

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

v.

GOPAL SHUKLA & ANR.

(Civil Appeal No.2038 of 2012)

SEPTEMBER 01, 2015

[DIPAK MISRA AND PRAFULLA C. PANT, JJ.]

U.P. Industrial Disputes Act, 1947 – s. 6(2-A) – Bus conductor with appellant-Corporation carried 25 passengers without ticket – Disciplinary proceedings – Dismissal from service – Industrial dispute raised – Labour court set aside the dismissal order and passed the award relating to reinstatement holding that the allegation of personal gain and corruption was not established – High Court upheld the award – On appeal, held: The said misconduct does not stand on a lesser footing than embezzlement or corruption and results in loss of faith and breaches the trust – Charge pertaining to personal gain established – Degree of corruption is immaterial – Whole act is reprehensible and does not commend any lenience – Thus, the courts below erred by imposing a lesser punishment on the workman whereas the only punishment, on establishment of the charges accepted by the labour court, should have been dismissal – Exercise of power u/s. 6(2-A) by Labour Court was arbitrary and was not exercised in a judicial manner – Award by the Labour Court as well as the order by the High Court set aside and the order of dismissal imposed by the Corporation restored.

Allowing the appeal, the Court

HELD: 1.1 An employee holding the post that requires trust and confidence is expected to behave with

A discipline, loyalty and also maintain the fiscal sanctity. He should not allow anything to creep in which would make him a person of questionable integrity. When the first three charges were treated to have been established by adducing cogent evidence, neither the Labour Court
B 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,
C adequate punishment has to be imposed and 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. The
D fundamental duty and work must not be forgotten. 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. [Para 10] [433-E-H; 434-A]

1.2 As the facts reveal, there could not have been any recovery. The non-recovery of the amount does not
E mean that there was no personal gain to the conductor or concealing of corruption for personal gains by lodging a report with the police regarding misplacing of waybill by the employee. The said charge has been
F 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
G 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
H that the eventual act was to conceal the corruption which

was rooted in his personal gain. The finding recorded by the Labour Court is absolutely perverse and the High Court repeated the reasons and concurred with the conclusion. Thus, the irresistible conclusion is that the charge pertaining to personal gain has been established. Though there is concurrent finding of fact, but the approach being manifestly perverse, the same can be interfered with in exercise of power u/Art. 136 of the Constitution. [Para 12] [435-H; 436-A-F]

1.3 The degree of corruption is immaterial. The whole act is reprehensible and such a situation does not even remotely commend any lenience. [Para 15] [437-G; 438-B]

1.4 Both the Labour Court and the High Court erred 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. The exercise of power under Section 6(2-A) of the U.P. Industrial Disputes Act, 1947 by the Labour Court is arbitrary and was not exercised in a judicial manner. 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. [Para 13, 14, 16] [436-G; 437-A, B; 438-B-C]

U.P. State Road Transport Corporation vs. Suresh Chand Sharma 2010 (7) SCR 239; (2010) 6 SCC 555; *Scooter India Ltd. Lucknow v. Labour Court, Lucknow and Anr* FLR 1988 (57): (1989) Supp. 1 31; *Alamelu v. State* 2011 (2) SCR 147 : (2011) 2 SCC 385; *Heinz India (P) Ltd. v. State of U.P.* 2012 (3) SCR 898: (2012) 5 SCC 443; *Vishwanath Agrawal v. Sarla Vishwanath Agrawal* 2012 (7) SCR 607: (2012) 7 SCC 288; *Shobha Suresh*

A *Jumani v. Appellate Tribunal* 2001 (3) SCR 525: (2001) 5 SCC 755; *Niranjan Hemchandra Sashittal v. State of Maharashtra* 2013 (4) SCR 767: (2013) 4 SCC 642 – referred to.

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Case Law Reference

2010 (7) SCR 239 referred to. Para 9

(1989) Supp. 1 31 referred to. Para 10

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2011 (2) SCR 147 referred to. Para 12

2012 (3) SCR 898 referred to. Para 12

2012 (7) SCR 607 referred to. Para 12

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2001 (3) SCR 525 referred to. Para 14

2013 (4) SCR 767 referred to. Para 15

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2038 of 2012.

From the Judgment and Order dated 29.08.2008 of the High Court of Judicature at Allahabad in CMWP No. 32298 of 1997.

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Pradeep Misra for the Appellants.

Vibhu Tiwari, Ravi Prakash Mehrotra, Shrish Kumar Misra, Yash Pal Dhingra for the Respondents.

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The Judgment of the Court was delivered by

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DIPAK MISRA, J. 1. 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 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 heart*" and dominantly affected by the conception "*mercy among the virtues is like the moon among the stars*"², 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 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 appelland, 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.

¹ Hannah More

² E.H. Chapin

A 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:-

E “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?”

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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:-

F “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

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workman immediately after the award.” A

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 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. B C

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

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

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

A (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
B gains.

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

C (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.”

D 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
E Court, it can be stated with certitude that the Labour Court
as well as the High Court has accepted that the first three charges
have been proved. We shall advert to the fourth charge and
the soundness of the reasons ascribed thereof by the Labour
F 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 :

G “(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
H 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.” A

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 in *U.P. State Road Transport Corporation vs. Suresh Chand Sharma*³. 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:- B C D

“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. E

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

“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 G

³ (2010) 6 SCC 555

⁴ AIR 1996 SC 1249

A misappropriation that is relevant.”

Similar view has been reiterated by this Court in *Ruston & Hornsby (I) Ltd. v. T.B. Kadam*⁵, *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. B.S. Hullikatt*⁸, and *Regional Manager, R.S.R.T.C. v. Ghanshyam Sharma*⁹.

C 23. In *NEKRTC v. H. Amaresh*¹⁰, and *UPSRTC v. Vinod Kumar*¹¹, this Court held that the punishment should always be proportionate to the gravity of the misconduct. However, in a case of corruption/misappropriation, the
D 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,
E 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
F 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

⁵ AIR 1975 SC 2025

G ⁶ (1997) 11 SCC 370

⁷ (2000) 7 SCC 517

⁸ AIR 2001 SC 930

⁹ (2002) 10 SCC 330

¹⁰ AIR 2006 SC 2730

H ¹¹ (2008) 1 SCC 115

observations of this Court that justice must be tampered with A
mercy and the erring workman should be given an opportunity
to reform himself and to prove to be a loyal and 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 B
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 C
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 D
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 E
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 questionable integrity. When the
first three charges were treated to have been established by
adducing cogent evidence, neither the Labour Court nor the F
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 G
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

¹²FLR 1988 (57) = (1989) Supp. 1 31

A persons had been allowed to travel in the bus, without paying
fare as if the fare was paid, the same was pocketed. That
B apart, the violation of the Rules and the manner in which he
has dealt with the Assistant Traffic Inspector should have been
seriously viewed.

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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

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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.

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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

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conductor and threatened the Inspector that if they will A
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 B
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 C
and 10 times fare can be recovered from them, then
certainly they will take ticket and if the conductor does
not issue ticket despite 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 D
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 E
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 F
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 G
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 H

A not mean that there was no personal gain to the conductor or
concealing of corruption for personal gains by lodging a report
with the 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
B 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
C 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
D 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
E contrary conclusion would tantamount to ignoring the obvious
and, in a way, treating the pinchbeck to be real. Though there
is concurrent finding of 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
F *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
G have fallen in error by imposing a lesser punishment on the
respondent-workman whereas the only punishment, on

¹³ (2011) 2 SCC 385

¹⁴ (2012) 5 SCC 443

H ¹⁵ (2012) 7 SCC 288

establishment of the charges which have been accepted by the labour court, should have been dismissal and not a lesser one. A

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 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. B C

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

“... 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.” E F

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 G

¹⁶ (2001) 5 SCC 755

¹⁷ (2013) 4 SCC 642

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

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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

C costs.

Nidhi Jain

Appeal allowed.