

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.2038 OF 2012

U.P. State Road Transport Corp. & Anr. ... Appellants
Versus
Gopal Shukla & Anr. ... Respondents

JUDGMENT

Dipak Misra, J.

The present appeal compels us to wonder whether a Legal forum should allow itself to imagine facts and conceive of perverted situations to brush aside the material brought on record and then for contrived reasons arrive at a conclusion that there was possibly no embezzlement or personal gain. The first respondent, a conductor in the service of the U.P. State Transport Corporation (for short, "the Corporation"), despite the factum of carrying 25 passengers without ticket being proved, is relieved and

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Gulshan Kumar Arora
Date: 2015.09.24
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Reason:

assuaged by substitution of punishment of dismissal with stoppage of two annual increments with cumulative effect taking aid of Section 6(2-A) of the U.P. Industrial Disputes Act, 1947 (for brevity, 'the Act') by the Labour court in invocation of the doctrine of reformation and principle of mercy, and the High Court, in exercise of its supervisory jurisdiction has given the stamp of approval to the award by treating it as just and defensible fundamentally resting its conclusion on the foundation that the controversy hinged on the factual score. The reasoning, if we allow ourselves to say, constrains us to ruminate whether the Labour Court

has been swayed away by the concept "forgiveness is the economy of the heart¹" and dominantly affected by the conception "mercy among the virtues is like the moon among the stars²", totally remaining oblivious to the basic principle that when the workman shatters the "institutional trust" and his act has the potentiality to corrode the faith and belief of the employer, does he deserve any leniency. It is not the quantum per se but the breach of trust with

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Hannah More

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E.H. Chapin

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reference to duty and obligation of the employee that must be the edifice of consideration for imposition of punishment.

2. The necessitous factual depiction is the first respondent was serving as a Conductor under the appellant, Corporation. On 24.10.1992, while he was the conductor of the bus No. UAN 8711, he allowed 25 passengers to travel in the bus without ticket. A report being received from the Assistant Traffic Inspector of the area, a disciplinary proceeding was initiated against him and in the said proceeding, he was found guilty and accordingly was visited with the punishment of dismissal. On an industrial dispute being raised, the competent authority of the State referred the industrial dispute to the concerned Labour Court under the provisions of the Act. The reference reads as follows:-

"Whether termination of services of Shri Gopal Shukla, S/o late Shri Mathura Prasad Shukla, Conductor, Fatehpur Depot vide order dated 3.12.93 by his employer is legal and valid? If not, then to what benefits/compensation (Relief) the concerned workman is entitled to receive and with what other details?."

3. The Labour Court on the basis of the materials brought on record took note of the report of the Assistant Traffic Inspector who had reported that 25 passengers

without ticket were found in the bus and the conductor had recovered fare from them but had not issued the tickets to them, perused the findings in the domestic enquiry and came to hold that the allegation of personal gain and corruption had really not been established. After so holding, the Labour Court observed that it would be appropriate to give a chance to the workman for improvement in future and thereafter recorded the conclusion as follows:-

"From the evidence available on record, it is proved that the Petitioner workman has committed illegality but fact of corruption is not proved. On the above basis setting aside the punishment of dismissal awarded by employers against the workman, it is directed that from the date of termination of the services of the Petitioner workman till he is reinstated only half of the wages would be payable and on reinstatement his two annual increments will be stopped without any cumulative effect. According to aforesaid conditions, the petitioner workman is reinstated with continuity of service and other admissible benefits. The employers are directed to reinstate the workman immediately after the award."

4. The Corporation assailed the said award in W.P. No.32298 of 1997. The High Court, appreciating the reasons ascribed in the award passed by the Labour Court, came to hold that it had not been proved that the workman

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concerned had taken fare from 25 passengers and not issued tickets to them and, therefore, there was no embezzlement. Being of this view, the High Court concurred with the award relating to reinstatement but as far as the grant of back wages is concerned, it reduced the same to 25 percentage.

5. We have heard Mr. Pradeep Mishra, learned counsel for the appellant and Mr. Vibhu Tiwari, learned counsel for the State. None has appeared for the respondent no.1.

6. On a perusal of the award passed by the Labour Court as well as the order passed by the High Court, we find that a categorical conclusion has been arrived at on the basis of

the evidence on record that the respondent who was engaged as a Conductor had allowed 25 passengers to travel in the bus without ticket. It is obvious that the primary and core duty of a conductor is to collect fare and render true and correct account. This is the mainstay and centerpiece of his work and faith reposed on him by the employer. The Labour Court as well as the High Court has been guided by the perception that there was no recovery of money and, therefore, there was no corruption or embezzlement. But it

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fails to notice the nature of duties and obligation of a conductor. Even the finding on no corruption or embezzlement is ambiguous and contradictory.

7. At the outset, we may reproduce the charges framed against the first respondent. They read as follows :

"(1) On 24.10.1992 carrying 25 without ticket passengers in Bus No. UAN 8711 for personal gains.

(2) To cause financial loss to the department by involving in planned corruption, at the time of inspection by not returning the way bill after taking the same from the hands of inspectors and causing hindrance in inspection by instigating the passengers against them for personal gains.

(3) As per the Rule 62 of Departmental Service Regulation committing misconduct as Misconduct No.1, 3, 5, 10, 16, 21 and 22.

(4) At the time of inspection for the sake of concealing the grave corruption for personal gains, lodged false report to the police regarding misplacing of waybill used by you."

8. The Labour Court as well as the High Court has found that 25 persons were carried without ticket. However, an opinion has been expressed that there was no personal gain. On a scrutiny of the award and the order passed by the High Court, it can be stated with certitude that the Labour Court as well as the High Court has accepted that the

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first three charges have been proved. We shall advert to the fourth charge and the soundness of the reasons ascribed thereof by the Labour Court at a later stage. However, it does not require Solomon's wisdom to understand that by

virtue of carrying 25 passengers without ticket, loss has indubitably been caused to the Corporation. The Labour Court, as is evident, has exercised its power under Section 6(2-A) of the Act. Section 6(2-A) reads as under :

"(2-A) An award in an industrial dispute relating to the discharge or dismissal of a workman may direct the setting aside of the discharge or dismissal and re-instatement of the workman on such terms and conditions, if any, as the authority making the award may think fit, or granting such other relief to the workman, including the substitution of any lesser punishment for discharge or dismissal, as the circumstances of the case may require."

9. When such a power is conferred on the Labour Court, it is obligatory on it to record satisfaction that the order of dismissal was not justified and thereafter proceeded to award a lesser punishment in lieu of discharge or dismissal. The thrust of the matter is whether the present case was one where a lenient attitude was required to be shown by the Labour Court and the High Court. In this context, Mr. Mishra has commended us to a two Judge Bench decision

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in U.P. State Road Transport Corporation vs. Suresh Chand Sharma³. In the said case, a contention was raised that an embezzlement of petty sum did not warrant the punishment of dismissal. Negating the said submission, the Court opined:-

"21. We do not find any force in the submissions made by Dr. J.N. Dubey, learned Senior counsel for the employee that for embezzlement of such a petty amount, punishment of dismissal could not be justified for the reason that it is not the amount embezzled by a delinquent employee but the mens rea to misappropriate the public money.

22. In Municipal Committee, Bahadurgarh Vs. Krishnan Bihari & Ors.⁴, this Court held as under:-

"In a case of such nature - indeed, in cases involving corruption - there cannot be any other punishment than dismissal. Any sympathy shown in such cases is totally uncalled for and opposed to public interest. The amount misappropriated may be small or large; it is the act of misappropriation that is relevant."

Similar view has been reiterated by this Court in

Ruston & Hornsby (I) Ltd. v.. T.B. Kadam⁵, U.P.
State Road Transport Corporation v.. Basudeo
Chaudhary & Anr.⁶, Janatha Bazar (South Kanara
Central Cooperative Wholesale Stores Ltd.) & Ors.
v.. Secretary, Sahakari Noukarara Sangha & Ors. ⁷,
Karnataka State Road Transport Corporation v..

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(2010) 6 SCC 555

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AIR 1996 SC 1249

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AIR 1975 SC 2025

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(1997) 11 SCC 370

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(2000) 7 SCC 517

Reportable

B.S. Hullikatti⁸, and Regional Manager, R.S.R.T.C.
v. Ghanshyam Sharma⁹.

23. In NEKRTC v. H. Amaresh¹⁰, and UPSRTC v.
Vinod Kumar¹¹, this Court held that the
punishment should always be proportionate to
the gravity of the misconduct. However, in a case
of corruption/misappropriation, the only
punishment is dismissal."

10. In the instant case, as accepted by the Labour Court,
the first respondent was carrying 25 passengers without
tickets which has caused financial loss to the Corporation.

That apart, the workman had also violated the postulates

under the Rule and committed misconduct.

Two aspects

are absolutely clear.

It is established that 25 passengers

were allowed to enter into the bus. There is no material on

record that they had entered inside the bus by application

of any kind of force. On the contrary, the finding that has

been recorded clearly establishes that they were travelling

in the bus without ticket.

The Labour Court, while

recording such a finding, has been guided by the

observations of this Court that justice must be tampered

with mercy and the erring workman should be given an

opportunity to reform himself and to prove to be a loyal and

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AIR 2001 SC 930

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(2002) 10 SCC 330

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AIR 2006 SC 2730

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(2008) 1 SCC 115

Reportable

disciplined employee.

The said observations have been

reproduced from Scooter India Ltd. Lucknow v. Labour

Court, Lucknow and Anr12.

The said decision was

rendered in the context of a workman having an ideology

and behaving in a different manner which bordered on

rudeness with the management. There was no allegation of

the present nature and, therefore, we really fail to fathom

how the said observations could have been applied to a case

of this magnitude when approximately half of the

passengers travelled without ticket and the first respondent

was performing the duties of a Conductor. The loss caused

to the Corporation cannot be marginalized.

In such a

situation the question of reformation and to make him

disciplined or giving him another chance, in our considered

opinion, does not arise. The Conductor holds the post of

trust under the Corporation. It is extremely difficult on the

part of the checking authorities to check in a constant

manner. An employee holding the post that requires trust

and confidence is expected to behave with discipline, loyalty

and also maintain the fiscal sanctity. He should not allow

anything to creep in which would make him a person of

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FLR 1988 (57) = (1989) Supp. 1 31

Reportable

questionable integrity. When the first three charges were

treated to have been established by adducing cogent

evidence, neither the Labour Court nor the High Court

should have been guided by the sense of mercy and direct

reinstatement. The motive of the respondent from the act is

inherent. When such kind of indiscipline causes financial

loss to the Corporation, adequate punishment has to be

imposed and in our view such misconduct does not stand

on a lesser footing than embezzlement or corruption and

more importantly results in loss of faith and breaches the

trust. We must not forget the fundamental duty and work.

A number of persons had been allowed to travel in the bus,

without paying fare as if the fare was paid, the same was

pocketed. That apart, the violation of the Rules and the manner in which he has dealt with the Assistant Traffic Inspector should have been seriously viewed.

11. Presently, we shall deal with the issue whether the Labour Court is justified in its reasoning that the charge of personal gain has not been proved. The reasoning ascribed by the Labour Court, we must say, is absolutely perverse. It reads as follows:-

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"In chargesheet Exht. W/1 it has been stated that the petitioner was carrying 25 passengers for his personal gains and being involved in planned corruption he has caused financial loss to the corporation. On behalf of employer no such reliable evidence has been given from which it could be proved that the petitioner had recovered money from alleged without ticket passengers. It is not the contention of the Inspector that they had checked the bag available with the workman and cash more than the cash for which ticket have been issued, was available with the petitioner. Inspector Mohd. Khalil Khan in his statement has stated "after recording comments on the waybill, the same was given to the conductor for his signatures as a proof of incident but the conductor has folded and kept it with him and has not returned it to me. Besides this he had instigated the passengers against the conductor then they will make miserable for me to live in the area". In normal course, if the petitioner workman would have taken fare of tickets from passenger and would not have issued tickets to them, then the passengers would have complained to the Inspectors that petitioner workman inspite of taking money has not issued ticket to them. It does not appear believable that without tickets passengers have taken the side of conductor and threatened the Inspector that if they will make any complaint against the conductor, they will make it miserable for them to live in the area. It has come in evidence that the inspectors have not recovered 10 times of the fare from without ticket passengers or Rs.500/- as compounding fee. I understand that by not recovering compounding fee from the without ticket passengers, it will motivate the passengers to travel without ticket. If the passengers apprehend that their checking can be done and 10 times fare can be recovered from them, then certainly they will take ticket and if the conductor does not issue ticket despite

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recovery of fare, then they will compel the conductor to issue tickets otherwise they have to pay a very large amount in case of checking. Thus the inspectors are also not less guilty for the irregularity of carrying without ticket passengers. If this fact of the inspectors is correct that 25 without ticket passengers have been found in petitioner's bus even then there is

no proof of this fact that the petitioner workman had recovered the fare from them and wanted to misappropriate the same. In the circumstances of the case, I understand that the punishment of dismissal awarded to the petitioner is somewhat severe."

12. On a mere glance at the said reasons, it is quite vivid the reasons are really imaginary and reveal some kind of unacceptable theoretical perceptions by the Labour Court.

The conduct of the conductor would clearly show that the factum of personal gain was established. The reason given that the passengers would have complained and they would not have taken the side of the conductor and would have made a complaint against the conductor are not based on any evidence, but are eloquently expressed by innate creativity of the Labour Court. As the factual matrix

reveals, there could not have been any recovery. The

non-recovery of the amount does not mean that there was no personal gain to the conductor or concealing of

corruption for personal gains by lodging a report with the

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police regarding misplacing of waybill by the employee.

Needless to emphasise the said charge has been proven in the domestic enquiry. The Labour Court has not really

dislodged that finding. It has really proceeded in a

mercurial manner and adverted to the issue of

misappropriation. It has remained wholly oblivious to the

facts that conductor had allowed 25 passengers to travel

without ticket; that by virtue of the said act, the

Corporation had sustained loss; that he had mischievously

lodged an FIR at the police station regarding misplacing of

waybill by him; that his conduct manifestly shows his

involvement for personal gain, and that the eventual act

was to conceal the corruption which was rooted in his

personal gain. The finding recorded by the Labour Court on

this score is absolutely perverse and the High Court has

repeated the reasons and concurred with the conclusion.

Thus, the irresistible conclusion has to be that the charge

pertaining to personal gain has been proved. We may

clearly state that the contrary conclusion would tantamount to ignoring the obvious and, in a way, treating the pinchbeck to be real. Though there is concurrent finding of

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fact, but the approach being manifestly perverse, the same can be interfered with in exercise of power under Article 136 of the Constitution. It has been so held in *Alamelu v.*

*State*¹³, *Heinz India (P) Ltd. v. State of U.P.*¹⁴ and

*Vishwanath Agrawal v. Sarla Vishwanath Agrawal*¹⁵.

13. In view of the aforesaid analysis, the irresistible conclusion is that both the Labour Court and the High Court have fallen in error by imposing a lesser punishment on the respondent-workman whereas the only punishment, on establishment of the charges which have been accepted by the labour court, should have been dismissal and not a lesser one.

14. In the facts and circumstances of the case, we are impelled to state that the exercise of power under Section 6(2-A) of the Act by the Labour Court is absolutely arbitrary and it can be said without any shadow of doubt that it has not been exercised in a judicial manner. Additionally,

when we have further held that the charge pertaining to personal gain has been established, the said view gets more support. It is so, as has been observed in *Shobha Suresh*

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(2011) 2 SCC 385

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(2012) 5 SCC 443

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(2012) 7 SCC 288

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*Jumani v. Appellate Tribunal*¹⁶ that there is a cancerous growth of corruption which has affected the moral standards of people and all forms of governmental administration.

15. In *Niranjan Hemchandra Sashittal v. State of Maharashtra*¹⁷, it has been observed that:-

"... corruption mothers disorder, destroys societal will to progress, accelerates undeserved ambitions, kills the conscience, jettisons the glory of the institutions, paralyses the economic health of a country, corrodes the sense of civility and mars the marrows of governance. It is worth noting that immoral acquisition of wealth destroys the energy of the people believing in honesty, and history records with agony how they have suffered. The only redeeming fact is that collective sensibility respects such suffering as it is in consonance with the constitutional morality."

In the said case, it has also been observed that the degree of corruption is immaterial. In the case at hand, as we perceive, the delinquent employee has harboured the notion that when the cancerous growth has affected the system, he can further allow it to grow by covering it like an octopus, with its tentacles disallowing any kind of surgical operation or treatment so that the lesion continues.

The

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(2001) 5 SCC 755

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(2013) 4 SCC 642

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whole act is reprehensible and such a situation does not even remotely commend any lenience.

16. Consequently, the appeal is allowed and the award passed by the Labour Court as well as the order passed by the High Court is set aside and the order of dismissal imposed by the Corporation is restored. There shall be no order as to costs.

.....J.
(Dipak Misra)

.....J.
(Prafulla C. Pant)

New Delhi;
September 1, 2015.
ITEM NO.106

COURT NO.5

SECTION XV

S U P R E M E C O U R T O F
R E C O R D O F P R O C E E D I N G S

I N D I A

Civil Appeal

No(s). 2038/2012

U.P.STATE ROAD TRANSPORT CORP.& ANR.

Appellant(s)

VERSUS

GOPAL SHUKLA & ANR.

Respondent(s)

Date : 01/09/2015 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE PRAFULLA C. PANT

For Appellant(s) Mr. Pradeep Misra,Adv.

For Respondent(s) Mr. Vibhu Tiwari, Adv.
Mr. Ravi Prakash Mehrotra,Adv.

Mr. Shrish Kumar Misra,Adv.

Mr. Yash Pal Dhingra,Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeal is allowed in terms of the signed reportable judgment.

(Gulshan Kumar Arora)
Court Master

(H.S. Parasher)
Court Master

(Signed reportable judgment is placed on the file)