

A U.P. STATE ROAD TRANSPORT CORPORATION
v.
VINOD KUMAR

DECEMBER 6, 2007

B [ASHOK BHAN AND D.K. JAIN, JJ.]

Labour Law:

C *Workman—Bus Conductor—Inquiry against for not giving*
tickets to passengers though charging from them—Removal from
service—Labour Court holding the punishment to be harsh and
substituting the same by stoppage of one increment without cumulative
D *effect and directing reinstatement with full back wages—High Court*
reducing the back wages to 50%—Held: Since workman did not
challenge correctness and legality of inquiry conducted, it was not
open to Labour Court to go into findings of Inquiry Officer regarding
misconduct committed by delinquent—Removal/dismissal from service
E *is appropriate punishment for an employee found guilty of*
misappropriation of funds—Courts should be reluctant to reduce
punishment on misplaced sympathy for such an employee.

The respondent-workman, a bus conductor, was removed from
service after an inquiry into the charge, *inter alia*, that he had
collected the fare from 8 passengers in his bus, but did not give them
F the tickets. On an industrial dispute being raised, the matter was
referred to the Labour Court. The workman did not press the legality
and fairness of the inquiry proceedings and confined his case only
to the conclusions reached by the Inquiry Officer and the quantum
of punishment. The Labour Court, however, held that the punishment
G of removal imposed upon the workman was excessive in comparison
to the charges levelled against him. It substituted the punishment
of removal by stoppage of one increment without any cumulative
effect and directed his reinstatement with full back wages. In the
writ petition filed by the workman, the High Court uphold the order

passed by the Labour Court, but reduced the back wages to 50%. A
Aggrieved, the Department filed the instant appeal.

Allowing the appeal, the Court

HELD: 1. Since the respondent had not challenged the
correctness, legality or validity of the inquiry conducted, it was not B
open to the Labour Court to go into the findings recorded by the
Inquiry Officer regarding the misconduct committed by the
respondent. This Court in a number of judgments has held that the
punishment of removal/dismissal is the appropriate punishment for C
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 D
and interfering with the quantum of punishment.

[Para 10] [1022-B-D]

Divisional Controller, N.E.K.R.T.C. v. H. Amaresh, [2006] 6 SCC
187, relied on.

1.2. The judgment of the High Court as well as the order passed
by the Labour Court are set aside. Consequently, the order passed
by the disciplinary authority dismissing/removing the respondent
from service is restored. [Para 11] [1023-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 5660 F
of 2007.

From the Judgment and final Order dated 03.08.2005 of the High
Court of Uttaranchal at Nainital in Writ Petition No. 603(M/S) of 2002.

Pradeep Misra for the Appellant. G

Dinesh Kumar Garg for the Respondent.

The Judgment of the Court was delivered by

BHAN, J. 1. Leave granted H

A 2. This appeal is directed against the final judgment and order dated
3.8.2005 passed by the High Court of Uttaranchal at Nainital in Writ
Petition No. 603 (M/S) of 2002. By the impugned order, the High Court
upheld the findings recorded by the Labour Court to the effect that the
punishment of removal imposed upon the respondent was excessive in
B comparison to the charges levelled against him. The High Court while
maintaining the findings recorded by the Labour Court that the punishment
of removal was excessive in comparison to the charges levelled against
the workman, reduced the back wages to 50%.

C 3. Respondent-workman was appointed as a Conductor in the U.P.
State Road Transport Corporation (the appellant herein) on 26.9.1991.
Respondent was conducting the bus on Kalsi-Chhani route, which was
checked and, on inspection it was found that out of 45 passengers, 28
passengers from Kalsi to Chhani were without ticket. The Inspecting Team
found that the Conductor had already recovered fare from 8 such without-
D ticket passengers. That he had issued 6 tickets which were not in seriatim
and their original copies were not completely filled. That entry of these
tickets was not made in the Way Bill. The inspecting team made an
endorsement to this effect on the Way Bill and got the signatures of
respondent as a proof thereof. On the report of the inspecting team,
E charge-sheet was issued to the respondent and he was placed under
suspension. Later on, respondent was reinstated in service subject to the
final result of the disciplinary proceedings initiated against him.

F 4. The Enquiry Officer, after holding the enquiry, submitted his report
wherein it was held that the charges were partially proved against the
respondent. The enquiry report was considered by the Punishing Authority,
which disagreed with certain conclusions arrived at by the Enquiry Officer.
After recording detailed reasons for disagreement with the conclusions
arrived at by the Enquiry Officer, the Punishing Authority issued a show-
G cause notice to the respondent enclosing therewith a copy of the enquiry
report. It was provided in the said notice that the workman can inspect
the record or obtain the copy thereof, if he so desires. Respondent filed
its reply to the said show-cause notice. Considering the entire material
on record including the reply to the show-cause notice submitted by the
respondent, Punishing Authority passed the detailed order, removing the
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respondent from service. Balance salary for the period of suspension was also forfeited. A

5. Respondent raised an industrial dispute. The State Government referred the following dispute to the Labour Court, Dehradun for adjudication:-

“Whether the termination of the services of the applicant/workman Shri Vinod Kumar S/o Shri Ravi Ram Singh, Conductor by the employers from 31.07.1999 is unjustified and/or illegal? If so, to which benefit/compensation the applicant/workman is entitled and to what extent?” B

6. Both the parties filed written statement, rejoinders and documents before the Labour Court. C

7. Respondent did not press the legality and fairness of the enquiry proceedings and confined his case only to the conclusions reached by the Enquiry Officer as well as the *quantum* of punishment. D

8. Labour Court, without appreciating the fact that in the absence of challenge to the legality or fairness of the inquiry report the Court should be reluctant to either interfere with the finding recorded by the Punishing Authority or the *quantum*, held that the charge of misappropriation has not been proved against the respondent and, thus, punishment of removal from service is harsh. It substituted the punishment of removal by stoppage of one increment without any cumulative effect and directed reinstatement of respondent with full back-wages. The said award was published. The appellant challenged the said award by filing Writ Petition No. 603 (M/S) of 2002 before the High Court of Uttaranchal at Nainital. The High Court, without appreciating the fact that once it was held that respondent was carrying passengers without ticket and had also recovered fare from 8 passengers which was a serious misconduct, upheld the order passed by the Labour Court. It agreed with the findings recorded by the Labour Court that punishment inflicted upon the respondent was excessive and disproportionate to the charges levelled/proved, but reduced the back-wages to 50%. The award of the Labour Court was modified to that extent. E F G

A 9. Counsel for the parties have been heard.

B 10. As stated in the preceding paragraphs, the respondent had
C confined his case only to the conclusions reached by the Enquiry Officer
D as well as the *quantum* of punishment. Therefore, since the respondent
E had not challenged the correctness, legality or validity of the enquiry
F conducted, it was not open to the Labour Court to go into the findings
G recorded by the Enquiry Officer regarding the misconduct committed by
H the respondent. 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] 6 SCC 187, wherein
this Court, after taking into account the earlier decisions, held in para 18
as under:-

E “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
F 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
G 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*

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*judgment in Karnataka State Road Transport Corporation v. A
B.S. Hullikatti [2001] 2 SCC 574 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 B
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 C
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 appellat
irrespective of the quantum."*

[Underlining is ours] D

11. Respectfully agreeing and following the aforesaid decision of this Court, we accept this appeal and set aside the judgment of the High Court as well as the order passed by the Labour Court. Consequently, the order passed by the Punishing Authority dismissing/removing the respondent from service is restored. No costs. E

R.P.

Appeal allowed.