A U.P. STATE ROAD TRANSPORT CORPORATION AND ORS.

v.

SHIVAJI

NOVEMBER 10, 2006

B [S.B. SINHA AND DALVEER BHANDARI, JJ.]

Labour Laws:

Industrial Disputes Act, 1947:

C

s.11A—Workman removed from service pursuant to domestic inquiry—Labour Court holding that workman was guilty of serious misconduct—High Court holding that there was no evidence to prove charges—Held, Labour Court did not assign any reason as to how the charges could be said to have D *been proved—It did not analyse the evidence adduced by the parties at all nor did it take into consideration power under s.11-A in regard to quantum of punishment—Judgment of High Court directing reinstatement cannot be faulted—Applying doctrine of proportionality reinstatement upheld, however, with 25% back wages.*

E **Respondent, a driver in the appellant-Corporation was removed from service pursuant to a domestic inquiry held against him on the charge that he dashed into a barrier intentionally and caused injuries to one person. The Labour Court held the domestic inquiry not to be legal and valid, and granted opportunity to the Corporation to adduce evidence to prove the charge.** F **Ultimately, the Labour Court held that the workman was guilty of serious misconduct and had no right to remain in service. But, the High Court allowed workman's writ petition holding that sequence of the events in the case clearly established that it was a case of no evidence. It directed reinstatement of the worker with 50% of back wages.**

G **In the present appeal filed by the Corporation it was contended that the workman having been found guilty of serious charge of misconduct by the Labour Court, the findings should not have been interfered with by the High Court.**

H

Disposing of the appeal, the Court A

HELD:1.1. The Labour Court exercised its jurisdiction under s.11A of the Industrial Disputes Act, 1947. Its opinion in the matter has, therefore, to be judged on the basis of the evidence adduced before it. The Labour Court did not analyse the evidence adduced by the parties at all. It adopted a wrong approach. It did not consider as to whether the person who was examined on B behalf of the Corporation, could have operated the said barrier particularly when his job was only to serve water to other employees. The barrier, according to him, had not been put up by the Corporation. He was not on duty to operate the said barrier. The public allegedly installed the said barrier for which no authority existed. The Labour Court did not assign any reason as C to how the charges could be said to have been proved nor did it take into consideration the power under s.11-A of the Act in regard to quantum of punishment. Why it opined that the workman was guilty of serious misconduct and had no right to remain in service has not been explained. [976-C-E; 977-E] D

1.2. The fact as to why the said barrier was put up and whether the same was within the knowledge of all the drivers of the Corporation had not been disclosed. Even according to the said witness, no First Information Report was lodged. He did not receive any serious injury. The offence to cause any intentional injury cannot be said to have been proved. The High Court was, E therefore, not wholly incorrect in opining that there was no evidence to prove the charges levelled against him. [976-F; 977-D]

2. The workman was out of service for a long time. During the pendency of the domestic inquiry he had been kept under suspension. He, however, was driving rashly and negligently. In a case of this nature, doctrine of F proportionality would also be applicable. The Labour Court also did not consider this aspect of the matter. Since only a charge of negligence had been proved against him, he is directed to be reinstated in service with 25% back wages. [977-G-H; 978-A-B]

Commissioner of Police and Ors. v. *Syed Hussain,* [2006] 3 SCC 173, G relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4779 of 2006.

From the final Judgment and Order dated 4.8.2004 of the High Court of H

A Judicature at Allahabad in C.M.W.P. No. 23726 of 1998.

Pradeep Misra, Adv. for the Appellants.

Mrs. K. Sarada Devi, Adv. for the Respondent.

B The judgment of the Court was delivered by

S.B. SINHA, J. Leave granted.

Respondent was appointed as a Driver by Appellants herein. On 07.12.1986, he was driving a bus on Aligarh-Agra route. A barrier was C installed at Sasani Bus Stand by the public. The barrier was not installed by Appellant-Corporation or by any other statutory authority. Respondent allegedly dashed into the barrier intentionally and caused injuries to one Bhoodev. He was placed under suspension. A domestic inquiry was held. He was found to be guilty of the charges levelled against him. He was D directed to be removed from services. An industrial dispute was raised whereupon the State referred the following dispute for adjudication to the Labour Court, Agra :

> "Whether the termination of services of Shri Shivaji, S/o Shri Sundarlal, Driver, by the employees *vide* order dated 07.09.1987 is legal and E valid? If not, then to what relief/benefit the workman is entitled? And with what details?

A preliminary issue was raised as to whether the domestic inquiry was legal and valid. It was held not to be so; whereupon Appellants were granted opportunity to adduce evidence to prove the charges against Respondent. F Evidence was led before the Labour Court. On analysis of the evidence brought on records, the Labour Court held :

> "....Shri Bhoodev Singh, S/o Mulayam Singh has been produced on behalf of employers who stated that on 07.12.1986 the witness was G posted as Sasani. A barrier was installed in front of bus stand to stop the bus which was used to be opened by the witness. On the said date the concerned workman came along with bus from the side of Aligarh. The witness has lowered the barrier to stop the bus but concerned workman did not stop the bus. The bus went ahead by breaking the barrier due to which the witness fell down and got H

injuries in his hands and legs. In cross examination also no contrary fact has been emerged from this witness and he has supported his original statement.

7. The concerned workman has not produced any evidence in his defence. From consideration of all the evidence and documents available on record the conclusion is arrived that the workman has intentionally hit the barrier due to which one employee got injured. In this accident there could be serious loss of life and property. Therefore my opinion is that concerned workman is guilty of serious misconduct and has no right to remain in service. The termination of workman's services w.e.f. 07.09.1987 is legal and valid and he is not entitled for any benefit/relief. Both parties will bear their own costs."

A writ petition was filed questioning the correctness of the said Award by Respondent before the High Court which by reason of the impugned judgment was allowed, stating :

"Statement of aforementioned sole witness has been brought on record along with supplementary affidavit. In the statement of aforementioned witness it has been mentioned that he has received minor injury. It has been admitted by him that while bus was proceeding from Aligarh to Sasni then he asked to get bus stopped when the Bus was near to barrier and by that time he was putting barrier down bus caused injuries to him. It has been admitted that said barrier was not belonging to Roadways and it was totally private barrier. No injuries has been caused by bus rather on account of barrier falling, the rope was loosened on account of which he fell down. It has been admitted that bus could have passed even without putting barrier down. No justification has come on record as to why said bus was being stopped at that private barrier. No First Information Report has been lodged, no medical examination was done at Government Hospital. It is true that High Court has got no authority to appreciate evidence, but the case in hand, taking the sequence of events clearly establish that it is practically case of no evidence. Tested on the touchstone of reasonableness and fairness, no reasonable or prudent man would construe, this case to be a case of misconduct as has been alleged. Even the sentence, which has been awarded, same is shockingly disproportionate to the charge which had been levelled i.e. non

A stopping of bus at barrier. Injuries alleged to be received by Bhoodev Singh are attributable to his own conduct as Bus in question could have passed even putting barrier down."

The learned counsel appearing on behalf of Appellants urged that Respondent having been found guilty of a serious charge of misconduct by B the Labour Court, the findings of fact arrived at by the Labour Court should not have been interfered with by the High Court.

Ms. Sharda Devi, the learned counsel appearing on behalf of Respondent, on the other hand, supported the judgment.

C The Labour Court exercised its jurisdiction under Section 11A of the Industrial Disputes Act, 1947 (for short, 'the Act'). It was categorically held that the domestic inquiry was not fair or valid and Respondent in the domestic inquiry had not been granted adequate opportunity to defend his case. Appellant was, therefore, granted opportunity to adduce evidence D afresh. The opinion of the Labour Court in the matter has, therefore, to be judged on the basis of the evidence adduced before it. The Labour Court did not analyze the evidence adduced by the parties at all. It adopted a wrong approach. It did not consider as to whether 'Bhoodev' who was examined on behalf of the Corporation, being its employee could have operated the said E barrier particularly when his job was only to serve water to its employees. The barrier, according to him, had not been put up by the Corporation. He was not on duty to operate the said barrier. As noticed hereinbefore, the public allegedly installed the said barrier for which no authority existed.

F The fact as to why the said barrier was put up and whether the same was within the knowledge of all the drivers of the Corporation had not been disclosed. Even according to the said witness, no First Information Report was lodged. He did not receive any serious injury. The statement of 'Bhoodev' before the disciplinary authority was marked as an exhibit. In his G statement before the domestic inquiry he stated :

"Q. When you had closed the barrier, how far was the bus standing?

A. As soon as the bus came, I had pulled down the barrier but as soon as the driver of the bus lowered down speed of the bus and H asked to raise the barrier, I tried to open the barrier, but even then it

was hit by the corners of the portion of the bus above the glass. A

Q. When you raise the barrier, how far were you dragged along with rope behind the bus?

A. I was dragged for about the distance of five hands."

The charge levelled against Respondent was noticed by the Labour Court in the following terms : B

"...On 18.12.1986 information has been received against the Driver that on 07.12.1986 when he was driving bus No. UTR 4007 on Aligarh-Agra route, he intentionally broken the barrier installed near Sasani bus stand. He had negligently driven the bus towards Agra due to which an employee Bhoodev received injuries in the accident. On this basis a chargesheet was issued to concerned workman on 20.01.1987 and domestic enquiry got made in accordance with law....." C

The offence to cause any intentional injury, thus, cannot be said to have been proved. The High Court was, therefore, not wholly incorrect in opining that there was no evidence to prove the charges levelled against him. D

In fact, the Presiding Officer, Labour Court, did not assign any reason as to how the charges could be said to have been proved. He had not taken into consideration his power under Section 11-A of the Act in regard to quantum of punishment. Why he had opined that the workman was guilty of serious misconduct and had no right to remain in service has not been explained. E

The matter in ordinary course should have been remitted to the Labour Court for passing an appropriate award, but keeping in view the fact that the matter is pending for a long time, we ourselves considered the evidence on records. F

We, therefore, are of the opinion that the impugned judgment cannot be faulted in its entirety. The High Court has granted reinstatement of Respondent with only 50% back wages. The said order has been stayed by this Court. Respondent was out of service for a long time. He, as noticed hereinbefore, even during the pendency of the domestic inquiry had been kept under suspension. He, however, was driving rashly and negligently. G

In a case of this nature, doctrine of proportionality would also be H

A applicable. Doctrine of irrationality is now giving way to doctrine of proportionality. [See *Commissioner of Police and Ors.* v. *Syed Hussain,* [2006] 3 SCC 173]. The Labour Court also did not consider this aspect of the matter. If only a charge of negligence had been proved against him, we are of the opinion that the interest of justice would be subserved if he is directed B to be reinstated in service with 25% back wages.

The appeal is disposed of with the aforementioned directions. No costs.

R.P. Appeal disposed of.