U.P. State Road Transport Corporation vs Sri Lakhan Singh And 2 Others on 12 October, 2018

Author: Sangeeta Chandra

Bench: Sangeeta Chandra

HIGH COURT OF JUDICATURE AT ALLAHABAD

AFR

Reserved on 22.12.2017

Delivered on 12.10.2018

Case :- WRIT - C No. - 55535 of 2013

Petitioner :- U.P. State Road Transport Corporation

Respondent :- Sri Lakhan Singh And 2 Others

Counsel for Petitioner :- Samir Sharma,Kartikeya Saran

Counsel for Respondent :- C.S.C.,Ajay Kumar Srivastava,Hitesh Pachauri

Hon'ble Mrs. Sangeeta Chandra,J.

1. This writ petition has been filed by the petitioner challenging the Award dated 28.5.2013 passed by the respondent no. 2 - Presiding Officer, Labour Court, U.P., Rampur in Adjudication Case no. 41 of 1992 (Lakhan Singh Vs. U.P.S.R.T.C.) by which it has set aside the removal order dated 24.5.1989 and directed reinstatement of the respondent no. 1 with full back wages and other consequential benefits.

2. As per the pleadings in the writ petition, the respondent no. 1 was working on the post of conductor in Agra Depot of the Corporation. On 29.4.1987, the respondent no. 1 was deputed on bus no. UPU-2731. This bus was checked enroute by the Checking Party comprising of Ram Lal Arora and Kanhai Singh, Traffic Inspectors. It was found that 48 passengers were travelling without tickets while the respondent no. 1 had already realised the fare from such passengers, but had not made entries in the Way Bill nor issued tickets to them. The Checking Party thereafter issued block tickets to 40 passengers travelling from Bisauli to Chandausi and 8 passengers travelling from

Bisauli to Mundia. As the Checking Party was making entries on the Waybill, the respondent no. 1 created obstruction in checking the bus and snatched away the Waybill from the Checking Party due to which it was torn and the driver sped away with the bus.

3. A report of the misconduct of the conductor was mae on 30.4.1987 by Sri R.L. Arora. The Station-Incharge on the basis of thereof sent a report on 4.5.1987. The respondent no. 1 was suspended on 18.5.1987. A charge sheet was issued to him on 8.10.1987.

4. The respondent no. 1 replied to the charge sheet, but his reply was not found satisfactory and a regular enquiry was held thereafter wherein the two members of Checking Party - R.L. Arora and Kanhai Singh were examined by the Inquiry Officer and the respondent no. 1 as well. His defence witness - Ashrafi Lal - the driver of the bus on that day was also examined. Opportunity of cross examination was given.

5. The Inquiry Officer submitted his report on 31.10.1988 to the effect that the charge of misconduct stood proved against the respondent no. 1. A show cause notice was issued on 15.11.1988 as to why his services be not terminated and balance pay for the suspension period be not forfeited.

6. The respondent no. 1 submitted his reply and finding his reply unsatisfactory, the respondent no. 1 was removed from service by the order dated 24.5.1989. The respondent no. 1 filed a departmental appeal which was rejected by the Appellate Authority on 5.2.1990. The respondent no. 1 raised an industrial dispute before the Deputy, Labour Commissioner.

7. The Corporation filed its written statement. The Deputy, Labour Commissioner nevertheless referred the matter to the State Government and the State Government under Section 4-K of the U.P. Industrial Disputes Act, 1947 referred it to the Labour Court which was registered as Adjudication Case No. 41 of 1992.

8. Before the Labour Court, a written statement was filed on behalf of the respondent no. 1, alleging that false and fabricated charges had been levelled upon him and he was removed without affording proper opportunity of hearing to him. A written statement was also filed by the Corporation before the Labour Court disputing the allegations. Rejoinder affidavits were also filed thereafter.

9. The Corporation proposed to amend the written statement to incorporate fresh pleading with regard to grant of opportunity to produce evidence before the Labour Court to prove the charge, but the Labour Court rejected the application by its order dated 5.1.1993.

10. The Corporation thereafter filed Writ Petition No. 12734 of 1993 challenging the Reference Order dated 16.3.1992 and the order dated 5.1.1993 rejecting the amendment application of the petitioner. An interim order was granted by this Court staying the further proceedings in Adjudication Case No. 41 of 1992.

11. This writ petition was ultimately disposed of by this Court on 10.7.2003 setting aside the order dated 5.1.1993 passed by the Labour Court and remanding the matter to the Labour Court with a

direction that the Corporation would be entitled to amend its written statement and also with a direction to decide the adjudication case expeditiously, preferably within a period of six months from the date of production of certified copy of this order.

12. After this order was passed by this Court on 10.7.2003 with an expectation that the matter would be decided finally by February 2004, an additional written statement was filed by the Corporation that the employer had lost confidence on respondent no. 1 and the adjudication case be rejected. It was also prayed that in case the departmental enquiry conducted against the respondent no. 1 was not found to be fair, the Corporation be granted opportunity to prove the charges against the respondent no. 1 before the Labour Court by leading evidence.

13. The Labour Court framed a preliminary issue regarding fairness of departmental enquiry conducted against the respondent no. 1. The hearing of the case commenced only in 2012 on the preliminary issue. One K.P. Saxena, Senior Clerk at Moradabad Depot of the Corporation who was deputed with the Inquiry Officer as Stenographer, Typist at the time of the enquiry, was produced by the Corporation and he gave his statement before the respondent no 2.

14. During the pendency of adjudication case, all the departmental witnessess had expired and the Corporation could not produce any witness, viz the Inquiry Officer or the two complainants. On 5.6.2012, the respondent no. 2 gave its finding on the preliminary issue that the enquiry conducted against the respondent no. 1 was not fair and proper.

15. Since, all the departmental witnesses had died in the meantime, only the respondent no. 1 was examined by the Labour Court, no evidence could be led on behalf of the Corporation to prove the charges. The Labour Court by means of the Award dated 28.5.2013 set aside the termination order and directed reinstatement of respondent no. 1 with continuity of service and full back wages.

16. In the writ petition filed by the Corporation, the finding recorded in the order dated 5.6.2012 deciding the preliminary issue has not been challenged only the Award dated 28.5.2013 by the respondent no. 2. has been challenged.

17. It is the contention of the counsel for petitioner that the punishment order has been set aside by the Labour Court on three grounds. Firstly, it has observed that the Inquiry Officer was an employee of the Corporation and therefore, he had not conducted the inquiry fairly. Secondly, it has observed that no independent witnesses were produced either before the Inquiry Officer or before the Labour Court and thirdly, the Presiding Officer has observed that the Traffic Inspectors Shri R.L. Arora and Shri Kanhai Singh who were part of the checking party when the Bus concerned was checked enroute were not produced before the Labour Court as witnesses by the Corporation.

18. The learned counsel for petitioner has stated that in so far as Inquiry Officer being an employee of the Corporation is concerned, it is settled principles of Service Jurisprudence that Inquiry Officer is always an employee of the Employer (Corporation herein) and no adverse inference could have been drawn by the Labour Court regarding the conduct of the Inquiry Officer only because he was an employee of the Corporation. Secondly, the counsel for the petitioner has argued that with regard to

non production of independent witnesses i.e. ticket-less passengers before the Inquiry Officer in the domestic inquiry or before the Labour Court, the Hon'ble Supreme Court has observed in several of its decisions that passengers who were caught without tickets cannot be insisted upon to be examined during the domestic inquiry and their statements are unnecessary. Thirdly, the counsel for petitioner (Corporation) has argued that the Traffic Inspector Sri R.L. Arora and Shri Kanhai Singh who were part of the checking party had been examined as departmental witnesses in the domestic inquiry held in the year 1987-88 and it is not disputed by the delinquent employee that he was also given opportunity of cross-examination of such witnesses. At the time when the Labour Court was hearing the matter both the Traffic Inspectors Mr. Arora and Mr. Kanhai Singh had died and the Corporation could not produce them as witnesses before the Labour Court and just because of their non production before the Labour Court, no adverse inference could have been drawn.

19. The facts as are evident from a perusal of the award make out a case that at the time when the Bus in question was stopped on 29.04.1987 enroute by the checking party, it was carrying 63 passengers, the fare of all these 63 passengers had been received by the delinquent employee but entry with regard to only some of the passengers was made on the Way-Bill and tickets were also issued only to some of the passengers. Forty eight passengers were found to be travelling without ticket and the last stop on which the Bus had picked up the passengers was almost seven kilometers away and the delinquent employee had enough time to issue tickets and make entries in the Way-Bill which he did not do by the time the checking party stopped the Bus. The Way-Bill was also snatched from the checking party and in this process the way-bill was torn and 3-4 torn pieces of the original Way-Bill were also produced by the checking party while making their report.

20. The Presiding Officer has examined the copies of the Way-Bill No. 174330 and observed that the way-bill had not been torn in half, but was torn in six pieces and therefore, the story of the checking party cannot be believed.

21. The counsel for respondent No. 1, however, has pointed out that when the preliminary issues were decided by the Labour Court, the Presiding Officer has found the domestic inquiry not having been conducted according to the principles of natural justice and he has also pointed out that the Inquiry Officer himself examined the departmental witnesses and did not allow the delinquent employee to cross examine the departmental witnesses and when the delinquent employee requested for production of independent witnesses i.e. the ticketless passengers, the Inquiry Officer did not permit such production of independent witnesses. This finding of the Labour Court on preliminary issues was not challenged by the Corporation. It is his case that if the delinquent employee had snatched away the Way-Bill, then, it would have been torn in half instead of in 4-5 pieces and in fact, the checking party itself had torn the Way-Bill only to create false evidence against the delinquent employee.

22. The counsel for the respondent No. 1 has pointed out from the order passed by the Labour Court, while deciding the preliminary issues with regard to fairness of the domestic inquiry, that the Employer Corporation had produced only one Shri K.P. Saxena, Senior Clerk of Moradabad Depot as their witness, who admitted that the Inquiry Officer Shri V.P. Singh, Depot Manager, Moradabad had dictated the inquiry proceedings to him and the inquiry report was in his handwriting. Shri K.P.

Saxena had said that he was not aware of the facts of the case whether the Bus was stopped for checking and whether the Bus was taken away rashly by the driver or by the conductor from the checking party and it has come in the statement of Shri K.P. Saxena that he does not know the distance between Bisauli and Mudiya. He also did not know whether the conductor had given tickets to all passengers in Bus and was caught while making entries in the Way-Bill. He also did not know whether the conductor made entries of 63 passengers in another Way-Bill after the Way-Bill was taken by the checking party and other facts relating to misconduct alleged to have been done by the delinquent employee. He had, however, admitted that the Inquiry Officer had died in the meantime and that the Inquiry Officer himself had questioned the Traffic Inspector Shri R.L. Arora and Shri Kanhai Singh.

23. The counsel for respondent No. 1 has also pointed out the observations made by the Labour Court regarding the statement of the delinquent employee that if indeed the story set up by the checking party was correct and he had snatched away the Way-Bill, in that event, at least half of the Way-Bill should have been in the possession of the checking party but four or five pieces of the Way-Bill were produced before the Labour Court which makes the prosecution story doubtful.

24. The learned counsel for the petitioner has also informed this Court that it was in the knowledge of the Labour Court at the time of the delivering the award that the respondent No. 1 had reached fifty eight years of age, yet he has directed the petitioner for his reinstatement which is not possible as the age of superannuation for the conductors in the Corporation is 58 years.

25. The learned counsel for petitioner has relied upon the judgment rendered by the Hon'ble Supreme Court in Divisional Controller, KSRTC (NWKRTC) Vs. A.T. Mane: (2005) 3 SCC 254.

26. Learned counsel for the respondents, Sri Ajay Kumar Srivastava relied upon his counter affidavit wherein it was submitted that it is incorrect to say that the bus was carrying 48 passengers without ticket. Infact tickets were issued, but when he was making entries in the Waybill, the Checking Staff checked the bus near Mundia Station and the respondent no. 1 handed over the Waybill to the Checking Staff and also the block ticket book.

27. If the departmental witnesses had expired during the pendency of the writ petition no. 12734 of 1993, the respondent no. 1 could not be claimed. Once, the respondent no. 2 had found the enquiry was not fair and proper in its order dated 5.6.2012, the petitioner refused to adduce fresh evidence and the petitioner failed to prove its case before the respondent no. 2.

28. Learned counsel for the respondents has continued his argument further and has relied upon a judgment rendered by the Full Bench of this Court in Asha Ram Verma & others Vs. State of U.P. & others: 2003 (2) UPLBEC 1726; judgment of Hon'ble Supreme Court in the case of Neeta Kaplish Vs. Presiding Officer, Labour Court 1991 (1) SCC 517; and another judgment rendered by the learned Single Judge of Karnataka High Court in Radhakrishna Setty Vs. Deputy General Manager, Indian Overseas Bank 1998(79) 39.

29. He has read out several paragraphs of the impugned award to show that the petitioner did not produce any evidence, for example the two Traffic Inspectors R.L. Arora and Kanhai Singh before the Labour Court. He has relied upon his counter affidavit and has argued that for delay in proceedings held before the Labour Court the Corporation itself is responsible as it had filed writ petition No. 12734 of 1993 against the order dated 05.01.1993 by which the Labour Court has rejected the Amendment Application of the petitioner i.e. Corporation seeking to amend its written statement in the Reference pending before the Labour Court.

30. Because of interim order granted in the said writ petition, proceedings before the Labour Court remained stayed. Ultimately, this writ petition was allowed on 10.07.2003 and in the meantime if Employers' witnesses died, no fault can be placed at the door of the respondents-workmen.

31. The counsel for petitioner in rejoinder has relied upon a judgment rendered by the Hon'ble Supreme Court in the case of Central Bank of India Vs. C. Bernard reported in (1991) 1 SCC 319 and has reiterated his contentions made earlier and has read out parts of the inquiry report to show that there was admission on the part of the workmen himself that he had been allowed to cross-examine the witnesses of the Department in the domestic inquiry but he has refused to cross-examine them any further.

32. This Court having heard the arguments of learned counsel for the parties has carefully perused the documents placed on record as Annexures to the writ petition. In the enquiry report submitted by the Depot Manager, Moradabad dated 31.10.1988, the charges against the respondent no. 1 mentioned that he was carrying 48 passengers without tickets and when the Checking Party tried to make note on the Way Bill, the respondent no. 1 misbehaved with them instigated the passengers also, and had torn the Waybill and used another Way Bill, thus misappropriating the revenue of the Corporation and acted against the conduct rules relating to Corporation staff in a corrupt manner.

33. The respondent no. 1 had stated before the Inquiry Officer that the Checking Party had harassed him, and falsely implicated him. Tickets had been distributed by him after taking the fare, only entry was left to be made in the Way Bill by the time the bus was stopped for checking.

Since, the Way Bill had been taken away by the Checking Party, he had no other remedy, but to use another Waybill. The members of the Checking Party who had appeared before the Inquiry Officer had stated that they had stopped the bus nearly 7 kms after it started at Bisauli Station near its regular stoppage at Mundia Station. By then tickets had not been distributed and no entry were made by the respondent no. 1. on the Way Bill.

34. The Checking Party issued one block ticket to 40 passengers travelling from Bisauli to Chandausi and also another block ticket to 8 passengers travelling from Bisauli to Mundia.

35. It was also stated by the members of the Checking Party that when they started making entry in the Way Bill, it was snatched away by the respondent no. 1 and he asked the bus driver to drive away the bus. The Checking Party had to take another bus to Faizganj where they reported the incident and also lodged an FIR.

36. The respondent no. 1 and his defense witness the driver of the bus both stated that they did not speed away with the bus, in fact the Checking Party travelled in the bus to Faizganj. Both the conductor and the driver of the bus disputed the Checking Party's statement in terms of time taken for the Checking Party to check the bus and also in terms of passengers found ticket less and the incident regarding snatching away of the Waybill.

37. The Inquiry Officer found contradiction in the statements of the driver of the bus and the conductor of the bus and also contradiction in between their statement and that of the Checking Party. He believed the Checking Party's version because some torn pieces of the Way Bill along with torn pieces of the carbon paper were produced by the members of the Checking Party. The Inquiry Officer also found that the driver of the bus was an interested witness and he disbelieved his version. The respondent no. 1 was found guilty of all the charges.

38. While considering the enquiry report in deciding the preliminary issue regarding whether the discipline proceedings were conducted against the fair manner, the respondent no. 2 in its order dated 5.6.2012 has recorded that the employers had produced only one K.P. Saxena, Senior Clerk, Moradabad Depot as their witness, he admitted that the statements of witnesses were recorded by the Inquiry Officer i.e. Depot Manager and he had cross examined the witnesses himself. The departmental witnesses had all expired in the meantime.

39. The respondent no. 2 observed in its order dated 5.6.2012, on examination of the respondent no. 1, that the Inquiry Officer did not call any independent witnesses / passengers, who were allegedly found ticketless by the Checking Party. In its order dated 5.6.2012, it rejected the enquiry proceedings and the Inquiry Report by observing that the Inquiry Officer had himself cross examined the witnesses, no opportunity was given to the delinquent employee to cross examine the witnesses. No independent witnesses were called by the Inquiry Officer.

40. At the time of final hearing, the respondent no. 2 in his Award dated 28.5.2013 has referred at length, to the findings recorded by his predecessor in his order dated 5.6.2012.

41. The respondent no. 2 has also referred to the written statement of the employers and to the written statement of the workman and has found that the bus was stopped by the checking staff on 29.4.1987 between Bisauli and Mundia. At the time of checking, there was no person found without ticket, only entry of the fact of issuance of tickets had not been done in the Way Bill by the time the bus was stopped and checked, the entries were being done by the respondent no. 1.

42. The Checking Party took away the Way Bill on which entry was being made by the respondent no. 1. The Way Bill no. 174330 was torn in six pieces which along with torn pieces of carbon papers had been submitted as evidence. It found also that the Checking Party had found 63 passengers in the bus of which 48 were allegedly without ticket. The respondent no. 2 relied upon the findings recorded in the order dated 5.6.2012, while deciding the preliminary issue that the Inquiry Officer had not conducted the enquiry fairly.

43. After the order dated 5.6.2012 was passed, the Corporation had submitted that it did not wish to produce any other evidence except K.P. Saxena, Senior Clerk, Moradabad Depot as all other witnesses had expired in the meantime.

44. The respondent no. 2 relied upon the oral statement of the respondent no. 1 as only respondent no. 1 deposed before it on 7.8.2012. Since, no additional evidence was led by the Corporation in support of the charges, the respondent no. 2 came to the conclusion that the charges could not be proved against the respondent no. 1. In the cross examination of the respondent no. 1 by the Corporation's representative, no discrepancy or contradiction could be pointed out.

45. The statement of the respondent no. 1 was consistent all throughout. The respondent no. 2 observed that the members of the Checking Party had stated that while they were making entries in the Way Bill, the respondent no. 1 had snatched away the Waybill and it was torn in half. However, the evidence submitted by the Corporation was of a Waybill which had been torn in several pieces. The respondent no. 2 came to the conclusion on examination of evidence that the Way Bill had neither been snatched away nor torn. The charge could not be proved by the employers against the workman.

46. The workman had reached the age of superannuation of 58 years, but now since the age of superannuation had been increased to 60 years, while setting aside the termination order, it directed reinstatement of the workman with continuity in service and full back wages.

47. This Court finds no discrepancy in the Award dated 28.5.2013 on the factual aspects. The issue before this Court is whether the Corporation could have relied upon the enquiry report dated 31.10.1988, if the same had been rejected by the order dated 5.6.2012 by the Labour Court while deciding the preliminary issue regarding fairness in the conduct of the enquiry and the order dated 5.6.2012 has not been challenged?

48. Learned counsel for the respondents has cited judgment rendered by the Hon'ble Supreme Court in Neeta Kaplish Vs. Presiding Officer, Labour Court 1991 (1) SCC 517. The Supreme Court was considering similar arguments raised by the counsel for the employers and it considered the legislative history which led to introduction of Section 11-A by amendment w.e.f. 15.12.1975. It observed in paragraphs 15 & 16 as under:-

> "15. The provisions of Section 11-A, specially the prohibition contained in the Proviso that the Labour Court would not take any fresh evidence, came to be considered by this Court in several cases which we shall shortly notice but even before the introduction of Section 11-A, this Court in -Ritz theatre (Pvt.) Ltd. Delhi Vs. Its Workmen (1962) 2 Lab LJ 498 : AIR 1963 SC 295 : (1963) 3 SCR 461, laid down that where the Management relied upon the domestic enquiry in defending its action, it would be the duty of the Tribunal to first consider the validity of the domestic enquiry and only when it came to the conclusion that the enquiry was improper or invalid, it would itself go into the merits of the case and call upon the parties to lead evidence.

> 16. Even after the introduction of Section 11-A, the legal position as to the jurisdiction of the Labour Court of Tribunal to itself decide the merits of charges on fresh evidence remained unaltered.

49. The Supreme Court referred to judgment in M/S Firestone Tyre and Rubber Corporation of India Private Ltd. Vs. The Management AIR 1973 SC 1227 and quoted from the said judgment as under:-

> "In our considered opinion it will be most unnatural and impractical to expect a party to take a definite stand when a decision of jurisdictional fact has first to be reached by the Labour Court prior to embarking upon an enquiry to decide the dispute on its merits. The reference involves. determination of the larger issue of discharge or dismissal and not merely whether a correct procedure had been followed by the management before passing the order of dismissal."

The Court further observed :

> "We are, therefore, clearly of opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication, the Labour Court should first decide as preliminary issue: whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer, there will be no difficulty. But when the matter is in controversy between the parties, that question must be decided as a preliminary issue. On that decision being pronounced, it will be for the management to decide whether it will adduce any evidence before that Labour Court. If it chooses not to adduce any evidence, it will not be thereafter permissible, in any proceeding to raise the issue."

50. The Supreme Court further observed in paragraph 19 thus:-

> 19. This decision makes it clear that the 'stage' at which the employer has to ask for an opportunity to adduce evidence for justifying its action is the stage when the Tribunal finally comes to the conclusion that domestic enquiry was invalid.

(emphasis supplied)

51. The Supreme Court thereafter considered several decisions of the Supreme Court where the language of the proviso was considered by the Supreme Court and observed in paragraph 23 thus:-

> "In view of the above, the legal position as emerges out is that in all cases where enquiry has not been held or the enquiry has been found to be defective, the Tribunal can call upon the Management or the employer to justify the action taken against the workman and to show by fresh evidence, that the termination or dismissal order was proper. If the Management does not lead any evidence by availing of this opportunity, it cannot raise any grouse at any subsequent stage that it should have been given that

> opportunity, as the Tribunal, in those circumstances, would be justified in passing an award in favour of the workman. If, however, the opportunity is availed of and the evidence is adduced by the Management, the validity of the action taken by it has to be scrutinised and adjudicated upon on the basis of such fresh evidence."

(emphasis supplied)

52. It then rejected the argument of the learned counsel for the appellant that the management could rely upon the domestic enquiry proceedings already held by the Inquiry Officer including the evidence recorded by him and that the Labour Court had to rely upon "materials on record" and since the enquiry proceedings constituted "material on record", the same could not be ignored.

53. While rejecting this argument it observed in paragraph 26 thus:-

> "The record pertaining to the domestic enquiry Would not constitute "fresh evidence" as those proceedings have already been found by the Labour Court to be defective. Such record would also not constitute "material on record", as contended by the counsel for the respondent, within the meaning of Section 11-A as the enquiry proceedings, on being found to be bad, have to be ignored altogether. The proceedings of the domestic enquiry could be, and, were, in fact, relied upon by the Management for the limited purpose of showing at the preliminary stage that the action taken against the appellant was just and proper and that full opportunity of hearing was given to her in consonance with the principles of natural justice. This contention has not been accepted by the Labour Court and the enquiry has been held to be bad. In view of the nature of objections raised by the appellant, the record of enquiry held by the Management ceased to be "material on record' within the meaning of Section 11-A of the Act and the only course open to the Management was to justify its action by leading fresh evidence as required by the Labour Court. If such evidence has not been led, the Management has to suffer the consequences."

(emphasis supplied)

54. The submission of the learned counsel for the petitioner that inquiry report constituted "material on record" cannot be accepted by this Court.

55. With regard to the submissions made by the learned counsel for the petitioner that the Inquiry Officer is always a departmental officer and no prejudice was caused to the respondent no. 1, if cross examination was done by the Inquiry Officer and not by the respondent no. 1; It is settled law that active participation of the Inquiry Officer in a domestic enquiry by playing the role of the Presenting Officer vitiates the enquiry. The role of the Inquiry Officer has been referred to in Roop Singh Negi Vs. Punjab National Bank & others 2009 (2) SCC 570. The Hon'ble Supreme Court has observed in paragraph 14 thus:-

> "Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the Enquiry Officer on the FIR which could not have been treated as evidence."

(emphasis supplied)

56. The Supreme Court in paragraph 17 has relied on Moni Shankar Vs. Union of India 2005 (5) SCC 88 and observed thus:-

> "The departmental proceeding is a quasi judicial one. Although the provisions of the Evidence Act are not applicable in the said proceeding, principles of natural justice are required to be complied with. The Court exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles. The Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the department, even if it is taken on its face value to be correct in its entirety, meet the requirements of burden of proof, namely - preponderance of probability. If on such evidences, the test of the doctrine of proportionality has not been satisfied, the Tribunal was within its domain to interfere. We must place on record that the doctrine of unreasonableness is giving way to the doctrine of proportionality."

(emphasis supplied)

57. In State of Uttar Pradesh & others Vs. Saroj Kumar Sinha 2010 (2) SCC 772, the Supreme Court observed in paragraphs 28 & 30 thus:-

> "28. An inquiry officer acting in a quasi judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department /disciplinary authority/Government. His function is to examine the evidence presented by the department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved

against the respondents."

30. When a department enquiry is conducted against the Government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The enquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service."

(emphasis supplied)

58. No doubt the learned counsel for the petitioner's argument regarding irrelevance of the necessity of examination of independent witnesses / passengers as observed by the Hon'ble Supreme Court in Divisional Controller, KSRTC Vs. A.T. Mane 2005 (3) SCC 254 and Karnataka, SRTC Vs. B.S. Hullikatti 2001 (2) SCC 574 may be true, but in this case the findings of fact recorded by the Labour Court cannot be interfered lightly by this Court by sitting in limited jurisdiction exercised by it.

59. In M/S Heinz India Private Ltd. Vs. State of U.P. 2012 (5) SCC 443, it has been observed in paragraph 68 :-

> "Judicial review involves a challenge to the legal validity of the decision. It does not allow the court of review to examine the evidence with a view to forming its own view about the substantial merits of the case. It may be that the tribunal whose decision is being challenged has done something which it had no lawful authority to do. It may have abused or misused the authority which it had. It may have departed from the procedures which either by statute or at common law as a matter of fairness it ought to have observed. As regards the decisions itself it may be found to be perverse or irrational or grossly disproportionate to what was required. Or the decision may be found to be erroneous in respect of a legal deficiency, as for example, through the absence of evidence, or of sufficient evidence, to support it, or through account being taken of irrelevant matter, or through a failure for any reason to take account of a relevant matter, or through some misconstruction of the terms of the statutory provision which the decision maker is required to apply. But while the evidence may have to be explored in order to see if the decision is vitiated by such legal deficiencies it is perfectly clear that in case of review, as distinct from an ordinary appeal, the court may not set about forming its own preferred view of evidence."

(emphasis supplied)

60. In Ishwarlal Mohanlal Thakkar Vs. Paschim Gujrat Vij Corporation Ltd. 2014 (6) SCC 434, the Supreme Court while placing reliance upon Shalini Shyam Shetty Vs. Rajendra Shanker Patil 2010 (8) SCC 329 and Harijandar Singh Vs. Punjab State Rare Housing Corporation 2010 (3) SCC 192 observed that a High Court in exercise of its judicial review cannot act as an Appellate Court or re-appreciate the evidence and record its finding on the contentious facts. Only if there is a serious

error of law or the finding recorded suffers from error apparent on record, can the High Court quash the order of the lower court. The Labour Court in the said case had satisfactorily exercised its original jurisdiction and properly appreciated the facts and legal evidence on record and given a well reasoned order and answered the points of dispute in favour of the candidates. The High Court had no reason to interfere with the same as the Award of the Labour Court was based on sound and cogent reasons which had served the ends of justice.

61. With regard to judgment cited by the learned counsel for the petitioner regarding consequence of setting aside an order of punishment by the Labour Court not on merits, but on technicalities, viz, on violation of principles of natural justice, namely Central Bank of India Vs. C. Barnard 1991 (1) SCC 319; this Court finds that reinstatement could not have been ordered as the respondent no. 1 had already reached the age of superannuation. As per his service book, his date of birth was 3.8.1953. The age of retirement of group C employees in the Corporation including that of a conductor was 58 years. The age of retirement was enhanced prospectively to 60 years only by Circular dated 26.7.2012. The respondent no. 1 had attained the age of superannuation i.e. 58 years in 2011 before the issuance of Circular dated 24.7.2012.

62. However, with regard to giving of full back wages, the learned counsel for the petitioner has argued that the respondent no. 1 had led no evidence and made no statement before the Labour Court that he was not gainfully employed in the meantime. Therefore, there was no necessity for awarding full back wages to the respondent no. 1 while setting aside the order of termination.

63. The Supreme Court on the other hand has observed in the Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalala 2013 (10) SCC 324 in paragraph 22 thus:-

> "The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer employee relationship, the latter's source of income gets dried up. Not only the concerned employee, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi judicial body or Court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting

the same emoluments."

(emphasis supplied)

64. This Court is of the considered opinion that reinstatement could not have been ordered by the respondent no. 2, but full back wages could certainly have been awarded along with continuity in service by the respondent no. 2 while setting aside the order of termination. The order of termination was not set aside only on the ground of mere technical violation of principles of nature justice. It was set aside on merits as well, as the Corporation could not prove the charges before the Labour Court, after it set aside the defective enquiry proceedings and was considering fresh evidence in exercise of its undisputed power under Section 11-A of the U.P. Industrial Disputes Act. It is pertinent to note that Section 6(2-A) of the U.P. Industrial Disputes Act has been found pari-materia to Section 11-A of the Central Industrial Disputes Act by the Hon'ble Supreme Court in Scooters India Limited Vs. Labour Court, Lucknow 1998 Sup. (1) SCC 31.

65. The writ petition is therefore disposed off by modifying the Award only to the extent that reinstatement could not have been ordered by the Labour Court. All other benefits available to the respondent no. 1 in pursuance of the Award shall be given to him within a period of two months.

Order Date :- 12.10.2018 Arif