

CASE NO.:
Appeal (civil) 1952 of 2003

PETITIONER:
Rajasthan State Road Transport Corp.& Anr.

RESPONDENT:
Bhik Nath

DATE OF JUDGMENT: 14/02/2005

BENCH:
N. Santosh Hegde & S.B. Sinha

JUDGMENT:
J U D G M E N T

SANTOSH HEGDE, J.

The appellant by this appeal is challenging an order of the Division Bench of the High Court of Judicature for Rajasthan at Jodhpur made in DBC Special Appeal (Writ) No. 1184/97 whereby the High Court allowed the appeal filed by the respondent workman herein setting aside the order of remand made by the learned Single Judge of the said High Court, and confirming the award made by the Labour Court, Jodhpur.

The brief facts necessary for the disposal of this appeal are as follows:-
The respondent herein who was working as a conductor in the appellant - Corporation was charged on two counts of non-issuance of tickets to passengers travelling in the bus of which he was the conductor.

In a departmental inquiry conducted, the Inquiry Officer came to the conclusion that in both the instances the respondent did not issue tickets to the concerned passengers. However, the explanation for non-issuance of tickets given by the conductor was acceptable, hence, misconduct alleged against him was held to be not proved.

The Disciplinary Authority to whom the said report was submitted on consideration of the same came to the contrary conclusion and disagreed with the Inquiry Officer and held the misconduct alleged in regard to both the charges against the respondent was established hence, imposed a punishment of termination.

The above order of the Disciplinary Authority gave rise to a labour dispute No. 112/92 on the file of the Labour Court, Jodhpur.

Before the Labour Court, both the parties consented that the Labour Court could decide the case on the basis of evidence and material available on the file of the domestic inquiry without seeking to adduce any additional evidence and on that basis the Labour Court heard the arguments of the parties and examined the evidence that was brought on record at the time of the departmental inquiry. It also examined the order made by the Disciplinary Authority and after discussing the evidence it came to the specific conclusion that the finding of the Inquiry Officer that though the respondent had not issued tickets to certain passengers,

he had no intention to cause loss to the Corporation and the explanation for non-issuance was justified, therefore, the respondent could not have been found guilty of the misconduct charged against him. It incidentally also recorded a finding that the Disciplinary Authority did not give an opportunity to the respondent before reversing the finding of the inquiry officer and that the order of the Disciplinary Authority was not a speaking order since it did not contain adequate and suitable reasons for differing from the opinion of the Inquiry Officer. In view of the above finding the Labour Court set aside the termination of the services of the respondent workman holding it to be illegal and unjustified. It also directed the appellant to reinstate the respondent in service with continuity of service and full back wages from the date of dismissal from service.

As stated above the appellant preferred writ petition challenging the said award before a learned Single Judge of the Rajasthan High Court who by a short order setting aside the award of the Labour Court and remanded the same back to the said court directing the said court to give opportunity to both the parties to lead evidence, even though either of the parties had sought such a prayer.

Against the said order of the learned Single Judge respondent preferred an appeal before the Division Bench which after considering the material on record agreed with the Labour Court that the misconduct alleged against the respondent was not established and upheld the direction of the Labour Court in regard to reinstatement and arrears of pay.

In this appeal Shri Sushil Kumar Jain, learned counsel appearing for the appellant firstly contended that when the finding of the Inquiry Officer as affirmed by the Labour Court was that the respondent had not issued tickets in both the cases in regard to which an inquiry was conducted the question of accepting the explanation of the respondent why he did not issue the tickets to those passengers does not arise because of certain circulars issued by the appellant Corporation which creates a presumption that whenever a passenger is not issued ticket such non-issuance shall be deemed to be with a view to defraud the Corporation. He also contended that the finding of fact recorded by the Disciplinary Authority reversing the finding of the Inquiry Officer could not have been interfered with by the Labour Court without affording an opportunity to the appellant to lead evidence in support of its charges. He nextly contended that the finding of the Labour Court that the Disciplinary Authority did not afford an opportunity to the respondent before passing the order is contrary to the judgment of this Court in *Managing Director, ECIL, Hyderabad & Ors. Vs. B.Karunakar and Ors.* [1993 (4) SCC 727].

We have heard the learned counsel for the parties and perused the record. We are of the opinion that on facts the contention of the learned counsel for the appellant as well as finding of the learned Single Judge that no opportunity was given to the appellant to lead evidence to prove its case of misconduct is incorrect. When the matter was pending before the Labour Court no application was filed by the appellant seeking permission to lead evidence. On the contrary when the Labour Court found difficulty in accepting the finding of the Disciplinary Authority as to the

guilty of the respondent the appellant as well as respondent consented that the Labour Court could go into the merits and demerits of the case on the basis of the material available on record and decide the correctness of the finding of the Inquiry Officer as well as that of the Disciplinary Authority. This concession is recorded in the following words of the Labour Court in its award:

"Both the parties had given their consent to decide the case on the basis of evidence and material available in the file of the domestic inquiry. I heard the arguments of both the parties and perused the file carefully."

In the background of this concession and in the absence of seeking permission for leading evidence in support of its charge by the appellant it cannot be now permitted to question the procedure adopted by the Labour Court based on consent of the parties. Even the learned Single Judge erred in wrongly recording a finding that the appellant was not given an opportunity to lead evidence. As a matter of fact a perusal of the award clearly shows that both the parties addressed arguments on merits and demerits on the basis of evidence on record and after considering the same Labour Court by a reasoned order agreed with the Inquiry Officer that though in the two cases in regard to which an inquiry was conducted the respondent workman has not issued tickets to 3 and 2 passengers respectively, the material on record and explanation given by the respondent sufficiently proved that had good reasons for not having issued the tickets when the checking staff came for checking and the respondent workman had no intention of defrauding the Corporation. This is a finding of fact based on material on record accepted by the Inquiry Officer, the Labour Court and the Division Bench and we find no reason whatsoever to differ from this finding. We are also of the opinion that since the Labour Court had formed an opinion that Disciplinary Authority had not properly considered the evidence on record while coming to a contrary conclusion Labour Court was justified in going into the question of fact that too as consented by the parties and giving a finding.

The learned counsel for the appellant had referred to certain circulars which according to him give rise certain presumptions as to misappropriation of the funds of the Corporation by non-issuance of tickets, we have not been shown any such circular. Be that as it may, assuming that there is such a circular which at the most can give rise to a presumption and in the instant case for the reasons already recorded by accepting the explanation given by the respondent workman that presumption, if any, has been rebutted.

In view of the above view taken by us the other argument urged by the learned counsel for the appellant does not arise for consideration.

In view of the above said we find no merit in this appeal and the same is dismissed.

JUDIS