Uttar Pradesh State Road Transport ... vs Gajadhar Nath on 8 December, 2021

Author: Hemant Gupta

Bench: V. Ramasubramanian, Hemant Gupta

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7536 OF 2021
(ARISING OUT OF SLP (CIVIL) NO. 12369 OF 2021)

UTTAR PRADESH STATE ROAD TRANSPORT
CORPORATION .....APP

VERSUS

GAJADHAR NATH .....R

JUDGMENT

HEMANT GUPTA, J.

Leave granted.

2. The order dated 20.1.2021 passed by the High Court of Allahabad is the subject matter of challenge in the present appeal at the instance of the employer whereby the order dated 22.10.2008 passed by the Industrial Tribunal 1 was not interfered with. The Tribunal directed that the respondent2 be reinstated in service and ordered 50% of the salary to be paid for the period when he was not in employment.

The workman was removed from service as conductor on account of misconduct on 14.12.2001. He raised an industrial dispute 1 For short, the 'Tribunal' 2 For short, the 'workman' which was referred to the Tribunal. On 5.5.2008, the Tribunal returned a preliminary finding that the domestic inquiry conducted into the charges levelled against the workman in question was not fair and proper. Therefore, the employer led evidence by examining Sheshmani Mishra, an Assistant Traffic Inspector 3 who had conducted inspection of the vehicle on 12.11.1998. The said witness supported the report submitted by him to the Assistant Regional Manager as Ex.P/10. He deposed that he

checked the bus at Katra when the bus was coming from Banda to Allahabad. All the 17 passengers in the bus had stated that they had given the money but the conductor did not issue even a single ticket. Thus, the Inspector concluded that all the passengers were without ticket. He also deposed that when he tried to record the statement of the passengers, the conductor misbehaved with him and used unruly words which he could not state even before the Court. In the cross-examination, he deposed that his report was dated 13.11.1998 and that such report does not bear the signature of driver or the conductor. Further, no statement of any of the passengers was filed.

4. The learned Tribunal considering the said statement, set aside the order of removal inter alia holding that the Inspector should have recorded the statements of passengers who have been found travelling without ticket and if they had shown reluctance in recording their statements, at least their oral statements, names 3 For short, the 'Inspector' and addresses must have been submitted. The Tribunal also returned a finding that the Inspector was not proved to have inspected the bus on 12.11.1998. It was also observed that if the conductor had misbehaved with the Inspector, why an FIR was not recorded in the concerned police station. On these grounds, the learned Tribunal set aside the order of removal.

5. The scope of an adjudicator under the Industrial Disputes Act, 19474 may be noticed. The domestic inquiry conducted can be permitted to be disputed before the Tribunal in terms of Section 11A of the Act. This Court in a judgment reported as Workmen of M/s Firestone Tyre and Rubber Co. of India (P.) Ltd. v. Management & Ors.5 held that in terms of Section 11A of the Act, if a domestic inquiry has been held and finding of misconduct is recorded, the authorities under the Act have full power and jurisdiction to reappraise the evidence and to satisfy themselves whether the evidence justifies the finding of misconduct. But where the inquiry is found to be defective, the employer can lead evidence to prove misconduct before the authority. This Court held as under:

> "32. From those decisions, the following principles broadly emerge :-
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> (1) The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power to see if action of the employer is justified.

4 For short, the 'Act' 5 (1973) 1 SCC 813 (2) Before imposing the punishment, an employer is expected to conduct a proper enquiry in accordance with the provisions of the Standing Orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.

(3) When a proper enquiry has been held by an employer, and the finding of misconduct is plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimisation, unfair labour practice or mala fide.

(4) Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, had to

give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence contra.

(5) The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a prima facie case. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.

(6) The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective. (7) It has never been recognised that the Tribunal should straightway, without anything more, direct reinstatement of a dismissed or discharged employee once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.

(8) An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before the Tribunal is in the interest of both the management and the employee and to enable the Tribunal itself to be satisfied about the alleged misconduct.

(9) Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time, punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is so harsh as to suggest victimisation. (10) In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of Panitole Tea Estate v. The Workmen, 1971-1 SCC 742 within the judicial decision of a Labour Court or Tribunal."

6. The question as to whether the employer is required to seek liberty to prove misconduct in the written statement or could lead evi- dence at a later stage was considered by a Constitution Bench of this Court in a judgment reported as Karnataka State Road Transport Corporation v. Smt. Lakshmidevamma & Anr.6. Therein this Court was examining a conflict, if any, between two judgments reported Shambhu Nath Goyal v. Bank of Baroda & Ors.7 and Rajendra Jha v. Presiding Officer, Labour Court, Bokaro Steel City, District Dhanbad & Anr. 8. The majority opinion of the Court noticed that the right of a management to lead evidence before the Labour Court or the Industrial Tribunal in 6 AIR 2001 SC 2090 7 (1983) 4 SCC 491 8 1984 Supp. SCC 520 justification of its decision under consideration by such Tribunal or Court is not a statutory right. This is actually a procedure laid down by this Court to avoid delay and multiplicity of proceedings in the disposal of disputes between the management and the workman.

"17. Keeping in mind the object of providing an opportunity to the management to adduce evidence before the Tribunal/Labour Court, we are of the opinion that the directions issued by this court in Shambhu Nath Goyal's case need not be varied, being just and fair. There can be no complaint from the management side for this procedure because this opportunity of leading evidence is being sought by the management only as an alternative plea and not as an admission of illegality in its domestic inquiry. At the same time, it is also of advantage to the workmen inasmuch as they will be put to notice of the fact that the management is likely to adduce fresh evidence, hence, they can keep their rebuttal or other evidence ready. This procedure also eliminates the likely delay in permitting the management to make belated application whereby the proceedings before the Labour Court/Tribunal could get prolonged. In our opinion, the procedure laid down in Shambhu Nath Goyal's case is just and fair.

18. There is one other reason why we should accept the procedure laid down by this Court in Shambhu Nath Goyal's case. It is to be noted that this judgment was delivered on 27th of September, 1983. It has taken note of almost all the earlier judgments of this Court and has laid down the procedure for exercising the right of leading evidence by the management which we have held is neither oppressive nor contrary to the object and scheme of the Act. This judgment having held the field for nearly 18 years, in our opinion, the doctrine of stare decisis require us to approve the said judgment to see that a long-standing decision is not unsettled without strong cause."

7. Now on merits, keeping in view the principles of law, learned counsel for the appellants-employer contended that the Indian Evidence Act, 18729 applies to all judicial proceedings in or before any Court. Since the domestic inquiry is not by a Court, therefore, 9 For short, the 'Evidence Act' strict rules of the Evidence Act are not applicable to such domestic inquiry. Reliance is placed upon a three-Judge Bench of this Court reported as State of Haryana & Anr. v. Rattan Singh10 wherein in respect of a conductor who was found to have not issued tickets, this Court held as under:

> "4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case-law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. However, the courts below misdirected themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The 'residuum' rule to which counsel for the respondent referred, based upon certain passages from American Jurisprudence does not go to that extent nor

> does the passage from Halsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence — not in the sense of the technical rules governing regular court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. We find, in this case, that the evidence of Chamanlal, Inspector of the Flying Squad, is some evidence which has relevance to the charge levelled

10 (1977) 2 SCC 491 against the respondent. Therefore, we are unable to hold that the order is invalid on that ground."

8. In a judgment reported as U.P. State Road Transport Corporation v. Suresh Chand Sharma11, this Court set aside the order of the High Court wherein the writ petition was allowed holding that the passengers without tickets have not been examined and cash with the employee was not checked. This Court relied upon the judgment of this Court in Rattan Singh and found that the punishment of dismissal from service was not disproportionate to the proved delinquency of the employee.

9. The Division Bench of the Allahabad High Court to which the learned Single Bench was bound in a judgment reported as U.P. State Road Transport Corporation through M.D. & Ors. v. Rajendra Prasad12 allowed the appeal of the employer wherein the Tribunal returned a finding that 16 passengers who were without tickets at the time of inspection were not examined. Therefore, the punishment order was set aside being in contravention of the principles of natural justice. The Division Bench of the High Court held as under:

> "24. In view of the above, we find no substance in the argument raised by the learned counsel for the claimant/respondent to the effect that the passengers were required to be examined during enquiry and accordingly, we hold that the finding with regard to examination of passengers given by the Tribunal is perverse being contrary to the Law and being so is unsustainable. It is also for the reason that the enquiry officer after examining the witnesses including claimant/respondent held that the 11 (2010) 6 SCC 555 12 2019 SCC OnLine All 5152 charge levelled against the claimant/respondent found proved.
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> 37. Further, in the present case, claimant/respondent-

Rajendra Prasad is a conductor of the bus and he was entrusted with the duty to collect the ticket from the passengers travelling in the bus and deposit the same with the Corporation however in the present case, from the material on record, the position which emerges out is to the effect that he collected the fair from 16 passengers/persons but did not deposit the same."

10. On the other hand, learned counsel for the respondent-workman argued that the statement of the Inspector does not inspire confidence as he had not recorded the names and addresses of the passengers. It is not the case of the workman that the passengers were required to be examined but at least there should have been some evidence that there were passengers who were found travelling without any ticket. Since the basic evidence is not available on record, therefore, the finding of the Tribunal cannot be said to be illegal or unwarranted which was rightly not interfered with by the High Court.

11. We find that the order of the Tribunal and that of the High Court are clearly erroneous and not sustainable in law. The representative of the employer has not been cross-examined on the question that he has not inspected the bus on 12.11.1998. He has deposed that when he tried to record the statements of the passengers, the conductor misbehaved with him and used unruly words. Even that part of the statement has not been disputed in the cross- examination. Therefore, the fact that the Inspector was not able to record the names and addresses of the passengers cannot be said to be unjustified. Since the passengers are low-fare paying passengers, they might have been hesitant to get involved in the issues of any action against the conductor. The Inspector had found that 17 passengers were not issued tickets and such statement of the Inspector has also not been disputed in the cross- examination. The Tribunal or the High Court could not reject the evidence led by the employer in respect of misconduct of the workman before the adjudicator. Still further non lodging of FIR cannot be the circumstance against the witness examined by the employer. The initiation of criminal proceedings against an employee or not initiating the proceedings has no bearing to prove misconduct in departmental proceedings. Therefore, we find that the order of removal from service cannot be said to be unfair and unjust in any manner which would warrant an interference at the hands of the Tribunal and the High Court. The three reasons recorded by the Tribunal are absolutely perverse and not supported by any evidence. The Tribunal had misapplied the basic principles of law and the High Court has thereafter wrongly confirmed the order.

12. Consequently, the appeal is allowed. The orders of the High Court and of the Tribunal are set aside. The order of punishment dated 14.12.2001 is hereby restored.

.....J. (HEMANT GUPTA) .....J. (V. RAMASUBRAMANIAN) NEW DELHI;

DECEMBER 8, 2021.