(2008) 08 AHC CK 0329

Allahabad High Court

Case No: None

U.P. State Road Transport Corporation		APPELLANT
	Vs	
State of U.P., Presiding Officer and Harish Chandra		RESPONDENT

Date of Decision: Aug. 12, 2008

Acts Referred:

- Industrial Disputes Act, 1947 - Section 11A

Citation: (2008) 119 FLR 710

Hon'ble Judges: Rakesh Tiwari, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Rakesh Tiwari, J.
Heard counsel for the petitioner and the standing counsel.

2. This petition has been filed challenging the validity and correctness of the award dated 1.7.1996 passed by labour court (II), U.P., Ghaziabad in adjudication case No. 17 of 1992. The aforesaid award was enforced by publication on the notice board on 15.11.1996 and has come into force after thirty days of its publication as provided u/s 6-A(3) of U.P. Industrial Disputes Act, 1947.

3. The facts in nutshell as culled out from the record, are that respondent No. 3 was working on the post of conductor in petitioner corporation. On 18.12.1989, he was deputed on bus No. UPP 9096 on Gulawati Syana route. The bus was checked enroute and it was found by the checking party that out of 36 passengers, 23 passengers were travelling without ticket and about 100 Kgs. of luggage which was being carried on the bus, had not been booked. When checking party demanded way bill, the respondent workman refused to hand over the same. It also appears on the same day when the said bus was returning from Syana to Bulawati, it was again

checked and it was found that out of tickets and that the respondent workman also created obstruction during the second checking. A report is said to have been submitted by the checking party in this regard.

4. The appointing authority being of the opinion that misconduct of the workman concerned may result into a major punishment, placed the workman under suspension vide order dated 16.3.1989. Subsequently, a charge sheet dated 3.5.1989 was issued to the workman, to which he filed his reply and thereafter departmental enquiry was initiated against him. The Inquiry Officer who was a retired District Judge found that charges against the workman were not proved. The said enquiry report has not been filed alongwith the writ petition.

5. It further appears that punishing authority disagreed with the report of Inquiry Officer and though noting that inspection report submitted by the checking squad/inspector was incomplete, yet held that both charges against the workman concerned were proved from the record and accordingly awarded punishment of removal from service vide order dated 12.1.1990.

6. The workman concerned raised an industrial dispute which was referred to the labour court aforesaid. Parties thereafter filed their written statement and evidence. After appreciation of pleadings and evidence and hearing the parties, the labour court came to a conclusion that domestic enquiry by the employers was fair and proper but while considering misconduct and quantum of punishment for the purposes of relief, the labour court came to the conclusion that neither of the charges against the workman were proved by the employers beyond reasonable doubt.

7. The labour court further held that the workman could prepare tickets as it was found that the bus while enroute to its destination, the passengers were boarding the bus and also disembarking on bus stops, as such there was little time for the workman to issue tickets and fill up the way bill.

8. The contention of the counsel for the petitioner is that respondent No. 3 had failed to follow the principle of Pay and Board which in itself was a misconduct serious enough to warrant the punishment of removal. It is further contended that labour court has failed to appreciate that in violation of rule, the corporation is exposed to financial loss and the conductors knowing fully well about the aforesaid rule only leads to an inescapable conclusion that the violation was for oblique motives. The conclusion of the labour court that the charges of misconduct had not been proved beyond doubt is absolutely perverse arbitrary and illegal.

9. As regard the first charge the labour court has held as under:

ijUrq lHkh ifjfLFkfr;ksa dks /;ku iwoZd ns[kus ls ,slk izrhr gksrk gS fd 23 lokjh;kWa chchuxj ls cSBh Fkh ftuds fVdV lacaf/kr Jfed cuk jgk Fkk vkSj mudks fVdV fn;k tk pqdk Fkk lHkh tkaWp gks xbZ vkSj blfy, og Hkkj fVdV igh cuk ldk A tc pyrh xkM+h essa fVdV

fn;s tkrs gS rks mudh izfof"V ges''kk ckn esa dh tkrh gS A lacaf/kr Jfed vHkh ekxZi= ij izfo"Vh ugh dj ik;k Fkk vkSj fujh{k.k gks x;k vkSj blfy, ;g deh ikbZ xbZ A lsok;kstd dh vksj ls ,slk dksbZ fu;e ugh fn[kk;k x;k fd lokfj;ksa dks igys fVdV fn;k tk;s vkSj rc mudks pus fn;k tk;s A blds vHkko esa vxj lokjh;ksa dks pyrh xkM+h esa fVdV fn;s tkrs gS vkSj blh chp xkM+h dh tkap gks tkrh gS rks lacaf/kr Jfed mlds fy, ftEesnkj ugh gS tc rd ;g u izekf.kr gks fd mlus fdlh ls iSls ys fy;s gS vkSj fVdV ugh fn;s gS ;k lacaf/kr Jfed dh fu;r [kjkc gS A ,slh dksbZ ckr u rks tkWap fjiksZV esa vk;h gS vkSj u i=koyh ij vk;h gS fd lacaf/kr Jfed dh uh;r [kjkc Fkh vkSj blfy, mlus fVdV lokjh;ksa dks ugh fn;s A vc ,slk dgk tkrk gS fd lacaf/kr Jfed us ekxZi= ij blfy, izfof"Vh ugh dh Fkh fd tc lokjh;kWa xUrO; LFkku ij igqWap tkrh rks muls og fVdV okfil ys ysrk] ijUrq ;g vkjksi fdlh Bksl izek.k ij vk/kkfjr ugh gS vkSj lsok;sktd ds fo}ku izfrfuf/k dh cq)eRrk dk izek.k gS A bu 23 fcuk fVdV lokjh;ksa dh tkWp fjiksZV ds vk/kkj dks {ks=h; izcU/kd us ugh ekuk vkSj mUgksus viuh vlgefr ds dkj.k crk;s ijUrq esjh jk; es vlgefr ds dkj.k larks"ktud ugh gSA vr% eS bl fu"d"kZ ij igqWprk gwW fd lacaf/kr Jfed us pyrh xkM+h esa fVdV cuk;s Fks blfy, lokfj;ks dh izfof"V o fujh{k.k ds le; ij ugh dj ldk vkSj blh dkj.k og Hkj fVdV Hkh ugh cuk ldk A vr% igyk vkjksi lacaf/kr Jfed ij vlafnX/k :i ls izekf.kr ugh gksrk vkSj eS mls nks"keqDr djrk gwWa A

10. Similarly in respect of the second charge the labour court has recorded finding of fact as follows:

bl laca/k esa tkWp vf/kdkjh Jh ,l0 lh0 tSu bl fu"d"kZ ij igWqps fd ^^ifjfLFkfr;ksa o lk{; ij fopkj djus ij ,slk izrhr gksrk gS fd vkjksih 12 ;k=h;ksa dks fVdV ugh ns ik;k Fkk vr% tkap vf/kdkjh Li"V fu"d"kZ ij ugh igqWp Ikk;s fd lacaf/kr Jfed dk Li"Vhdj.k lqlaxr gS ftlesa mlus dgk gS fd mijksDr ;k=h lByk HkV~Bs ls cSBs Fks vkSj og txg fujh{k.k LFky ls djhc vk/kk fdyksehVj gS vkSj bl chp esa tc og muds fVdV ugh cuk ik;k rks tkWp gks xbZ A tkWp vf/kdkjh us Hkh lacaf/kr Jfed dk dgus dk ;gh rkRi;Z gks ldrk gS fd le; de gksus ds dkj.k og fVdV ugh ns ik;k A bu lc ls ;gh izrhr gksrk gS fd bl izkbZosV :Ik ij ,slh iz.kkyh gS fd lokjh;kWa cSBrh jgrh gS vkSj muds fVdV fn;s tkrs jgrs gS vkSj izLrqr fookn esa lacaf/kr Jfed rc rd fVdV lokjh;ksa dks ugh ns ik;k Fkk vkSj mldh xkM+h dk fujh{k.k gks x;k A mlesa lacaf/kr fujh{k.k dh mifLFkfr esa lokjh;ks ds fVdV cuk;s ftldh izfo"Vh fujh{k.k vf/kdkjh us ekxZi= ij dh A vr% lc ckrks ij fopkj djus ds ckn eS bl fu"d"kZ ij igqaprk gwW fd lacaf/kr Jfed us tkucw>dj dksbZ xyrh ugh dh ijUrq mlus fVdV cukus es dqN nsjh o ykijokgh cjrh A mldks fVdV tc lokjh;kWa ph Fkh rHkh cukuk ''kq: dj nsuk pkfg, Fkk vkSj vk/kk fdyksehVj rd fVdV u cukuk mldh ykijokgh o xyrh ekuk tk;sxk A bl fookn esa fdlh lokjh dk dksbZ c;ku ugh fy[kk x;k gS A ;g ckr igys gh vk x;h gS fd fujh{k.k vf/kdkjh lacaf/kr Jfed ls igys gh dqN ukjkt Fks blfy, ykSVrh gqbZ cl dk fujh{k.k ,d ?kUVs ckn fQj dj fn;k x;k A vr% ,slh ifjfLFkfr esa lc ckrksa ij fopkj djus ds ckn esa bl fu"d"kZ ij igqaprk gwW fd lacaf/kr Jfed us tkucw>dj dksbZ xyrh ugh dh vkSj u gh mlus ljdkjh iSls dk dksbZ nq:i;ksx fd;k A vr% nwljk vkjksi Hkh mlds fo:) vlafnX/k :i ls izekf.kr ugh gksrk A mldk dsoy bruh xyrh gS fd mlus ;g fVdV dqN nsjh ls cuk;s A

tgkWa rd n.M dk iz''u gS A lacaf/kr Jfed ds fo:) nksuks vkjksi lansg ls ijs izekf.kr ugh gksrs vkSj mDr nksuks vkjksiks ls eqDr fd;s tkrs gS rks n.M dk dksbZ iz''u gh ugh

mBrk vkSj og vius iwoZ dze esa ,oa vius iwoZ iw.kZ osru o vU; leLr fgr ykHkks lfgr lsok esa cgkyh dk gdnkj gS A

nksuks i{kks dsk lquus ds mijkUr o Ik=koyh dk iw.kZ:is.k voyksdu ds Ik''pkr eS bl fu"d"kZ ij igqaWprk gwW fd izfroknh lsok;kstd us lacaf/kr Jfed dh fnukad 12-1-90 ls vuqfpr o voS/kkfud ax ls lsok;s lekIr dh gS A vr% esjk vfHkfu.kZ; gS fd izfroknh lsok;kstd bl vokMZ ds izdk''ku ds rhl fnu ds vUnj lacaf/kr Jfed dks iqjkuh lsok ds dze ess iw.kZ osru o vU; leLr fgr ykHkks lfgr lsok esa cgky djs A okn ls lacaf/kr Jfed izfrfuf/k dks okn O;; ds :i esa 100@& izfroknh lsok;sktd mDr vof/k ds vUnj Hkqxrku djs A

11. With regard to quantum of punishment, it appears from the award that way bill was filled up by the workman and only totalling remained to be done when the bus was checked. Considering all facts and circumstances in totality, a finding of fact has been given by the labour court that charges against the workman are not proved beyond doubt and accordingly discharged the workman of both the charges, as such there is no question of awarding any punishment to him.

12. It is an admitted fact that the Inquiry Officer has not found workman concerned guilty of any charges in the enquiry proceedings. The employers could have proved charges before the labour court, but there too the court has recorded a finding of fact that charges have not been proved and he has been discharged of the charges.

13. Counsel for the petitioner has relied on decision of the Apex Court in Regional Manager, RSRTC v. Ghanshyam v. Sharma, (2002) 1 LLJ 234 SC

In the aforesaid case the Apex Court has held that discretion exercised by the labour court should be judicious. In that case, conductor of the bus was carrying passengers without issuing tickets and he was awarded punishment of removal from service by the employer. The labour court in exercise of the powers u/s 11-A of the Industrial Disputes Act 1947 while upholding the finding that respondent was guilty of misconduct, directed his reinstatement with continuity of service but without back wages.

14. In the aforesaid backdrop, the Apex Court interfered with the matter and held that interference by the labour court by reinstating the workman when charges had been proved, was not proper.

15. In the present case, Inquiry Officer in the domestic enquiry as well as the labour court both have come to the conclusion that removal of workman from service was not fair, proper, and justified. Therefore, facts of the present case are clearly distinguishable from the facts of the case cited by the counsel for petitioner.

16. Moreover, the case cited by the counsel for petitioner was one in which provisions of Section 11-A were considered. The scope of Section 11-A is only limited and different from the scope of Section 4-K of U.P. Industrial Disputes Act, 1947.

17. No illegality or infirmity has been established in the impugned award, therefore, findings of fact recorded by the labour court should not be interfered with for only small discrepancies shown by the counsel for petitioner.

18. For the reasons stated above, this petition fails and is accordingly dismissed. No order as to costs.