

U.P.S.R.T.C.

v

MAHENDRA NATH TIWARI AND ANR.

NOVEMBER 11, 2005

[RUMA PAL AND P.K. BALASUBRAMANYAN, JJ.]

Service law:

Disciplinary proceedings:

Misconduct—Conductor found driving bus—Dismissal from service—Justification of—Held: Conductor had no authority to drive the bus—This is a serious misconduct on his part justifying his dismissal as he endangered the public as well as property of his employer.

Breach of trust—Conductor found in possession of used tickets—Passenger travelling in the bus but not issued tickets—Held: Amounts to breach of trust placed on conductor by the employer as he is duty bound to collect fare from every passenger on behalf of his employer.

Misappropriation of funds—Used tickets found in possession of conductor—The amount involved in offence of this nature does not have material bearing while considering whether there has been misconduct on the part of conductor.

Respondent was employed as conductor by the appellant-Corporation. Disciplinary proceedings were initiated against him on the ground that he was found driving the bus; that the lone passenger travelling in the bus was not issued a ticket and that he was found in possession of used tickets. The authority imposed the punishment of removal from service. Labour Court found that punishment was too severe and directed the reinstatement of respondent with continuity of service and all remaining dues but directed stoppage of his annual increment. Aggrieved Corporation moved High Court by way of Writ Petition. High Court upheld the order of Labour Court on the ground that the embezzlement alleged against respondent was of a paltry sum of Rs. 1.50 only and that driver who had changed roles with the respondent as a conductor was responsible for not collecting the fare from the passenger and action

A ought to have been taken against him. Hence the present appeal.

Partly allowing the appeal, the Court

B HELD: 1. The conduct of the respondent as a conductor was totally irresponsible and clearly constituted misconduct on his part deserving the maximum punishment. [221-C]

C 2.1. When a conductor drives a bus for which he is not authorized, he is endangering the public as well as the property of his employer. This by itself is a serious misconduct justifying dismissal of a conductor. Similarly, the fact that one passenger was found travelling and had not been issued a ticket for that journey, constitutes a grave charge against a conductor who is really in a position of trust as far as the employer-Corporation is concerned. He is duty bound to collect the fare from every passenger on behalf of his employer. Same is the position regarding the unexplained twelve used tickets, found in his possession. That *prima facie* suggests that there is room to doubt the honesty of the respondent. He did not even try to explain the circumstances in that regard. The charges are such that they show a betrayal of the trust placed on the conductor by the employer and that the employee endangered an asset of the corporation in addition to endangering the lives of the other users of the road. [221-D-E]

E 2.2. It is a misconception to consider that the amount involved in an offence of this nature has a material bearing, while considering whether there has been misconduct on the part of an employee. It may be relevant in a criminal prosecution when considering the quantum of punishment to be imposed. When a person like the conductor of a bus, who has the obligation to make proper collection of the charges from the passengers on issuing tickets to them, is found to have passengers in the bus, even if it be only one, to whom he had not issued a ticket, it clearly amounts to a clear violation of the duty imposed on him. It is really a breach of the duty cast on the conductor who is acting on behalf of the employer. Whether it be one passenger or ten passengers it would make no difference in principle in the absence of any explanation in that behalf. It was simply the case of a conductor who had violated the Regulations or the terms of his employment and had betrayed his employer, which in any event, is a grave misconduct justifying a dismissal.

[221-G, H; 222-A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6703 of 2005.

H From the Judgment and Order dated 20.10.2003 of the Allahabad High

Court in C.M.W.P. No. 7079 of 2001.

Pradeep Misra for the Appellant.

Amit Dubey, Abhishek and Naresh Kumar for the Respondents.

The Judgment of the Court was delivered by

P.K. BALASUBRAMANYAN, J. Leave granted.

1. The respondent herein was appointed conductor of a bus by the Uttar Pradesh State Road Transport Corporation (hereinafter referred to as "U.P.S.R.T.C."). On the allegation that he was found to be driving the bus URO 7908 and that no ticket had been issued to a lone passenger found in the bus and he had in his possession used tickets, disciplinary proceedings were initiated against the respondent. A domestic enquiry was got conducted through a retired judicial officer. He found that the respondent was unauthorisedly driving the bus and that no ticket had been issued to a lone passenger sitting in the bus when the checking party inspected the bus. He also found that the respondent had in his possession 12 used tickets. Based on the finding at the enquiry and after hearing the respondent, U.P.S.R.T.C. imposed a punishment of removal against the respondent.

2. At the instance of the respondent, the matter was sent to the labour court. It was numbered as Adjudication Case No. 259 of 1991. The Presiding Officer found that the domestic enquiry relied on by the U.P.S.R.T.C. was not proper. The parties were given an opportunity to lead evidence. U.P.S.R.T.C. adduced evidence in support of the charge. The respondent adduced no evidence. In other words, he did not even try to explain the circumstances under which he was allegedly driving the bus or the circumstance in which it was found that a lone passenger travelling in the bus had not been issued a ticket. He also did not try to explain as to how he came to be in possession of 12 used tickets. The Presiding Officer, in spite of the absence of evidence on the side of the respondent proceeded to interfere with the punishment imposed. It appears that the Presiding Officer found that the respondent was a conductor but was driving the bus. There was clear evidence before him that the driving of the bus by a conductor amounted to misconduct. The Presiding Officer, in fact, noticed that only the respondent could explain how the twelve used tickets were with him or how he happened to be in possession of them. He also stated that if used tickets were found with the conductor it falls within the definition of misconduct. Taking a curious view that since

A no action has been taken against the driver, no action could be taken against the respondent alone and that the punishment awarded was too severe, the Presiding Officer proceeded to interfere with the punishment.

B 3. The Presiding Officer directed the reinstatement of the respondent with continuity of service and all the remaining dues but directed the stoppage of his annual increment. He further directed that the respondent will receive his annual increment only when he satisfied his senior officers for three years without any charges or complaint against him. Apparently, what he meant was that the question of increment would depend upon the respondent satisfying his superiors over a period of three years that his conduct as a conductor during that period was blemishless.

C 4. U.P.S.R.T.C. filed a writ petition in the High Court of Allahabad challenging the award of the labour court. By a reasoning, which with all the restraint at our command, we can only describe as perverse and a conclusion obviously flawed, the High Court dismissed the Writ Petition. The main theme D of the song was that no action had been taken against the driver. The judge proceeded to speculate on the reason why the conductor was driving the bus. He also stated that the embezzlement alleged against the respondent was of a paltry sum of Rs. 1.50. He came to a curious conclusion that the bus driver who according to him had changed roles with the respondent as a conductor, was responsible for not collecting the fare from the passenger and no reason E was shown why no charge sheet was given to the driver and why no enquiry was held against him. The learned judge also accepted the argument that the respondent was given a totally disproportionate and harsh punishment for his misconduct. The Writ Petition was dismissed. We are aghast at the approach made by the learned judge and the reasoning adopted by him. Here was a F conductor who was not authorized to drive the bus. Admittedly, he was driving the bus at the relevant time. He thus endangered the lives of pedestrians and other vehicle owners using the road. He also endangered the safety of the bus belonging to U.P.S.R.T.C. He was found in possession of 12 used tickets for which he offered no explanation. One passenger was found in the bus to whom no ticket had been issued. If these are not enough to find the G conductor of a bus guilty of misconduct, we wonder what according to the learned judge would be misconduct on the part of the conductor of a bus. The judgment of the High Court is challenged in this appeal.

H 5. At the time of issuing notice, this Court issued notice only limited to the question of back wages that was awarded to the respondent. Of course,

when we are hearing the appeal on grant of leave or the petition for special leave to appeal after notice, we are entitled to reopen the appeal in its entirety and consider the question of punishment and the legality of the reinstatement ordered by the labour court and affirmed by the High Court. This could be done by giving a notice in that behalf to the respondent and giving him an opportunity of being heard. But for the purpose of this case and at this distance of time, we do not think that it is necessary to do so. Therefore, somewhat reluctantly, we refrain from adopting that course, though according to us, this is a fit case where neither the labour court nor the High Court had any justification in interfering with the order removing the respondent from service. The conduct of the respondent as a conductor of U.P.S.R.T.C. was totally irresponsible and clearly constituted misconduct on his part deserving the maximum punishment.

6. We have no hesitation in coming to the conclusion that the respondent did not deserve the award of back wages to him. In fact, he must consider himself lucky to have been reinstated and that we are not interfering with that reinstatement. When a conductor drives a bus for which he is not authorized, he is endangering the public as well as the property of his employer. This by itself is a serious misconduct justifying dismissal of a conductor. Similarly, the fact that one passenger was found travelling and had not been issued a ticket for that journey, constitutes a grave charge against a conductor who is really in a position of trust as far as the employer-Corporation is concerned. He is duty bound to collect the fare from every passenger on behalf of his employer. Same is the position regarding the unexplained twelve used tickets, found in his possession. That *prima facie* suggests that there is room to doubt the honesty of the respondent. He did not even try to explain the circumstances in that regard. The charges are such that they show a betrayal of the trust placed on the conductor by the employer and that the employee endangered an asset of the corporation in addition to endangering the lives of the other users of the road.

7. It is a misconception to consider that the amount involved in an offence of this nature has a material bearing, while considering whether there has been misconduct on the part of an employee. It may be relevant in a criminal prosecution when considering the quantum of punishment to be imposed. When a person like the conductor of a bus, who has the obligation to make proper collection of the charges from the passengers on issuing tickets to them, is found to have passengers in the bus, even if it be only one, to whom he had not issued a ticket, it clearly amounts to a clear

- A violation of the duty imposed on him. It is really a breach of the duty cast on the conductor who is acting on behalf of the employer. Whether it be one passenger or ten passengers it would make no difference in principle in the absence of any explanation in that behalf. It was simply the case of a conductor who had violated the Regulations or the terms of his employment and had betrayed his employer, which in any event, is a grave misconduct justifying a dismissal.

8. We, therefore, allow the appeal in part and set aside the award of back wages. The respondent would be entitled to wages or salary only from the date of his being reinstated pursuant to the direction of the labour court. If anything has been paid to him in excess, U.P.S.R.T.C. would be entitled to adjust the same from his future salary in monthly installments and/or recover it from his retiral benefits, if he is not still in service or by proceeding otherwise.

D.G.

Appeal partly allowed.