

# **BOMBAY HIGH COURT**

Maroti Lutabaji

Vs.

Member of State Industrial Court

Misc. Petn. No. 517 of 1956

(J.R. Mudholkar and S.P. Kotwal, JJ.)

19.06.1958

## **JUDGMENT**

**J.R. Mudholkar, J.**

1. In this petition under Article 226 of the Constitution, the petitioner who was employed as a bus conductor by the Provincial Transport Company, challenges the order of the State Industrial Court, dismissing his appeal from the order of the Assistant Labour Commissioner which upheld his dismissal from service.

2. The ground on which the petitioner requests this Court to quash the orders is that he was in the process of issuing tickets to the passengers who boarded the bus belonging to the Provincial Transport Company, at Chargaon, though he was required by the Motor Vehicles Rules to issue such tickets to the passengers before the bus started on its journey. The facts are not in dispute. But what is contended on behalf of the petitioner is that he had actually received the fares from the passengers and that he was in the process of preparing their tickets when the Ticket Inspector who had entered the bus checked the tickets of the passengers and found that two of them had not got any tickets. It was also contended on behalf of the petitioner that no enquiry had been made by the Provincial Transport Company into the incident and that he was not even heard before he was dismissed.

3. We will take up the second point first. Here, the facts are admitted and therefore the absence of any enquiry cannot be said to have caused any prejudice to the petitioner.

4. As regards the breach, we would refer to Rule 79(a)(ix-a) of the Central Provinces and Berar Motor Vehicles Rules and R. 79-A. The first rule is :-

"The driver and the conductor of a public service vehicle -  
(ix-a) shall not allow any person to be recarried in any public service vehicle without

payment of the legal fare."

Then follow the two provisos with which we are not here concerned. Rule 79-A is as follows :-

"The conductor of a public service vehicle shall issue a ticket immediately on payment of the legal fare by the passenger."

Reading the two rules together, it is clear that they contemplate the issue of tickets to the passengers before the public service vehicle moves away. The fact that the tickets had not been issued to two passengers before the bus started, having been admitted here, it is clear that the petitioner contravened these rules. We are informed that instructions have been given by the Provincial Transport Company to its employees requiring them to observe these rules very strictly and it is said on behalf of the Provincial Transport Company that this is not the first time that the petitioner contravened these instructions.

5. Sri Sathe who appears for the petitioner then urged that for an act of this kind an employer cannot remove his employee because such a course is not permitted by the Central Provinces and Berar Industrial Disputes Settlement Act, 1947. We are of opinion that this contention is not well founded. 'Under the common law a master is entitled to dismiss his servant summarily for failure to exercise good faith towards him or for habitual neglect. Now, the neglect, in order to justify removal from service, must be such as would amount to a breach of the express or implied conditions of the contract of service. The observance of the rules framed under the Motor Vehicles Act is enjoined upon drivers and conductors of public vehicles. The non-observance of the rules is made punishable at law. Therefore, where a driver or conductor neglects to comply with any of the requirements of the Motor Vehicles Act or of any of the rules framed there under which he is bound to comply with, it must be held that he was guilty of neglect or of misconduct which would justify a dismissal from service.

6. Sri Sathe then said that under the Second Schedule to the Industrial Disputes Settlement Act an employee can be dismissed from service only when such a course is permitted by law or by the Standing Orders settled under Section 30 of the Act and that in the instant case no standing orders having been settled, the dismissal, not being in accordance with the Industrial Disputes Settlement Act, is illegal. No doubt, there are no standing orders here, but it is not correct to say that in the absence of any standing order an employee cannot at all be dismissed by an employer. The entry upon which reliance is placed by Sri Sathe clearly permits dismissal from service where it is in accordance with law. Now, the law here is the law of master and servant as modified or amended by statute. It is not shown that the common law right of an employer to dismiss an employee for misconduct or neglect of the kind shown here has been abrogated by any law. Shri Sathe's contention that the word "law" must here mean the Industrial Disputes Settlement Act is not correct as would appear from entry No. 3 in Schedule II. Then Shri Sathe says that the word "law" as used in the entry must mean "any other enactment". But that

contention is not borne out by the entry. The word used therein is of general import' and therefore must be deemed to embrace any law, whether it be common law or statute law.

7. Sri Sathe then said that the alleged misconduct was a trivial one and therefore would not justify so serious an action as dismissal. In this connection we would refer to a decision in *Clouston and Co. Ltd. v. Corry*<sup>1</sup>, where their Lordships pointed out that while there is no fixed rule of law defining the degree of misconduct, which will justify dismissal from service, the question of misconduct being sufficient or otherwise to justify

<sup>1</sup>(1906) AC 122

dismissal is itself one of fact. Now, here, both the tribunals have found that the act of the petitioner established in the instant case amounts to a misconduct which would justify a dismissal. That is a finding of fact and the decision cannot be relied upon to challenge the finding.

8. In the circumstances we dismiss the petition. We however make no order as to costs. The outstanding amount of security shall be refunded to the petitioner.

Petition dismissed.