IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6808 OF 2004

Maharashtra State Road Transport Corporation
having its office at Vahatuk Bhavan,
Dr. A. Nair Marg, Bellasis Road,
Bombay Central, Bombay – 400 008. ....Petitioner

V/S

Mr. Raghu Deu Mongal,
Tukaram Mhatre's Chawl,
Wadavli, Near Lee Factory
Ambarnath, Dist. Thane ....Respondent

Ms. Pinky M. Bhansali with Ms. Dharini Jain *for the Petitioner.*
Mr. Vaibhav Jagdale *for Respondent.*

CORAM : SANDEEP V. MARNE, J.
RESERVED ON : 03 OCTOBER 2024.
PRONOUNCED ON : 09 OCTOBER 2024.

J U D G M E N T

1. Maharashtra State Road Transport Corporation (**MSRTC**) has filed this Petition challenging the judgment and order dated 13 November 2003 passed by Industrial Court allowing Revision (ULP) No.122 of 2002 filed by Respondent-employee, setting aside the judgment and order dated 4 December 2002 passed by Labour Court, Thane, in Complaint (ULP) No.65 of 2001. The Industrial Court has allowed the Complaint filed by Respondent and has restrained Petitioner from taking any action against

Respondent in pursuance of show-cause notice of dismissal dated 29 January 2001. The Labour Court had dismissed Complaint (ULP) No.65 of 2001, in which Respondent had challenged show-cause notice dated 29 January 2001 proposing to impose the penalty of dismissal from service on him. Since Industrial Court has restrained the Petitioner-MSRTC from acting on the show-cause notice and thereby prevented it from imposing the proposed penalty of dismissal of Respondent, Petitioner-MSRTC has filed the present Petition. While admitting the Petition this Court stayed the impugned order of the Industrial Court, on account of which Respondent has already been dismissed from service.

2. I have heard Ms. Bhansali, the learned counsel appearing for Petitioner-MSRTC and Mr. Jagdale, the learned counsel appearing for Respondent-workman.

3. While working as Conductor in the services of Petitioner-MSRTC, a check was conducted on the bus on 7 May 2000 in which Petitioner-MSRTC was deployed to work as Conductor. The Checker found one passenger travelling without ticket. The passenger apparently gave a statement to the Checker that he had paid Rs.3/- to Respondent at the boarding point and that he was not issued ticket. The Checker also found Rs. 65.25/- short in the cash bag of Respondent-workman. Respondent-workman was issued charge-sheet dated 10 May 2000 and after completion of enquiry, a show-cause notice proposing to impose punishment of dismissal was issued on 29 January 2001. The said notice was

challenged by Respondent before Labour Court by filing Complaint (ULP) No.65 of 2001. The Complaint came to be dismissed by the Labour Court on 4 December 2002. The Industrial Court has however reversed the decision of Labour Court, and while allowing the Complaint, has restrained the Petitioner-MSRTC from acting on the show-cause notice dated 29 January 2001.

4. Perusal of the findings recorded by the Industrial Court while allowing Respondent's Complaint would indicate that the Industrial Court is essentially swayed by failure on the part of the Petitioner-MSRTC to examine the concerned passenger who had allegedly paid Rs.3/- to Respondent without receiving any ticket, as witness. Though the Industrial Court has accepted well settled position of law in relation to domestic enquiries about admissibility of hearsay evidence, it has still proceeded to allow the Complaint by holding that the concerned statement was not recorded in the handwriting of the concerned passenger.

5. In my view, the Checker who checked the bus has been examined in the enquiry. He has given evidence about checking the bus and interception by him of one ticketless passenger in the bus. Therefore, allegation of permitting a ticketless passenger to travel in the bus is clearly proved by direct evidence of the Checker. So far as payment of fare of Rs.3/- by the passenger to Respondent is concerned, the evidence of the Checker is hearsay. However, the Checker did record statement of the passenger and produced the same in the enquiry. He led

evidence of recording of the statement. In domestic enquiries, hearsay evidence is not allergic as held by the Apex Court in ***State of Haryana vs. Rattan Singh***, 1977 (2) SCC 492 in which it is held in paragraph 4 as under:

> "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 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 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 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 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 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 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.**
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> *(emphasis and underlining supplied)*

6. Respondent was given an opportunity to cross-examine the Checker during the course of enquiry. It transpired during the course of enquiry that there were only five passengers in the bus, out of whom one was without ticket. Therefore, this is not a case where Respondent was unable to issue ticket on account of rush in the bus. It has also come in evidence that the distance between the point at which the passenger boarded the bus and the point at which bus was checked was 6.4 k.m. Thus, Respondent had sufficient time to issue ticket to the passenger. Considering the nature of evidence available on record, the charge of permitting ticketless passenger to travel as well as misappropriation of amount of Rs.3/- is clearly established.

7. So far as the second charge of shortage of Rs.65.25/- in ST cash is concerned, Respondent gave justification of dealing mistake. No doubt the said shortage of Rs.65.25 is made good by Respondent after being caught. However, it appears that Respondent had committed similar misconducts on 11 occasions in the past. Though the second charge of shortage of Rs.65.25 in ST cash on its own, may not be grave enough to attract punishment of dismissal, when seen in conjunction with the first serious charge of allowing ticketless passenger in the bus and pocketing fare of Rs.3/-, punishment of dismissal from service which was proposed by the Petitioner-MSRTC cannot be said to be shockingly disproportionate. The proposed punishment appears to be commensurate with the gravity of misconduct.

8. Mr. Jagdale has relied upon judgment of this Court in ***Maharashtra State Road Transport Corporation vs. Sayed Ali,*** 2001 (4) LLN 709 which is reproduced in the judgment of the Industrial Court and according to him, punishment could not have been imposed solely on the basis of evidence of Inspector in absence of corroboration by any independent witness. In my view, domestic enquiry does not warrant production of any corroborative evidence. The Checker/Inspector cannot be considered as interested witness. There is nothing on record to indicate that there was any animosity between the Inspector and Respondent. The charge is to be proved on the test of preponderance of probability. There was no reason for Checker/Inspector to depose falsely against Respondent.

9. Mr. Jagdale has highlighted the point that Respondent attempted to examine the passenger as witness which opportunity was denied to him. In my view mere denial of opportunity to the Respondent to examine the passenger cannot be a ground for drawl of inference in favour of Respondent.

10. In my view the Industrial Court has erred in reversing the decision of the Labour Court. As observed above, on account of interim order passed by this Court punishment of dismissal from service is already imposed on Respondent.

11. Considering the overall conspectus of the case, I am of the view that the Industrial Court has palpably erred in reversing

the order of Labour Court. Employer has inherent right of punishing the employee, who is found guilty in domestic enquiry. The Industrial Court could not have passed a restraint order on Petitioner from exercising such inherent right. Despite there being no lacuna in the enquiry, the Industrial Court has erred in holding that the same was not held in accordance with principles of natural justice. The finding of the Industrial Court that Respondent did not commit any misconduct during pendency of litigation is preposterous. The reasonings adopted by the Industrial Court for allowing the Complaint filed by Respondent do not appeal to this Court. Its order is clearly indefensible and liable to be set aside.

12. Writ Petition accordingly succeeds. Judgment and order dated 13 November 2003 passed by Member, Industrial Court, Thane, in Revision (ULP) No.122 of 2002 is set aside. Complaint (ULP) No.65 of 2001 is dismissed. However, Respondent shall be paid gratuity in respect of the services rendered by him within a period of three months from today. Writ Petition is accordingly allowed. Rule is made absolute. There shall be no order as to costs.

(SANDEEP V. MARNE, J.)