Surat Singh Vs The Presiding Officer, Labour Court and Another

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: July 14, 1997

Acts Referred: Constitution of India, 1950 â€" Article 226

Citation: (1997) 117 PLR 458

Hon'ble Judges: Jawahar Lal Gupta, J; B. Rai, J

Bench: Division Bench

Advocate: Abha Rathore, for the Appellant; None, for the Respondent

Final Decision: Dismissed

Judgement

Jawahar Lal Gupta, J.
This bunch of cases is a combination of nine writ petitions and 8 Regular Second Appeals 14 of these cases have

been filed by the employees who are working as conductors. Civil Writ petition No. 5132 of 1986 has been filed by the Pepsu Road Transport

Corporation to challenge the award given by the Labour Court in favour of the respondent-workman. Regular Second Appeal Nos. 1463 of 1975

and 2447 of 1989 have been filed by the State of Punjab to challenge the judgment and decree of the civil court. The issue is - Is the order of

punishment passed against a Bus Conductor for his failure to issue tickets after having collected the fare after a regular enquiry vitiated merely

because the statements of passengers had not been recorded by the Inspector or the cash with the conductor was not counted? In spite of the fact

that this issue had been conclusively answered initially by a Full Bench of this Court in The State of Haryana and Ors. v. Shri Ram Chander

(1976)78 P.L.R. 842 and thereafter by the Apex Court in State of Haryana and Another Vs. Rattan Singh, , there was a conflict of decisions

within this Court. In State of Punjab and Anr.. v. Gurdial Singh 1984(3) SLR 735, it was held that the direct evidence, of passengers was not

necessary for finding guilt of the employee. However, in State of Punjab v. Mohan Lal, RSA No. 146 of 1973, a learned Single Judge inter alia

held that -

On the charge levelled in this case, the minimum that ought to have been done was that either the statements of those three passengers or some

other passengers should have been recorded at the time of checking or they should have been produced during the enquiry. Even if the cash with

the conductor had been tallied with the tickets issued and if there had been difference between the two by Rs. 2.40, some adverse inference could,

be drawn against the plaintiff and if nothing of the sort is done then I fail to understand on what material the plaintiff could have been held guilty of

the charge.

This view was again followed in State of Haryana v. Mohan Singh 1985(2) SLR 116 and the order of termination passed against the conductor

was set aside. Resultantly, in pursuance of the orders, these cases have been placed before us.

2. The submission on the legal issue was made by Mr. Sarjit Singh, Senior Advocate. It was contended that unless there is some evidence of

probative value, a finding of guilt cannot be recorded. There is no quarrel with this proposition. Indeed, the issue has been authoritatively settled by

a Full Bench of this Court in Shri Ram Chander"s case (supra). It has been held as under:-

(Pr.3)""".....It is true that in courts of law hear-say evidence is not admissible except to the extent permitted by the evidence Act. But there is no

reason why this strict rule of evidence should be applied to proceedings before domestic tribunals. Hearsay evidence is logically probative" though

its probative value may be strong or weak according to the facts and circumstances of a case. It is "logically probative" - A Tribunal is entitled to

act upon, it.

(Pr.4) We are, therefore, of the view that while there is no bar against the reception of hearsay evidence by domestic tribunals, the extent to which

such evidence may be received and used must depend on the facts and circumstances of the case and the principles of natural justice."" Thereafter,

the Apex Court in Rattan Singh"s case (supra) has held as under:-

(Pr.4) ""It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All

materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus

and credibility. It is true that 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 Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text

books, although we have been taken "through case law and other authorities by counsel on both sides. The essence of a judicial approach is

objectivity, exclusive of extraneous materials or considerations and observance of rules of natural justice. Of course, fair play is the basis and if

perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic

tribunal cannot be held good. However, the courts below misdirected themselves, perhaps, in insisting that passengers who had come in and gone

out should be chased and brought before the tribunal before a valid finding could be recorded. The "residum" rule to which the counsel for the

respondent referred based upon certain passages from American Jurisprudence does not go to that extent not does the passage from Halbsbury

insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence-not in the sense of the technical rules

governing regular court proceedings but in a fair common sense way as men of understanding and wordly wisdom will accept. Viewed in this way,

sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly

available for the Court to look into because it amounts to an error of law apparent on the record.

The legal issue is, thus, clearly answered by these decisions.

3. On facts, learned counsel for the petitioner, Ms. Abha Rathor had referred to the facts in CWP No. 1271 of 1987 (Surat Singh v. Presiding

Officer, Labour Court and Anr.). A few facts may be noticed.

4. The petitioner herein was working as a conductor with the Haryana Roadways since 1975. On November 21, 1979, he was on duty on the

Ambala-Bhiwani route. The bus was checked. 12 passenger were found to be without tickets. On the basis of this incident, the petitioner was

served with a charge sheet dated May 1, 1980 for embezzling of Rs. 11.40. An enquiry was held. Mr. Sube Singh who had checked the bus

appeared as a witness. The petitioner did not appear during the enquiry proceedings. Ultimately, he was found to be guilty. A show cause notice

was issued to the petitioner. Alongwith, a list of the punishments awarded to him on previous occasions, was also supplied, He was called upon to

show cause as to why his services be not terminated.

5. While this matter was pending, on May 3, 1980, the petitioner was again found to have allowed passengers to travel without tickets on the

Chandigarh-Loharu route and, thus, embezzled an amount of Rs. 16.20. A Charge sheet was given. An enquiry was held. The petitioner was

found to be guilty. The petitioner was again served with a show cause notice. He was called upon to explain as to why his services be not

terminated. He submitted his reply. A list of the punishments which had been awarded to the petitioner on earlier occasions was also furnished

alongwith this notice.

6. This was not all, on September 11, 1980, the petitioner was on duty on the Dehradun-Bhiwani route. The bus was checked. The tickets were

not given to nine persons who were travelling from Shamli to Kirana. The petitioner alleges that they were ""drunk and quarrelsome."" A charge

sheet was issued to the petitioner for embezzling of Rs. 7.50 followed by a regular enquiry. The petitioner did not appear. An ex parte enquiry was

held. The charge was found to have been proved. A show cause notice was given to the petitioner.

7. On the basis of the three enquiry reports as also the past record, the petitioner was ordered to be dismissed from service vide order dated June

16, 1981. After more than a year, the petitioner served a notice of demand dated July 26, 1982. The matter was referred to the Labour Court.

Vide award dated April 26, 1986, a copy of which is at Annexure P.13, the Labour Court rejected the petitioner''s claim. It found that - (i) ""the

enquiry conducted in this case as fair and proper."". (ii)""the respondent roadways was fully justified in losing confidence in the workman whose duty

is to handle cash daily on behalf of the respondent.."""; and (iii) ""the management has been unduly indulgent towards the petitioner in the past. His

previous service record is so reprehensible that his continuation in service has been a serious hazard, because the function of the petitioner is to

handle cash daily"". As a result of these findings, the petitioner''s claim was rejected. Hence this petition.

8. On behalf of the petitioner, it has been contended that the findings were recorded by the enquiry officers on the basis of hear-say evidence. The

cash was not checked. Still further, the past record was taken into consideration without holding any enquiry into the allegations levelled against the

petitioner. It was not fair to punish the petitioner merely on the statement of the checking staff, it was also contended that the action suffered from

the vice of discrimination in as much as no action had been taken against various persons who were guilty of gross misconduct.

9. A perusal of the record of the case shows that this is not the first time that the petitioner had been accused of serious misconduct. In fact, he had

been checked and found guilty on atleast 38 occasions. He was let off with minor penalties like censure, warning, forfeiture of security, suspension

and stoppage of two increments with permanent effect. It appears that the minor penalties did not have any effect on the petitioner. He did not

mend his ways. He persisted in his habit of making money. He was charge sheeted on three occasions. He was found guilty. He was given a show

cause notice, Ultimately, he was dismissed from service. The Labour Court having found that the enquiry was fair, the management had good

reason to lose confidence in the petitioner and that the order of dismissal was just and reasonable, there is really no scope for interference under

Article 226 of the Constitution.

10. Regardless of this, the matter has been considered. It is the admitted position that the checking staff had appeared before the enquiry officer.

On the basis of their respective statements, the charges are found to have been proved. They had checked the buses. They had found the

passengers to be without tickets, inspite of the fact that the fare had been paid. Their evidence cannot be said to be mere hear-say. It cannot be

said that there is no evidence on the basis of which the charges were held to have been proved. Still further, the past record was not irrelevant for

the purpose of determining the punishment that would be awarded by the facts of the case. The : list of the orders passed on previous occasions

was furnished to the petitioner alongwith the show cause notice. On the basis of his record, the competent authority had imposed the penalty of

dismissal from service. It cannot be said to have acted illegally or unfairly. The petitioner was afforded an opportunity of representing on the

question of punishment even with regard to the past record. It was not necessary to frame charges in this behalf. Consequently, the contention

raised on behalf of the petitioner cannot be accepted.

11. Lastly, it was contended that the action suffers from the vice of discrimination. Persons whose record of service was bad had been allowed to

continue in service while the petitioner had been dismissed.

12. This contention is misconceived. The order of punishment passed against the petitioner cannot be said to be vitiated merely on the ground that

certain other persons have not been punished. Even if it is assumed that certain persons who were guilty of misconduct have not been punished, it

would not imply that the petitioner has a right to be exonerated. Two wrongs will never make a right.

13. In RSA No. 2447 of 1989, respondent-Swaran Singh had filed a suit for a declaration that the orders dated May 4, 1984, February 28, 1985

and August 20, 1985 by which the General Manager, Punjab Roadways, Pathankot had imposed the penalties of stoppage of eight, two and five

increments respectively with cumulative effect, were illegal and void. It was alleged that the orders have been passed without holding a proper

enquiry. Even the past record had been taken into consideration. The learned trial court had found on ""perusal of the enquiry file ... that all the

documents were supplied to the plaintiff and a proper opportunity was afforded to him. He even produced two defence witnesses. The Enquiry

Officer exonerated him from the charge of embezzlement but held him guilty that the plaintiff issued those tickets after seeing the checking staff. The

punishing authority agreed with the findings of the Enquiry Officer. A show cause notice was issued. His reply was considered and impugned order

was passed. No violation of any provision of law has been proved by the plaintiff. As far as the impugned orders dated 28.2.85 and 20.8.85 are

concerned, the enquiry files show that these orders were passed after proper enquiry in which the plaintiff was afforded full opportunity. The

Enquiry Officer gave a detailed finding and Punishing Authority while agreeing with the report of the Enquiry officer passed the impugned orders

after issuing show cause notices and considering the reply of the plaintiff..."" Consequently, the suit was dismisses Aggrieved by this judgment and

decree, the plaintiff had filed an appeal. The learned Additional District Judge found that ""the order dated 4.5.84 is based on no legal evidence. Sh.

Teja Singh and Bohar Singh, Checkers who had been produced during the domestic enquiry, did not state that the passengers in the presence of

the conductor had stated having paid the fare to him or had complained about the non-issuance of the tickets...This being the position the impugned

order dated 4.5.1984 cannot be sustained and is held to be illegal and void...."" With regard to the other two orders, the judgment and decree for

the trial Court was affirmed. The appeal was, thus, partly allowed.

14. The defendants have filed the present second appeal to impugn the decree of the learned lower appellate court with regard to the validity of the

order dated May 4, 1984. The plaintiff has filed cross objections to challenge the findings with regard to the orders dated February 28, 1985 and

August 20, 1985.

15. No arguments have been addressed on behalf of the appellants. It has been shown that the finding recorded by the appellate court is contrary

to the evidence on record. Consequently, no ground for interference is made out. Equally, even Mr. Sanjiv Manrai who had appeared on behalf of

the plaintiff and pressed his cross objections has not been able to show that there is no evidence in support of the allegations levelled against the

employee.

16. No ground for interference with the concurrent findings of fact recorded by the two courts is made out. Consequently. The appeal as well as

the cross objections are dismissed.

17. In CWP No. 5132 of 1986, the Pepsu Road Transport Corporation is the petitioner. No arguments have been addressed by any one to

challenge the findings recorded by the Court. Similarly, in RSA No. 1463 of 1975, it has not been shown that the judgment and decree passed by

the court below call for any interference.

18. Except, as noticed above, no arguments were addressed in any of the other cases. No other point has been raised.

19. In view of the above, we hold that the decisions in the cases of State of Punjab v. Mohan Lal and State of Hatyana v. Mohan Singh (supra) do

not lay down the correct law. These are over-ruled. The question as posed is answered in the negative. It is held that the order is not vitiated

merely because the statements of the passengers are not recorded or the cash is not counted. The court has to consider and see if there is some

evidence on which the authority could have held the employee guilty. The quantum is not to be seen.

20. We dismiss the writ petitions as well as the appeals. The cross objections in RSA No. 2447 of 1989 are also dismissed. However, there will

be no order as to costs. The records shall be sent to the concerned courts.