

NORTH WEST KARNATAKA ROAD TRANSPORT
CORPN.

V.

H.H. PUJAR

(Civil Appeal No.4520 of 2008)

JULY 18, 2008

[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]

Labour Laws – Dismissal from service – Of bus conductor – For the misconduct of not issuing tickets to some passengers – Labour court as well as High Court setting aside order of dismissal on the ground that ticket-less passengers were not examined – On appeal, held: Order of dismissal justified – Non-examination of passengers is inconsequential in view of the facts that proceedings of domestic enquiry were fair and that the conductor admitted having not issued the tickets – Industrial Disputes Act, 1947 – s. 10 (4-A).

The bus, on which the respondent-conductor was commissioning, was intercepted by the checking staff. It was found that the respondent had not issued tickets to 20 out of 136 passengers. In domestic enquiry he was found guilty and consequently dismissed from service. Labour Court though held that the domestic enquiry was fair, set aside the order of dismissal and direct his reinstatement with conformity of service and back wages, on the ground that cash bag of the respondent and the ticket-less passengers were not checked. Single Judge of High Court confirmed the order except the direction for payment of back wages. Writ appeal was dismissed as not maintainable. Hence the present appeal.

Allowing the appeal, the Court

HELD: Since fairness of the proceedings was conceded and the respondent admitted that he had not is-

A sued tickets to 20 passengers, non-examination of the passengers is really of no consequence. The order of dismissal passed by the Corporation is to operate. [Paras 9 and 10] [1153-E,F & G]

B *State of Haryana and Anr. v. Rattan Singh 1977 (2) SCC 491; Divisional Controller KSRTC (NWKSRTC) v. A.T. Mane 2004 (8) SCALE 308*— relied on

Case Law Reference

C 1977 (2) SCC 491 Relied on Para 7
2004 (8) SCALE 308 Relied on Para 8

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D From the final Order and Judgment dated 21.10.2005 and 21.6.2006 of the High Court of Karnataka at Bangalore in W.P. No. 17519/2000 (L-KSRTC) and W.A. No. 3830/2005 (L-KSRTC) respectively

E R.S. Hegde, Chandra Prakash, J.K. Nayyar, Ashwani Garg, Rahul Tyagi and P.P. Singh for the Appellant.

The Judgment of the Court was delivered by

Dr. ARIJIT PASAYAT, J. 1. Leave granted.

F 2. Challenge in this appeal is to the judgment of a Division Bench of the Karnataka High Court in the writ appeal no.3830/2005 dismissing appeal against the order of learned Single Judge in Writ Petition No.17519/2000. The writ appeal was dismissed as not maintainable and, therefore, the challenge in the present is essential to the order of learned Single Judge.

G 3. Background facts in a nutshell are as follows:

H Respondent-Conductor was commissioning as such in Bus No. F-16 on 15.9.1993 when the bus was intercepted by the checking staff. It was found that the respondent had not issued tickets to 20 out of 136 passengers. Appellant conducted do-

mestic enquiry which found him guilty. Consequently, he was dismissed from service vide order dated 3.4.1995. The same was challenged by the respondent before the Labour Court invoking Section 10(4-A) of the Industrial Disputes Act, 1947 (in short the 'Act'). The Labour Court held that the domestic inquiry was fair and proper on the basis of the memorandum filed by the respondent conceding to the fairness of the domestic inquiry. However, the Labour Court set aside the order of dismissal and directed reinstatement of respondent with full back wages, continuity of service and other consequential benefits. The basis for this order was non-checking of cash bag of the respondent and non-examination of ticketless passengers. The order was challenged before the High Court. By order dated 21.10.2005, the learned Single Judge held that the order was correct so far as setting aside dismissal order is concerned, direction for reinstatement and continuity of service and consequential benefits. However, the direction relating to back wages was set aside. The writ appeal as noted above, was dismissed on the ground that the same was not maintainable.

4. In support of the appeal learned counsel for the appellant submitted that the primary reason indicated by the Labour Court to hold that the order of dismissal was bad, was the alleged non-examination of the passengers to whom the respondent had not issued the tickets. It also did not find any substance in the stand of the Corporation that earlier also on 12 occasions for similar charges punishments were awarded but the respondent did not improve his conduct. The High Court found that the conclusions of the Labour Court were correct. It was noted that if more passengers were carried within the permissible limit, it was fault of the Corporation who did not took timely reformative and remedial measures.

5. Learned counsel for the appellant submitted that the view expressed by the High Court is clearly contrary to the law laid down by this Court. Further, when the respondent himself conceded to the fairness of the proceedings and the fact that he had not issued tickets to twenty passengers, their non-examination is of no consequences.

A 6. There is no appearance on behalf of the respondent in spite of service of notice.

7. In *State of Haryana and Anr. v. Rattan Singh* (1977 (2) SCC 491), it was, inter alia, held as follows:

B "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
C 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
D 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
E 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
F 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
G 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
H 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 against the respondent. Therefore, we are unable to hold that the order is invalid on that ground.

5. Reliance was placed, as earlier stated, on the non-compliance with the departmental instruction that statements of passengers should be recorded by inspectors. These are instructions of prudence, not rules that bind or vitiate in the violation. In this case, the Inspector tried to get the statements but the passengers declined, the psychology of the latter in such circumstances being understandable, although may not be approved. We cannot hold that merely because statements of passengers were not recorded the order that followed was invalid. Likewise, the re-evaluation of the evidence on the strength of co-conductor's testimony is a matter not for the court but for the Administrative Tribunal. In conclusion, we do not think the courts below were right in overturning the finding of the domestic tribunal."

8. The view was reiterated in *Divisional Controller KSRTC (NWKSRTC) v. A.T. Mane* (2004 (8) SCALE 308).

9. As rightly contended by the appellant since fairness of the proceedings was conceded and the respondent admitted that he had not issued tickets to 20 passengers, their non-examination is really of no consequence.

10. In view of what has been stated by this Court in *Rattan Singh's* case (supra) and in *A.T. Mane's* case (supra) award of the Labour Court and impugned order of the High Court cannot be maintained and are set aside. The order of dismissal passed by the Corporation is to operate.

11. The appeal is allowed without any order as to costs.