

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No. 3804/2007**

% Judgment delivered on: 05.03.2010

Smt. Shanti Devi. Petitioner.
Through: Mr. Rajat Aneja with Mr.
Chand Zafar, Advocates.

versus

Delhi Transport Corporation. Respondent.
Through: Mr. Sumeet Pushkarna with
Mr. Jitendra Kumar, Advocates.

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

KAILASH GAMBHIR, J. Oral:

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1. By this petition filed under Article 226/227 of the Constitution of India, the petitioner seeks quashing of the Award dated 19.1.2007 passed by the Labour Court whereby the imposition of punishment of removal from service of the petitioner was upheld.

2. Brief facts relevant for deciding the present petition are

that the deceased workman was working as a Conductor since 1984 with the respondent corporation and on 6.12.2000 he was on duty in Bus No.9294 on Delhi Bareilly route when it was checked by the checking staff that 2 out of 29 passengers were found to be without tickets. Thereafter, disciplinary proceedings were initiated against the workman where the penalty of removal from service was imposed upon him, to which an appeal was filed by the workman but was rejected. Thereafter, an industrial dispute bearing ID No. 279/2006 was raised by the workman, in the midst of which on 2.3.2005 he expired. Vide order dated 19.1.2007, the Labour Court upheld the punishment of removal from service of the deceased workman. Feeling aggrieved with the same, the widow of the deceased workman has preferred the present petition.

3. Counsel for the petitioner submits that so far the past record of the deceased workman is concerned, the same being exemplary was pleaded before the enquiry officer but the same was not taken into consideration by the Disciplinary Authority. Counsel for the petitioner placed reliance on the office order dated 3.1.1966 issued then by the Delhi Transport Undertaking, to support his argument that in the case of commission of first time offence involving cheating, the concerned employee was required to be cautioned so

that he does not indulge in the commission of any such offence again in the future. Placing further reliance on the same office order, counsel submits that the past misconduct of the official is required to be equally mentioned in the charge sheet if such past misconduct is likely to result in imposition of any major punishment including the punishment of removal or dismissal. Counsel thus submits that in the charge sheet past misconduct of the petitioner was not brought on record by the respondent, therefore, the same could not have been considered by the labour court. Counsel further submits that, in all, there were 29 passengers in the bus when the bus was checked by the checking staff and tickets to all 29 passengers were issued by the conductor. Counsel thus submits that there could not have been any question of non-issuance of tickets to the two passengers and had this been so, then, the number of passengers would have been 31 instead of 29. Counsel further submits that before the enquiry officer no statement of any of the passengers was recorded.

4. On the other hand, counsel for the respondent submits that both the passengers who were not issued tickets by the conductor gave their statement to the checking staff. Counsel further submits that so far the office order dated 03.01.1996 is concerned, the same

would not be applicable in view of the standing orders issued by the respondent DTC governing the conduct of its employees and as per its clause 19 (F), (H), (M), it was clearly a case of serious misconduct on the part of the deceased workman. Counsel further submits that even if the past misconduct of the deceased workman is not taken into consideration, the misconduct committed by the deceased conductor in terms of the chargesheet issued against him was itself sufficient enough for imposing the punishment of removal from service. In support of his arguments, counsel for the respondent placed reliance on the judgment of the Apex Court in ***Uttaranchal Transport Corporation vs. Sanjay Kumar Nautiyal 2008 (12) SCC 131***. Counsel also placed reliance on the judgment of the Apex Court in ***Commissioner of Central Excise, Bolpur, Vs. Ratan Melting & Wire Industries (2008) 13 SCC 1*** to support his argument that wherever the Supreme Court or the High Court declares the law on any question arising before it for consideration then, it would not be appropriate for the court to place reliance on the circulars or orders issued by the Central Government or the State Government as such circulars merely represent their understanding of the statutory provisions and the same cannot have any binding effect.

5. Refuting the said submissions of counsel for the

respondent, Mr. Rajat Aneja, counsel for the petitioner submits that the judgment of the Apex Court in the case of ***Uttranchal Transport Corporation*** would not be applicable to the facts of the present case.

6. I have heard learned counsel for the parties at considerable length and carefully gone through the records.

7. Mr. Aneja, counsel for the petitioner, laid much emphasis on the Office Order NO. 1/Adm.1-3 (18)/65 dated 3.1.1966 which requires the enquiry officer to take corrective action by personally cautioning him to avoid reoccurrence in case cheating is committed by the delinquent employee for the first time.

8. Counsel for the respondent on the other hand has contended that the act of cheating committed by the petitioner workman constitutes misconduct within the meaning of clause 19 (F) (H) and (M) of the Standing Orders governing the conduct of the DTC employees. Counsel also submitted that in view of the said standing orders the office order dated 3.1.1966, on which reliance has been placed by the petitioner stands superseded. Counsel for the respondent also submitted that the Apex Court in a catena of judgments has taken a view that the conductor if after collecting fare does not issue the ticket then such an act on his part would be a case of gross misconduct deserving no sympathy. The contention of the

counsel for the respondent is that in various decisions, the Apex Court has taken a serious view on such acts of cheating committed by the conductors and no reliance can be placed on the overruled Office Order NO. 1/Adm.1-3 (18)/65 dated 3.1.1966.

9. I find considerable force in the arguments of the counsel for the respondent. The said order dated 3.1.1966 on which reliance was placed by the counsel for the petitioner already stands superseded in view of the standing orders framed by the respondent DTC which govern the conduct of the employees of the respondent. I also find considerable merit in the argument of the counsel for the respondent that if the Apex Court and the High Court take a particular view which has the effect of superseding or overruling of such an office order or circular then no further reliance can be placed on the same. It would be worthwhile to reproduce the relevant para of the judgment in ***Commissioner of Central Excise (supra)*** here:

Circulars and instructions issued by the Board are no doubt binding in law on the authorities under the respective statutes, but when the Supreme Court or the High Court declares the law on the question arising for consideration, it would not be appropriate for the Court to direct that the circular should be given effect to and not the view expressed in a decision of this Court or the High Court. So far as the clarifications/circulars issued by the Central Government and of the State Government are concerned they represent merely their understanding of the statutory provisions. They are not binding upon the court. It is for the Court to declare what the particular provision of statute says and it is not for the Executive. Looked at from another angle, a circular which is contrary to the statutory provisions has really no existence in law.

10. It is no more res integra that in a catena of judgments of the Apex Court and various High Courts, a serious view has been taken even where a conductor is found involved in a solitary act of misconduct in the misappropriation of money either by not issuing tickets to the commuters or by issuing a ticket of lesser amount and therefore, no lenient view can be taken on the misconduct of the delinquent employee and hence the contention of the counsel for the petitioner in this regard stands repelled.

11. The other argument raised by the counsel for the respondent that there were 29 passengers when the bus was checked by the checking staff and tickets to all the 29 passengers were issued by the conductor, is equally devoid of any force. It was proved before the enquiry officer that there were in all 29 passengers in the bus but the tickets were issued by the conductor to 27 passengers while the rest two were not found in possession of the tickets and when interrogated by the checking staff they clearly disclosed that they had paid the ticket fare to the conductor. The enquiry officer, based on the material placed on record by the checking staff and the evidence adduced by both the parties, clearly found that there were in all 29 passengers in the bus but the tickets were issued to 27

passengers and not to the rest two even after collecting fare of Rs.12/- each for their travel from Moradabad to Rampur. The enquiry officer did not believe the story of the delinquent workman stating that the said two passengers might have misplaced their tickets. The learned Tribunal has also accepted the said finding of fact as arrived at by the enquiry officer and there is no reason to upset the said findings of fact by this court while exercising jurisdiction under Article 226 of the Constitution of India. It is a settled legal position that the labour courts/tribunals are final courts of findings of facts and unless there is any illegality or perversity in the approach of the learned labour court to arrive at such findings, then only the same can be re-appreciated by the High court while exercising jurisdiction under Article 226 of the Constitution of India. It would be relevant to refer to the judgment of the Apex Court in **Management of Madurantakam, Co-operative Sugar Mills Ltd. Vs. S.Vishwanathan (2005)3 SCC 193**: where it was held that:-

12. Normally, the Labour Court or the Industrial Tribunal, as the case may be, is the final court of facts in these type of disputes, but if a finding of fact is perverse or if the same is not based on legal evidence the High Court exercising a power either under Article [226](#) or under Article [227](#) of the Constitution of India can go into the question of fact decided by the Labour Court or the Tribunal. But before going into such an exercise it is necessary that the writ court must record reasons why it intends reconsidering a finding of fact. In the absence of any such defect in the order of the Labour Court the writ court will not enter into the realm of factual disputes and finding given

thereon. A consideration of the impugned order of the learned Single Judge shows that nowhere he has come to the conclusion that the finding of the Labour Court is either perverse or based on no evidence or based on evidence which is not legally acceptable. Learned Single Judge proceeded as if he was sitting in a court of appeal on facts and item after item of evidence recorded in the domestic enquiry as well as before the Labour Court was reconsidered and findings given by the Labour Court were reversed. We find no justification for such an approach by the learned Single Judge which only amounts to substitution of his subjective satisfaction in the place of such satisfaction of the Labour Court.

12. In the present case, no motives have been attributed by the petitioner against the members of the checking staff who had intercepted the bus and found the two passengers in the bus without tickets and when questioned they clearly told that they had already paid an amount of Rs.12/- each to the conductor and thereafter the conductor admitted his guilt of issuing two unpunched tickets to the said two passengers. Hence, there is no scope or reason to interfere in the said findings of facts and therefore, the second contention raised by the counsel for the petitioner is also devoid of any force and substance.

13. It is no doubt true that the delinquent employee is the husband of the petitioner and has already expired leaving his family behind to suffer and starve, but the helping hand of justice cannot be extended to those who not only betray the trust of their employer but of their family as well. The Apex Court has clearly taken a view that

the conductors hold a position of trust and if they betray such trust and indulge in acts of dishonesty, then they do not deserve any kind of generosity or misplaced sympathy from the judicial forums. It would be relevant to refer to the judgment in case of ***Karnataka SRTC vs. B.S Hullikatti (2001)2 SCC 574*** where it was held that :-

"It is misplaced sympathy by the Labour Courts in such cases when on checking it is found that the Bus Conductors have either not issued tickets to a large number of passengers, though they should have, or have issued tickets of a lower denomination knowing fully well the correct fare to be charged. It is the responsibility of the Bus Conductors to collect the correct fare from the passengers and deposit the same with the Company. They act in a fiduciary capacity and it would be a case of gross misconduct if knowingly they do not collect any fare or the correct amount of fare."

The Apex Court also held that it is not the amount of money misappropriated that becomes a primary factor for punishment but it is rather the loss of trust which is a primary factor to be taken into consideration. In this regard it would be worthwhile refer to the following paras of the judgment in the case of ***U.P.SRTC vs. Vinod Kumar (2008) 1 SCC 115*** here:-

"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. v. H. Amaresh** : (2006)IIILLJ232SC , 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)ILLJ725SC 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 mis-conduct 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."*

14. Applying the aforesaid principles of laws to the case at hand, no sympathy can be shown to the petitioner who is bound to suffer because of the corrupt deeds of her husband. The past clean

record of the deceased would also be of no help to the petitioner as the solitary act of corruption will be sufficient enough to award punishment of dismissal from service. No doubt, it may look harsh and perhaps inequitable to uphold punishment of removal in cases where misappropriation of a small amount of money is concerned, more particularly when the big sharks are seen swimming comfortably without any fear of law and law enforcing agencies. Strangely, corruption is a paradoxical phenomenon as the highly placed corrupt officials, rich and influential, save themselves from the clutches of law by corrupting those whose primary job is to take action against the corrupt people. Henceforth, it is in this way how the evil of corruption is well flourishing and has now, so to say, carved a comfortable niche for itself in the societal framework. It is not surprising that rather than becoming a hard hitting reality to which people should object and frown upon, looking with disdain upon those indulging in such unethical practice, it has gained acceptance as an indispensable virtue and is gradually becoming a way of life. Therefore, no leniency or sympathy can be shown even to a person who indulges himself in corruption even at a small level and by all means, corruption has to be checked and nipped in the bud. It is not the amount but the mind and intention of a corrupt person which has

to be checked and the conductor on duty can only indulge in corruption at a small level and one cannot expect him to misappropriate amount of thousands and lacs of rupees as his job is to issue tickets and non issuance of the same can only result into pocketing small amounts on daily basis. However, nevertheless, by that process alone, his daily and monthly earnings sometimes may be more than his official income. Therefore as a society this widespread malpractice has to be defenestrated.

15. Hence, in the light of the above discussion, I do not find any merit in the present petition and the same is hereby dismissed.

March 05, 2010
Pkv/mg

KAILASH GAMBHIR,J