

(2008) 03 BOM CK 0116**Bombay High Court****Case No:** Writ Petition No. 8884 of 2007

Maharashtra State Road
Transport Corporation

APPELLANT**Vs**

Shri Vasant B. Araj

RESPONDENT**Date of Decision:** March 11, 2008**Citation:** (2008) 4 ALLMR 744**Hon'ble Judges:** B.H. Marlapalle, J**Bench:** Single Bench**Advocate:** G.S. Hegde and C.M. Lokesh, for the Appellant; Rahul Oak, for the Respondent**Final Decision:** Allowed

Judgement

B.H. Marlapalle, J.

Being aggrieved by the Award passed by the IVth Labour Court at Thane on 9-10-2006 in Reference(IDA)No. 110/1999, the Petitioner Corporation has approached this Court. By the said Award the reference has been allowed and the Respondent workman was directed to be reinstated with full backwages and continuity of service w.e.f. 18-4-1998.

2. The Petitioner is an undertaking of the Government of Maharashtra. The Respondent joined the service of the Corporation as a bus conductor sometimes in the year 1977 and was posted at the Jawahar depot. On 20-11-1992 he was on duty as a conductor on the Corporation bus starting from Jawahar and going to Shirdi. The said bus was checked at Amboli (stage No. 24) by the Corporations squad headed by Shri K.K. Jadhav and it was found that a group of 50 passengers who were getting down at Amboli were not issued the bus tickets and the Respondent was trying to hand over the bundle of tickets to the group leader when the checker had entered the bus and at that stage the tickets were snatched from his hands by the checker. There were 54 unpunched tickets and from two different groups but of the same denomination of Rs. 1 and paise 25. The Statement of all these 50 passengers was recorded and their group leader Shri Chhagan Dumada stated that

he had handed over a note of Rs. 100/- to the conductor and asked for 50 tickets from Torangaon (stage No. 23) to Amboli (stage No. 24) but the conductor did not issue the tickets and also did not return the balance amount of Rs. 37.50 paise till the squad entered the bus. During the search it was also found that the Respondent was found with excess cash of Rs. 43.80 paise in his cash box. He refused to sign the statement recorded of the 50 passengers as well as the panchanama. The Respondent was issued a chargesheet on the same day and was placed under suspension. Departmental enquiry was conducted into the said charges.

3. The enquiry officer submitted his report and he was issued a show-cause notice on 21-1-1993 proposing the punishment of dismissal.

4. The Respondent approached the Labour Court at Thane and filed Complaint(ULP)No. 28/1993 alongwith an application for interim-relief and the said application was rejected. He approached the Industrial Court by filing Revision Application (ULP)No. 51/1993 and the same was also dismissed by the Industrial Court on 20-1-1998. The Respondent, therefore, approached this Court in Writ Petition No. 74/1998 and it was dismissed on 18/3/1998. He was dismissed from service by way of punishment as per the order dated 18-4-1998. He submitted a departmental Appeal which was dismissed by the First Appellate Authority on 22-6-1998. Thereafter, he filed the second appeal on or about 10-7-1998 and the same was also dismissed on or about 29-9-1998. He approached the Government Labour Officer vide his representation dated 24-11-998 with the demand for reinstatement with continuity in service and full backwages and the said demand came to be referred for adjudication to the IVth Labour Court at Thane in Reference(IDA) No. 110/1999.

5. As per the Part-I Award dated 27-12-2005 the Labour Court held that the enquiry conducted against the Respondent was not fair and proper and the findings of the enquiry officer were perverse. Consequently the Petitioner Corporation examined Shri K.K. Jadhav at Exhibit 38-A and the Respondent stepped in the witness box. The Labour Court in the impugned Award held that the Corporation could not prove the charge that the Respondent had issued the tickets to the passengers after he had noticed that the Inspector had entered the bus. This finding implied that the tickets were issued to the group of 50 passengers after receiving Rs.100/ from the group leader and, therefore, the first charge of misappropriation of the Corporation funds was not proved. On the return of balance amount of Rs. 37.50 the Labour Court did not record any finding. It concluded that the Corporation failed to prove the misconduct of the Respondent workman and consequently set aside the order of dismissal by reinstating him with full backwages and all consequential benefits.

6. As per the Respondent, at Torangaon 54 passengers had got into the bus and their group leader Shri Chhagan Dumada had given him a note of Rs. 100/. He had issued 54 tickets but could not return the money when the next stop of Amboli came and while he was handing over the balance, the checker entered the bus. He also

claimed that in the bus there were in all 86 passengers and the bus was over crowded. The group leader had claimed that there were 50 passengers but on the count of passengers, the conductor noticed that there were 54 passengers and, therefore, he had issued 54 tickets and while he was handing over the said tickets to the group leader, the checker intercepted and snatched all the 54 tickets. He stated that the spot statements of the group leader Chhagan Dumada and other passengers (Exhibit 39) was a document which was falsely recorded by Shri Jadhav and he being an active union leader was deliberately blamed whereas as per the Corporation witness Shri Jadhav when the bus was reaching Amboli, the checking squad entered the bus and at Amboli when the bus had stopped, the Respondent tried to hand over 54 tickets to Shri Chhagan and at that time the tickets were recovered. The ticket tray was checked and the Respondent was found with excess amount of Rs. 43.80 paise. An amount of Rs. 37.50 paise was returned to Shri Chhagan when he had stated that balance amount was not refunded to him by the conductor and even then an amount of Rs. 6.30 paise was found to be surplus with the conductor. Panchanama was drawn at Exhibit 40 which was signed by Shri Vilas Keshav Patil, Modada, Tukaram Gongre Morchundi, jeep driver Iqbal Shaikh and other two persons namely D.J. Patil and P.S. Tamore. The bus driver had refused to sign the said panchanama. Report was submitted to the Corporation. As per the witness of the Corporation there were in all 69 passengers in the bus when it was checked at Amboli and 19 of them were with tickets and 50 were without tickets. Those 50 passengers had boarded the bus at village Torangaon and the distance between Torangaon and Amboli was 6 kms. All the 50 passengers signed the statement at Exhibit 39 and some of them were educated while most of them were uneducated. He stated that the Respondent refused to sign the documents at Exhibit 39 and Exhibit 40. He had closed the way-bill at stage No. 25 and the tickets snatched from his hands were unpunched which clearly indicated that the same were not issued to the passengers. He also stated that the explanation furnished by the Respondent that the tickets could not be punched on account of the number of tickets and the rush in the bus could not be accepted. However, the Labour Court was not impressed by the evidence adduced by the Corporation (oral as well as documentary) and held that charges were not proved.

7. The R & P received from the Labour Court also contains the First Appellate Order as well as the Second Appellate Order thereby dismissing the Appeals submitted by the Respondent. The original tickets recovered by Shri Jadhav are also on record. In the first set there are 26 tickets starting with No. 879074 and ending with 879099 and of the denomination of Rs. 1.25 paise. In the second set there are 28 tickets of the same denomination but starting with No. 202500 and ending with No. 202527. There can be no dispute that these are unpunched tickets. The panchanama signed by five witnesses and placed on record at Exhibit 40 clearly states that the passengers who had got into the bus at Torangaon and got down at Amboli were 50 in number. It is true that the statement at Exhibit 39 has signatures/thumb

impressions of 51 persons. The enquiry officer in his report has considered the same and noted that Shri Chhagan Dumada who was the group leader made his thumb impression twice and, therefore, as per the enquiry officer there were 50 passengers who got down at village Amboli. Exhibit 41 is the spot panchanama signed by four witnesses. All these documents clearly go to show that there were in all 50 passengers who boarded the bus at Torangaon (stage No. 23) and got down at Amboli (stage No. 24) and their group leader had paid Rs. 100/-for all the 50 tickets (Rs. 62.50 paise). The plea of the Respondent that he had issued the tickets and while he was handing over the same to Shri Chhagan, Shri K.K. Jadhav snatched the tickets cannot be accepted for the simple reason that the tickets were unpunched and in his evidence he stated that when he had noticed the squad entering the bus in a hurry he took out 54 tickets in the denomination of Rs. 1.25 paise while there were only 50 passengers. The defence that was taken by the Respondent is not supported by any document and on the contrary it is proved from the original tickets that he had taken a false plea.

8. The Labour Court in the impugned Award has been overwhelmed by the act of Shri K.K. Jadhav of overwriting the way-bill. The Learned Counsel for the Respondent also submitted that the said Shri Jadhav has been subsequently dismissed from the Corporations service and he, therefore, urged that he was an unreliable witness, he was guilty of overwriting for which he was dismissed and that fact by itself would not disprove all the charges proved against the Respondent namely receiving Rs.100/-from the group leader and not issuing the bus tickets as well as not returning the balance amount. It has been fairly admitted that the balance amount of Rs. 37.50 was returned to the group leader by Shri Jadhav from the excess cash recovered from the Respondent. When it is not disputed that the balance to be returned to Shri Chhagan Dumada was Rs. 37.50, the conductor was required to issue only 50 tickets and not 54 of the denomination of Rs. 1.25 each. This is an additional reason to hold that no tickets were issued to Shri Chhagan before the squad entered the bus and by way of a cover up action, the conductor had hurriedly taken out 54 tickets and was trying to handover to Shri Chhagan when they were snatched by Shri Jadhav. I am, therefore, satisfied that the charges levelled against the Respondent vide the chargesheet dated 21-11-1992 were duly proved before the enquiry officer as well as before the Labour Court.

9. Both the Appellate Authorities have considered the findings recorded by the enquiry officer, the seriousness of the charges and the past record of service of the Respondent. The order passed by the Second Appellate Authority considered the past record of service of the Respondent and in the concluding para it noted as under:

Taking into consideration all the aspects of the case we feel that the charges levelled against the appellant are proved beyond doubt. We are of the opinion that any leniency in such type of cases would be detrimental to the interest of the

Corporation and would also be subversive and prejudicial to the discipline and good order of the Corporation. We, therefore, "REJECT" the second appeal in respect of Shri V.B. Araj, Ex.Conductor B. No. 7988 of Jawahar Depot, Palghar Division.

10. There is no doubt that the Respondent is a public servant and his past record of service is far from being satisfactory. There are as many as 8 instances of punishment awarded to him and 6 of them pertain to the issuance of tickets to the passengers. The Appellate Authorities of the Corporation, therefore, named him "the habitual dishonest conductor" and did not feel it appropriate to interfere with the punishment of dismissal. No fault could be found with the same decision. The impugned Award is, therefore, perverse and the Learned Judge of the Labour Court has committed gross error in holding that the charges were not proved. Consequently, the said Award deserves to be quashed and set aside and the Petition succeeds.

11. Hence, the Petition is allowed and the impugned Award is quashed and set aside. Reference(IDA) No. 110/1999 stands dismissed.

12. Rule is made absolute accordingly with no order as to costs.