(1969) 10 MP CK 0004

Madhya Pradesh High Court

Case No: M. P. No. 649 of 1966

Madhya Pradesh State Road Transport Corporation		APPELLANT
	Vs	
Industrial Court, Madhya Pradesh, Indore and others		RESPONDENT

Date of Decision: Oct. 15, 1969

Citation: (1970) JLJ 8 : (1970) MPLJ 62

Hon'ble Judges: Bishambkar Dayal, C.J; A. P. Sen, J

Bench: Division Bench

Advocate: V. S. Dabir, for the Appellant; P. S. Nair, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Bishambhar Dayal, C. J.

This is a petition by the Madhya Pradesh State Road Transport Corporation challenging an order of the Labour Court, Jabalpur, and the revisional order by the Industrial Court of Madhya Pradesh at Indore directing the reinstatement of respondent No. 3 Nandkishore Sahu, who was a conductor of one of the buses. The incident took place on the 29th October 1958 and respondent No. 3 has been reinstated by order of the Labour Court dated 13th January 1966. The matter is, therefore, quite old. It has been stated by learned counsel for the petitioner before us that orders were issued for reinstatement of respondent No. 3; but learned counsel for both the sides are unable to say whether he has actually joined service or what is the exact present position with regard to his reinstatement. Learned counsel for the applicant has stated that the applicant-Corporation is not anxious necessarily to terminate the service of the respondent No. 3 if he has joined service and is doing satisfactory work.

The Labour Court has set aside the order of dismissal on the ground that the domestic enquiry was not fair. The finding is based on two facts. In the first place,

the finding is that no opportunity to produce defence witnesses was given to the respondent and in the second place the order of the officer conducting the domestic enquiry is not a speaking order and it merely says in one sentence that upon enquiry the charges have been proved without considering the evidence and without giving any reasons for coming to that conclusion.

So far as the first point is concerned, the fact is that on the date of the enquiry the respondent No. 3 was asked the question as to whether he want-ed to produce defence witnesses. He stated that the enquiry should be conducted at the site where the occurrence took place. This was taken by the Enquiry Officer as meaning that he did not want to give any evidence. The Labour Court has not read this answer in that sense. The Labour Court is of opinion that by this answer the respondent No. 3 wanted to say that he might be able to produce evidence if the enquiry was conducted at the site and that, therefore, the possibility of his producing evidence cannot be ruled out. We are unable to say that this interpretation of the Labour Court is necessarily wrong. It should have been made clear to him that he should produce evidence there if he so liked. On the second point also we have seen the order of the officer conducting the domestic enquiry. The order is very short and does not give any reason for holding that the charges had been proved. The Enquiry Officer has not even mentioned the names of witnesses or the nature of evidence that was produced before him on the basis of which he found the charges proved. We are, therefore, unable to hold that this part of the decision of the Labour Court was without jurisdiction or patently wrong in law.

It was further contended by learned counsel for the applicant that after coming to the above conclusion on the preliminary issues about the nature of the domestic enquiry, the Labour Court should have given an opportunity to the applicant to prove the merits of the charges before the Tribunal and the Tribunal was not right in ordering reinstatement without going into the facts and coming to a conclusion that the charges were in fact not proved either in the domestic enquiry or before the Tribunal itself. Learned counsel has relied for this proposition on Piarelal Khuman Vs. Bhagwati Prasad Kanhayalal and Others, (M. P, No. 491 of 1968 decided on 9th August 1968.), a decision of a Division Bench of this Court. We think that this is a very salutary practice to be adopted by the Labour Courts. After all, a delinquent, who is in fact guilty, should not be imposed upon the employer without coming to a finding that the charges have not been proved. If the domestic enquiry is defective and an opportunity to prove the charges before the Labour Court is not given to the employer, the only result would be that the employer would have to start a fresh enquiry and this process may go on several times and every time the enquiry may be found to be defective. This would cause loss both to the employer and the employee. It is a healthy practice, therefore, after coming to the conclusion that the domestic enquiry was not proper, to give an opportunity to the employer to produce evidence before the Labour Court itself and for the Labour Court to come to a final conclusion whether the charges were proved or not.

Since the applicant was not given an opportunity to prove the charges before the Labour Court, we think that this is a proper case in which to set aside the order of the Labour Court dated 13th January 1966 and the revisional order of the Industrial Court dated 2nd September 1966. These orders are accordingly set aside and the case is sent back to the Labour Court for giving an opportunity to the applicant to prove the guilt of the respondent No, 3, if necessary. In the circumstances of the case, parties will bear their own costs. The outstanding amount of the security deposit shall be refunded to the petitioner.