiction. However, if *Navalkishore's* case (1975 M.P.L.J. 251) (*supra*) is understood to mean that an order of a Labor Court even when based on serious and palpable mistakes cannot be set aside by an Industrial Court in exercise of its jurisdiction under Sections 66 and 67 of the Act, then it must be deemed to be not a good law in view of the observations made by their Lordships of the Supreme Court in *Awdesh Kumar Bhatnagar v. Gwalior Rayon Silk Mfg. (Weaving) Co. Ltd.* But it does

appear to us that the learned Judges who decided Navalkishore's case (supra) did not mean to lay down such a broad proposition.

21. The result is that we do not see any force in this petition and hereby dismiss it. But in the circumstances of the case we make no order as to costs. Security amount be refunded to petitioner.

Petition dismissed.

Cases Referred.

1. 1975 MPLJ 251
2. AIR 1972 SC 1431: (1972 Lab IC 842)
3. 1973 MPLJ 324: (1973 Lab IC 986)
4. 1968 MPLJ 597
5. AIR 1949 PC 239
6. 1970 MPLJ 280
7. 1975 MPLJ 251
8. AIR 1972 SC 1431: (1972 Lab IC 842)