

CASE NO.:
Appeal (civil) 5660 of 2007

PETITIONER:
U.P. State Road Transport Corporation

RESPONDENT:
Vinod Kumar

DATE OF JUDGMENT: 06/12/2007

BENCH:
ASHOK BHAN & D.K. JAIN

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO 5660 OF 2007
[Arising out of S.L.P. (Civil) No. 16639 of 2006)

BHAN, J.

1. Leave granted

2. This appeal is directed against the final judgment and order dated 3.8.2005 passed by the High Court of Uttaranchal at Nainital in Writ Petition No. 603 (M/S) of 2002. By the impugned order, the High Court upheld the findings recorded by the Labour Court to the effect that the punishment of removal imposed upon the respondent was excessive in comparison to the charges levelled against him. The High Court while maintaining the findings recorded by the Labour Court that the punishment of removal was excessive in comparison to the charges levelled against the workman, reduced the back wages to 50%.

3. Respondent-workman was appointed as a Conductor in the U.P. State Road Transport Corporation (the appellant herein) on 26.9.1991. Respondent was conducting the bus on Kalsi-Chhani route, which was checked and, on inspection it was found that out of 45 passengers, 28 passengers from Kalsi to Chhani were without ticket. The Inspecting Team found that the Conductor had already recovered fare from 8 such without- ticket passengers. That he had issued 6 tickets which were not in serialim and their original copies were not completely filled. That entry of these tickets was not made in the Way Bill. The inspecting team made an endorsement to this effect on the Way Bill and got the signatures of respondent as a proof thereof. On the report of the inspecting team, charge-sheet was issued to the respondent and he was placed under suspension. Later on, respondent was reinstated in service subject to the final result of the disciplinary proceedings initiated against him.

4. The Enquiry Officer, after holding the enquiry, submitted his report wherein it was held that the charges were partially proved against the respondent. The enquiry report was considered by the Punishing Authority, which disagreed with certain conclusions arrived at by the Enquiry Officer. After recording detailed reasons for disagreement with the conclusions arrived at by the Enquiry Officer, the Punishing Authority issued a show-cause notice to the

respondent enclosing therewith a copy of the enquiry report. It was provided in the said notice that the workman can inspect the record or obtain the copy thereof, if he so desires. Respondent filed its reply to the said show-cause notice. Considering the entire material on record including the reply to the show-cause notice submitted by the respondent, Punishing Authority passed the detailed order, removing the respondent from service. Balance salary for the period of suspension was also forfeited.

5. Respondent raised an industrial dispute. The State Government referred the following dispute to the Labour Court, Dehradun for adjudication:-

"Whether the termination of the services of the applicant/workman Shri Vinod Kumar S/o Shri Ravi Ram Singh, Conductor by the employers from 31.07.1999 is unjustified and/or illegal? If so, to which benefit/compensation the applicant/workman is entitled and to what extent?"

6. Both the parties filed written statement, rejoinders and documents before the Labour Court.

7. Respondent did not press the legality and fairness of the enquiry proceedings and confined his case only to the conclusions reached by the Enquiry Officer as well as the quantum of punishment.

8. Labour Court, without appreciating the fact that in the absence of challenge to the legality or fairness of the inquiry report the Court should be reluctant to either interfere with the finding recorded by the Punishing Authority or the quantum, held that the charge of misappropriation has not been proved against the respondent and, thus, punishment of removal from service is harsh. It substituted the punishment of removal by stoppage of one increment without any cumulative effect and directed reinstatement of respondent with full back-wages. The said award was published. The appellant challenged the said award by filing Writ Petition No. 603 (M/S) of 2002 before the High Court of Uttaranchal at Nainital. The High Court, without appreciating the fact that once it was held that respondent was carrying passengers without ticket and had also recovered fare from 8 passengers which was a serious misconduct, upheld the order passed by the Labour Court. It agreed with the findings recorded by the Labour Court that punishment inflicted upon the respondent was excessive and disproportionate to the charges levelled/proved, but reduced the back-wages to 50%. The award of the Labour Court was modified to that extent.

9. Counsel for the parties have been heard.

10. As stated in the preceding paragraphs, the respondent had confined his case only to the conclusions reached by the Enquiry Officer as well as the quantum of punishment. Therefore, since the respondent had not challenged the correctness, legality or validity of the enquiry conducted, it was not open to the Labour Court to go into the findings recorded by the Enquiry Officer regarding the misconduct committed by the respondent. This Court in a number of judgments has held that the punishment of removal/dismissal is the appropriate punishment for an employee found guilty of misappropriation of funds; and the Courts should be

reluctant to reduce the punishment on misplaced sympathy for a workman. That, there is nothing wrong in the employer losing confidence or faith in such an employee and awarding punishment of dismissal. That, in such cases, there is no place for generosity or misplaced sympathy on the part of the judicial forums and interfering with the quantum of punishment. Without burdening the judgment with all the judgments of this Court on this point, we may only refer to a recent judgment in Divisional Controller, N.E.K.R.T.C. Vs. H. Amaresh, 2006 (6) SCC 187, wherein this Court, after taking into account the earlier decisions, held in para 18 as under:-

"In the instant case, the mis-appropriation of the funds by the delinquent employee was only Rs.360.95. This Court has considered the punishment that may be awarded to the delinquent employees who mis-appropriated the funds of the Corporation and the factors to be considered. This Court in a catena of judgments held that the loss of confidence is the primary factor and not the amount of money mis-appropriated and that the sympathy or generosity cannot be a factor which is impermissible in law. When an employee is found guilty of pilferage or of mis-appropriating the Corporation's funds, there is nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of dismissal. In such cases, there is no place for generosity or misplaced sympathy on the part of the judicial forums and interfering therefore with the quantum of punishment. The judgment in Karnataka State Road Transport Corporation v. B.S. Hullikatti (2001) 2 SCC 574 was also relied on in this judgment among others. Examination of the passengers of the vehicle from whom the said sum was collected was also not essential. In our view, possession of the said excess sum of money on the part of the respondent, a fact proved, is itself a misconduct and hence the Labour Court and the learned Judges of the High Court misdirected themselves in insisting on the evidence of the passengers which is wholly not essential. This apart, the respondent did not have any explanation for having carried the said excess amount. This omission was sufficient to hold him guilty. This act was so grossly negligent that the respondent was not fit to be retained as a conductor because such action or inaction of his was bound to result in financial loss to the appellant irrespective of the quantum."

[Underlining is ours]

11. Respectfully agreeing and following the aforesaid decision of this Court, we accept this appeal and set aside the judgment of the High Court as well as the order passed by the Labour Court. Consequently, the order passed by the Punishing Authority dismissing/removing the respondent from

service is restored. No costs.

JUDIS