A DIVISIONAL MANAGER, RAJASTHAN S.R.T.C.

v.

KAMRUDDIN

(Civil Appeal No. 3485 of 2009)

MAY 12, 2009

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[S.B. SINHA AND DR. MUKUNDAKAM SHARMA, JJ.]

Industrial Disputes Act, 1947:

C *s. 11 A - Power of Labour Court to interfere with quantum of punishment - Held: Should be exercised judiciously - In the instant case, misconduct of the delinquent bus conductor while on probation was proved - Disciplinary enquiry was found to have been conducted in a fair manner - Award of* D *Labour Court directing reinstatement of delinquent cannot be sustained, and is set aside.*

Certified Standing Orders:

Standing Order No. 36 - Held: Would prevail over E *departmental circular.*

The respondent, a bus conductor, while on probation was caught on five occasions for having not issued tickets to passengers. He was placed under suspension. The disciplinary enquiry initiated against him culminated F **in an order of termination of his services. The Labour Court, despite finding that the enquiry was fairly conducted, held that the punishment was disproportionate, and accordingly, passed an award substituting the punishment by stoppage of two** G **increments with cumulative effect and directed reinstatement of the workman, but without back wages. The Department having remained unsuccessful in the writ petition as also in intra-court appeal before the High Court filed the appeal.**

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Allowing the appeal, the Court A

HELD: 1.1. The power of Labour Court and/or Industrial Tribunal in terms of s.11A of the Industrial Disputes Act, 1947 to interfere with the quantum of punishment although cannot be denied, but it is also a well settled principle of law that the said power should be exercised judiciously. [Para 10] [1189-C-D] B

Karnataka State Road Transport Corporation vs. B.S. Hullikatti **(2001) 2 SCC 574],** *Regional Manager, RSRTC vs. Ghanshyam Sharma* **(2002) 10 SCC 330,** *Uttaranchal Transport Corporation vs. Sanjay Kumar Nautiyal* **2008 (12) SCC 131, relied on.** C

1.2. It is not a case where the misconduct against the respondent had not been proved. It is also not a case where the domestic enquiry was found of have been conducted in an unfair manner or contrary to the principles of natural justice. The services of the respondent had been terminated while the period of probation was not over. As a conductor, his performance during the period of probation was found to be unsatisfactory. It is not in dispute that the disciplinary proceeding were initiated against him while he was found to have committed similar misconduct for the fifth time. It is also beyond any doubt or dispute that he had also been served with a letter or warning. [Para 9] [1188-H; 1189-A-D] D E F

Rajasthan State Road Transport Corporation vs. Bhagyo Mal & Ors. **[1994] Supp 1 SCC 573, held inapplicable.** G

RSRTC vs. Shri Ram Yadav **[1995 (3) WLC 16], cited.**

2. Standing Order No. 36 merely provides for different nature of penalties which can be imposed on a worker; and stating that penalties specified at Serial Nos. 5 to 7 therein would be appealable. A corrigendum H

A **thereto was issued on 24.7.1982 by way of clarification with regard to the full route fare as contained in Circular No. 625 dated 5.6.1982. The said corrigendum has nothing to do with the nature or quantum of penalty. The same does not provide for a substitution of the penalty**
B **provided for in the Certified Standing Order. In any event, Certified Standing Order would prevail over such circulars. [Para 12] [1191-G-H; 1192-A-B]**

3. It may be true that in execution of the award passed by the Labour Court, for a short time respondent
C **was put back in service. This Court, however, stayed the operation of the judgment by reason whereof the award as also the judgment of the High Court became non-operational. In the circumstances, the judgments of the High Court and the award of the Labour Court cannot be**
D **sustained and are set aside. [Para 13 and 14] [1192-B-D]**

Case Law Reference:

1995 (3) WLC 16	**Cited**	**Para 4**
E **1994 (1) SCC 573**	**held inapplicable**	**Para 4**
(2001) 2 SCC 574	**relied on**	**Para 11**
(2002) 10 SCC 330	**relied on**	**Para 11**
(2008) 12 SCC 131	**relied on**	**Para 11**

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3485 of 2009.

From the Judgment & Order dated 16.11.2005 of the High
G Court of Judicature for Rajasthan, Jaipur Bench, Jaipur in D.B. Special Appeal (writ) No. 416 of 2003.

Sushil Kumar Jain, Puneet Jain, Ashwin and V. Kotemath for the Appellants.

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B.K. Satija for the Respondents. A

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted.

2. Extent of interference with the quantum of punishment imposed by an employer on a delinquent employee by the Labour Court in exercise of its power under Section 11A of the Industrial Disputes Act, 1947 (for short, "the Act") is in question in this appeal which arises out of a judgment and order dated 16.11.2005 passed by a Division Bench of the Rajasthan High Court, Jaipur Bench, Jaipur. B C

3. The said question arises in the following factual matrix:

Respondent herein was appointed as a conductor by the appellant – corporation on or about 6.8.1982 as a daily wager for a specific period on the expiry whereof his services came to an end. D

He was, however, appointed as a conductor on probation for a period of two years by an offer dated 26.3.1983, inter alia, on the terms and conditions laid down therein; the relevant claim whereof reads as under: E

> "4. That on being caught by the inspection team and on finding corruption their services could be terminated at any time and the security amount would be seized." F

Within the aforementioned period of probation, inspections were carried out in the buses in which he had been discharging his duties as a conductor and on not less than five occasions, i.e., on 4.4.1983, 11.5.1983, 23.9.1983, 21.11.1983 and 8.2.1984, he was found to have not issued tickets to the passengers. Indisputably, on or about 19.4.1993, in relation to the incident which took place on 4.4.1983, a warning was administered to him, stating: G

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A "You were on duty on date 4.4.83 in the vehicle no. 6070 at the Vayavar Udaipur road. After the inspection of the vehicle it was found that you were carrying 2 passengers without tickets. The Checking staff collected the fare from the same and issued the tickets.

B Therefore, you are hereby warned to be careful in the near future otherwise your probation period would be terminated."

After he was found guilty of having not issued tickets to the C two passengers and carrying 180 kilograms luggage without a ticket, a disciplinary proceeding was initiated against him. He was placed under suspension.

The fairness of the disciplinary enquiry is not in question. D By reason of an order dated 15.6.1984, the Divisional Manager of the Corporation being the Appointing Authority terminated his services, stating:

"On the basis of the complaints received against Shri Kamruddin S/o Shri Sikandar Khan, Conductor, Vayavar E Depot he was suspended vide the Office Order No. 395 dated 13.2.84 and was issued the Charge sheet no. 404 dated 24.2.84. In respect of the inquiry of the imposed charges the Divisional Depot Manager, Ajmer was appointed the Inquiry Officer vide the Office order no. 581 F dated 3.3.84.

After completing the inquiry by the Inquiry Officer the enquiry report was produced. I have carefully gone through the same along with the available record. The Inquiry G Officer has found the conductor guilty of the imposed charges. I fully agree with the view of the Inquiry Officer.

Therefore, I, Divisional Manager, RSRTC, Ajmer, impose the following punishment under Section 36(5) and (7) of the Standing Orders on Shri Kamruddin s/o Shri H

Sikandar Khan, Conductor, Vayavar Depot after finding him guilty in the aforesaid case. A

1. I seize the remaining salary of the suspension period in the interest of the Corporation.

2. I terminate his probation period after removing him from the services of the Corporation with immediate effect." B

4. Respondent raised an industrial dispute. By reason of an Award dated 16.7.1996, the Labour Court despite finding C that the enquiry was fairly conducted opined that the punishment inflicted on the respondent was disproportionate to the gravity of the misconduct committed by him, stating:

"Therefore, it would not be just and proper to impose the severe punishment of the termination from the service but D keeping in view the proved misconduct on the part of the applicant this court could amend the penalty keeping in view the provisions of Section 11(A) of the Industrial Disputes Act and as per the facts and circumstances of the case it would be just and proper that the punishment E of the stoppage of two grade increments with cumulative effect be awarded and the same would be made effective from the date of inspection i.e. 8.2.84 and further that the applicant would not be entitled of the back wages. That he would be reinstated in the service in continuation of his F service as if he has not been terminated from the service of the corporation. Accordingly, the Award is passed."

In support of its aforementioned finding, the Tribunal relied upon a decision of the Rajasthan High Court in *RSRTC vs. Shri* G *Ram Yadav* [1995 (3) WLC 16] as also the decision of this Court in *Rajasthan State Road Transport Corporation vs. Bhagyo Mal & Ors.* [1994 Supp (1) SCC 573].

5. A writ petition preferred thereagainst by the Corporation H

A has been dismissed both by a learned single judge. A Division Bench of the High Court by reason of the impugned judgment dismissed an intra-court appeal preferred by the appellant.

6. Mr. Sushil Kumar Jain, learned counsel appearing on behalf of the appellant would contend that in a case of this B nature where the respondent has been found guilty of commission of a misconduct of misappropriation, no interference with the quantum of punishment was warranted.

7. Mr. B.K. Satija, learned counsel appearing on behalf of C the respondent, on the other hand, would contend that this Court should not interfere with the impugned judgment as imposition of the punishment of dismissal from service having regard to the guidelines issued by the Corporation itself was wholly disproportionate to the charges of misconduct framed against D the respondent. Learned counsel in this connection would draw our attention to the statement made in the counter affidavit, which reads as under:

"It is respectfully submitted that the Corporation in number E of standing orders has taken decision in regard to awarding financial punishment, where the Conductor is carrying the passengers without ticket. Operative Portion of Section 36 of standing order is reproduced hereunder for ready reference:

F '36. One or more of the following penalties may, for good and sufficient reasons, be imposed on a worker by a competent authority; penalties from (v) to (vii) shall be appealable-

G (i) Censure:-Three censures in a period of one year will involve withholding of one increment.

(ii) Withholding of increments or promotion.

(iii) Recovery from pay/wages of the whole or part of H any pecuniary loss caused to the employer by

negligence or breach of any law.

(iv) Fine upto 2% of worker's wages.

(v) Forfeiture of wages during the period or of suspension.

(vi) Reduction to a lower post or grade.

(vii) Termination of service, which shall not be a disqualification for future employment.

(viii) Dismissal from service which shall be disqualification for future employment.'

It is respectfully submitted that the petitioner Corporation has issued number of semi Government order, where the decision to impose financial punishment was decided by the Corporation and the cases pertaining to traveling without ticket were settled imposing financial punishment upon the employee/workman."

8. Our attention was also drawn to a corrigendum issued on 24.7.1982, the relevant portion whereof reads as under:

" Recently circular No. 625 dt.05.06.1982 was issued by the General Manager for charge of full route fare from the without ticket passengers, because correct information regarding journey undertaken was not being provided by the passengers as well as by the conductors to conceal fraudulent activities.

During the last meeting of the Divisional Managers, clarification was sought with regard to certain points to enable the officers and inspectorial staff to implement the directions imparted in the circular under reference. Further, instructions in this regard are imparted as under:-

1. The cases where the conductor has realized fare, but

A has not issued tickets, it shall be presumed that the passenger had been undertaking journey from the originating point of the bus to the terminal point and the conductor had realized fare for the journey being undertaken by the passenger. Hence, full fare of the route
B along with equal penalty or Rs.5/- whichever is more, shall be chargeable from the conductor."

Our attention was also drawn to the Office Order dated 12.01.2006, the relevant portion whereof reads as under:-

C "Nigam has decided to prefer a Special Leave Petition before the Hon'ble Supreme Court against order dt. 16.11.2005 passed by Hon'ble High Court of Rajasthan Bench at Jaipur and it has also been decided that Sh. Kamruddin S/o Sh. Sikandar Khan, Ex-Conductor, Vyavar
D Depot be reinstated subject to the outcome of Special Leave Petition.

Therefore, Kamruddin S/o Sh. Sikandar Khan, Ex-Conductor, Vyavar Depot in pursuance of order dt.
E 04.02.2003 passed by learned Single Judge of the Hon'ble High Court Bench at Jaipur and order dt. 16.11.2005 passed by Division Bench of the High Court of Rajasthan at Jaipur and compliance of Award dt. 16.07.1996 passed by Labour and Industrial Tribunal Ajmer in LCR No. 24/96
F (263/90) is hereby reinstated and posted at Vyavar Depot subject to the decision of Special Leave Petition."

Learned counsel furthermore urged that as in implementation of the said Award passed by the Labour Court as affirmed by the High Court, respondent had been reinstated
G in service by an office order dated 12.1.2006 and his services having been terminated again by an order dated 2.6.2006 in view of the order of stay granted this Court, this Court may restore the order passed by the Labour Court.

H 9. It is not a case where the misconduct against the

respondent had not been proved. It is also not a case where the domestic enquiry was found to have been conducted in an unfair manner or contrary to the principles of natural justice. The services of the respondent had been terminated while the period of probation was not over. As a conductor, his performance during the period of probation was found to be unsatisfactory. It is not in dispute that a disciplinary proceeding was initiated against him while he was found to have committed similar misconduct for the fifth time. It is also beyond any doubt or dispute that he had also been served with a letter of warning.

10. The power of Labour Court and/or Industrial Tribunal in terms of Section 11A of the Industrial Disputes Act, 1947 to interfere with the quantum of punishment although cannot be denied, but it is also a well settled principle of law that the said power should be exercised judiciously.

The Labour Court relied upon the decision of this Court in *Bhagyo Mal* (supra) wherein the High Court allowed back wages to the workman concerned. This Court in the facts and circumstances of the case found the order of the High Court to be self-contradictory, stating:

> "When the High Court had found that the respondent – employee deserved punishment on account of his misconduct, the High Court could not have rewarded the employee by granting him the back wages particularly when the Tribunal had converted the order of dismissal into that of the stoppage of two increments with cumulative effect. We, therefore, allow the appeal and set aside that part of the order of the High Court whereby the respondent – employee has been given the benefit of back wages. The rest of the order is maintained."

We fail to understand as to how the said decision advanced the case of the respondent.

11. The question with regard to imposition of appropriate

A punishment upon a conductor of a bus belonging to a corporation constituted under the Road Transport Corporation Act, 1950 came up for consideration before this Court in *Karnataka State Road Transport Corporation vs. B.S. Hullikatti* [(2001) 2 SCC 574], wherein it was held:

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> "5. On the facts as found by the Labour Court and the High Court, it is evident that there was a short-charging of the fare by the respondent from as many as 35 passengers. We are informed that the respondent had been in service as a Conductor for nearly 22 years. It is difficult to believe
> C that he did not know what was the correct fare which was to be charged. Furthermore, the appellant had during the disciplinary proceedings taken into account the fact that the respondent had been found guilty for as many as 36 times on different dates. Be that as it may, the principle of
> D res ipsa loquitur, namely, the facts speak for themselves, is clearly applicable in the instant case. Charging 50 paise per ticket less 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
> E 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.
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> 6. It is misplaced sympathy by the Labour Courts in such
> F cases when on checking it is found that the Bus Conductors have either not issued tickets to a large number of passengers, though they should have, or have issued tickets of a lower denomination knowing fully well the correct fare to be charged. It is the responsibility of the
> G Bus Conductors to collect the correct fare from the passengers and deposit the same with the Company. They act in a fiduciary capacity and it would be a case of gross misconduct if knowingly they do not collect any fare or the correct amount of fare."

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A three judge Bench of this Court in *Regional Manager, RSRTC vs. Ghanshyam Sharma* [(2002) 10 SCC 330], reiterated the said principle, stating:

> "4. This Court in *Karnataka SRTC v. B.S. Hullikatti* has held that in such cases where the bus conductors carry passengers without ticket or issue tickets at a less rate than the proper rate, the said acts would inter alia amount to either being a case of dishonesty or of gross negligence and such conductors were not fit to be retained in service because such inaction or action on the part of the conductors results in financial loss to the Road Transport Corporation. This Court was firmly of the opinion that in cases like the present, orders of dismissal should not be set aside.
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> 5. Furthermore, we agree with the observations of the Single Judge in the present case that the Labour Court was not justified in interfering with the punishment of dismissal. Though under Section 11-A the Labour Court has jurisdiction and powers to interfere with the quantum of punishment, however the discretion has to be used judiciously. When the main duty or function of the conductor is to issue tickets and collect fare and then deposit the same with the Road Transport Corporation and when a conductor fails to do so, then it will be misplaced sympathy to order his reinstatement instead of dismissal."

Recently in *Uttaranchal Transport Corporation vs. Sanjay Kumar Nautiyal* [2008 (12) SCC 131], *Hullikatti* (supra) has been followed.

12. Standing Order No. 36 whereto our attention has been drawn merely provides for different nature of penalties which can be imposed on a worker stating that penalties specified at Serial Nos.5 to 7 therein would be appealable. A

A corrigendum thereto was issued on 24.7.1982 by way of clarification with regard to the full route fare as contained in Circular No. 625 dated 5.6.1982. The said corrigendum has nothing to do with the nature or quantum of penalty. The same does not provide for a substitution of the penalty provided for
B in the Certified Standing Order. In any event, Certified Standing Order would prevail over such circulars.

13. It may be true that in execution of the Award passed by the Labour Court, for a short time respondent was put back in service. This Court, however, as indicated hereinbefore,
C stayed the operation of the judgment by reason whereof Award as also the judgment of the High Court became non-operational. We are, therefore, of the opinion that by itself that may not be a ground to refrain ourselves from following the authoritative binding precedents.
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14. For the aforementioned reasons, the impugned judgment cannot be sustained. It is set aside accordingly. The appeal is allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.

E R.P. Appeal allowed.