

HON'BLE Dr. JUSTICE K.G. SHANKAR

Writ Petition No.2777 of 2003

Date: 31.12.2013

Between:

S. Sathaiah,
S/o. (late) S. Ramulu,
Occ: Ex-Conductor (Removed),
E-10344, R/o.18-8-407,
Naraharinagar, Uppuguda,
Hyderabad.

... Petitioner

AND

A.P.S.R.T.C.
rep.by its Managing Director,
Musheerabad, Hyderabad,
and 3 others.

...

Respondents

HON'BLE Dr. JUSTICE K.G. SHANKAR

Writ Petition No.2777 of 2003

ORDER:

The sole petitioner sought for a Writ of *Mandamus* to set aside the award of the Labour Court-II, Hyderabad in Industrial Dispute (I.D.) No.207 of 1999, dated 09.10.2002. As this is a Writ to quash the award, it ought to have been a Writ of *Certiorari*, instead of *Mandamus*.

2. The petitioner was appointed as a Conductor in the Andhra Pradesh State Road Transport Corporation (Corporation, for short) on 13.02.1985. On 24.11.1996 he

was acting as Conductor of shuttle service between Chincholi and Zaheerabad. A checking was organized at about 9.45 p.m. The petitioner allegedly was found indulging in cash and ticket irregularities.

On 28.11.1996 suspension order was issued.

The petitioner claimed that he failed to participate in the enquiry as subsistence allowance was not paid during the period of suspension and the petitioner was permitted to engage the services of co-employee to defend him.

3. The petitioner filed representations on 06.03.1997, 18.03.1997 and 05.06.1997 seeking certain documents, seeking permission to engage one of the co-employees to defend him and seeking to conduct the enquiry in Telugu. The Corporation paid a deaf ear to the representations. As subsistence allowance was not paid to the petitioner and as the proceedings were conducted in English, which is an alien language to the petitioner, the petitioner chose to approach this Court through Writ Petition No.12215 of 1997. The writ petition was disposed of on 31.07.1997 directing the Corporation to furnish the documents sought for by the petitioner and to conduct the proceedings in Telugu.

4. However, the *ex parte* proceedings took place having commenced on 11.09.1997, concluded on 06.10.1997. The petitioner was found guilty. After following the procedure, the petitioner was dismissed from

service on 25.06.1998. Questioning the same, the present writ petition is laid.

5. Four charges were framed against the petitioner. The charges read:

- a) For having failed to issue tickets to a batch of ten (10) passengers found travelling without tickets even after collecting the requisite fare of Rs.2.25 from each at their boarding place itself, who boarded the bus at Fatehpur and bound for Kusumrampally ex-stages 9/9 of 7.
- b) For having failed to collect the fare and issue tickets to a batch of ten (10) passengers found traveling without tickets who boarded the bus at Chincholi and bound for Gudipally ex-stages 10 to 6/5.
- c) For having violated the rule "issue, complete and start.
- d) For having failed to close the ticket, Nos., of all denominations in the service statistical return from the stage No.10 to the place of check i.e., stage No.8.

6. Two batches of 10 passengers each are involved in this case. It is the case of the Corporation that at the time of the checking, there were only 20 passengers in the bus and that it is preposterous to claim that the petitioner could not issue tickets even to such a small group of passengers travelling in the bus. On the other hand, it is the case of the petitioner that shortly after the bus reached Chincholi, a group of 10 passengers boarded the bus in a drunken condition and that they were all confusing themselves and the petitioner as to which member of the group should purchase tickets for the group. It is the claim of the petitioner that each

member of the group was directing the other members of the group to purchase tickets and in the process no one was tendering money for the tickets. He further contended that while the petitioner was trying to procure fare from the group so as to enable him to issue tickets, the bus reached the stage No.9, which was the next stage where another group of 10 passengers boarded the bus.

7. The second group of 10 passengers was not an unruly crowd according to the petitioner. The petitioner claimed that he was about to issue tickets to the second group and that the checking staff entered the bus in the meanwhile. The contention of the petitioner that the first group of 10 passengers was in a drunken state is fortified by the checking staff themselves who admitted at the time of the enquiry that some of the passengers were in drunken state. Their case is that the petitioner ought to have collected fare from the passengers, or should have disembarked them or should have handed over the unruly passengers to the police for appropriate action and that the failure of the petitioner to resort to these methods shall constitute misconduct on the part of the petitioner.

8. The learned counsel for the petitioner *inter alia* contended that the charges were vague, so much so, there is no possibility for the petitioner to respond to the charges. The charges had already been extracted. I am afraid that the charges are not vague. Indeed, the

charges do not speak as to the place and time of the incident, but the same has been contextually understood. There is no dispute that the charges relate to the service of the bus from Chincholi to Zaheerabad during the evening shift of 24.11.1996. I, therefore, reject the contention of the learned counsel for the petitioner that the charges are vague to such an extent that the very enquiry, enquiry report and consequential proceedings are bad and are liable to be set aside.

9. An important aspect in this case is Circular No.32/91-OPD(C), dated 24.09.1991 issued by the Corporation. Undoubtedly, the circular is not a statutory circular. However, as the same was issued by the Corporation, it is binding on the Corporation. The learned counsel for the petitioner placed heavy reliance upon the provisions of the circular.

10. In Para-VI of the circular dealing with “Domestic Enquiry Proceedings”, it was stated that the enquiry proceedings shall be conducted in Telugu, that the copies of the statements should be furnished to the delinquent immediately and that the witnesses cited by the delinquent should be examined. It is evident that the whole domestic enquiry was conducted in English. This is despite the fact the petitioner approached this Court in W.P.No.12215 of 1997, *inter alia*, claiming that the

petitioner did not know English. I am afraid that the domestic enquiry proceedings conducted by the Enquiry Officer against the circulars of the Corporation itself are vitiated as not in accordance with the Rules. Added to it, principles of natural justice contemplate that the enquiry should be conducted in a manner understandable to the delinquent and not in such a way that the delinquent is not able to follow the same. When the petitioner repeatedly urged that he did not know English and that the proceedings be conducted in Telugu, continuing to conduct the proceeding in English is violation of the principles of natural justice. Even on this ground, the enquiry report is liable to be set aside.

11. The learned counsel for the petitioner also placed reliance upon Para-II of the circular dealing with “checking system”. It was envisaged that the checking officials should try to collect independent evidence of fellow passengers and should record the full address of the passengers connected with the irregularity. It was also ordained that if it is established that the ticket issued was lost by the passenger, the passenger travelling without ticket should be punished to purchase fresh ticket. It is the contention of the learned counsel for the petitioner that there is no whisper from the checking officials that the 10 drunken passengers were not made to purchase tickets nor was any fine imposed against them

for travelling in the bus without purchasing tickets. It is contended by the learned counsel for the petitioner that even the checking officials could not deal with the group of drunken passengers, so much so, it is unjust to accept the petitioner to deal with them single handedly while the bus was operating. At any rate, admittedly, the passengers were not made to purchase fresh tickets. Consequently, the claim of the petitioner is feasible and probable.

12. The learned counsel for the petitioner pointed out that the Labour Court-II considered the past conduct of the petitioner as a ground to dismiss the reference.

I may point out that in para-2 of the award, there is a reference to the past conduct of the petitioner. However, it is with reference to the allegations in the counter of the Corporation before the Court and not the finding of the Court. The learned counsel for the petitioner submitted that the charges have not been proved against the petitioner.

13. There is no dispute that 10 passengers boarding at stage No.10 and 10 passengers boarding at stage No.9 were not issued tickets. However, it is the case of the petitioner that the non-issuance of the ticket was not out of the negligence, carelessness or any *mala fides*; but, owing to the unruly behaviour of the passengers who boarded the bus at stage No.10.

Admittedly, there is no allegation of misappropriation.

In the Circular referred to at Para-VII dealing with “disciplinary action and penalties”, it was mentioned that the extreme penalty of removing from service should be imposed in case of serious cash and ticket irregularities such as re-issue of tickets, sale of fake tickets, unconcerned tickets, alterations in statistical return, way bill and the like. It is the contention of the learned counsel for the petitioner that the petitioner allegedly did not commit any of these irregularities, so much so, the dismissal or removal of the petitioner from service is not permissible even according to the circular of the Corporation itself.

14. In *K. Chattopadhyaya v. Government of Andhra Pradesh*^[1], the facts were fairly similar.

A passenger was found without ticket at the time of the check. The delinquent-conductor contended that the passenger was in a drunken state. The claim of the conductor was supported by the checking staff themselves. The Court held that it was not a case where the conductor collected the fare, but failed to issue tickets. It was an added factor that fine was collected from the passenger by the checking officials. Holding that the drunken passengers were travelling in the bus without tickets, without the fault of the conductor in any manner, a learned single Judge of this Court set aside the order of

the Labour Court. Regarding the scope of Article 226 of the Constitution of India in respect of charges of the Labour Court, it was observed

“The scope and jurisdiction of this Court under Article 226 of the Constitution of India to interfere with the award of the Labour Court is very limited. All the same, an award, which is patently perverse, cannot be permitted to remain and the employee cannot be made to suffer. This Court is of the view that at the most the petitioner can be said to have been negligent in collecting the fare from the passenger. Even if the latter was in drunken condition, he ought to have either made him to get down or to take him to the nearby police station. It appears that he was in the process, but the check took place in the meanwhile.”

15. It is contended by the learned counsel for the petitioner on the basis of this decision that the order of the Labour Court in confirming the order of dismissal without any evidence is perverse and is liable to be set aside.

16. In ***Sawai Singh v. State of Rajasthan***^[2], where the charges in a departmental enquiry were vague and evidence was not sufficient to connect the charged officer with the alleged misconduct, the enquiry report was held to be vitiated by non-compliance with the principles of natural justice. The order of removal from service was, consequently, held to be invalid. It is contended by the learned counsel for the petitioner that there is no evidence in this case pointing out the guilt of the petitioner and the finding of the Enquiry Officer is liable to be set aside and the finding of the Tribunal confirming the enquiry report is

also liable to be set aside as perverse.

17. In *Depot Manager, APSRTC, Bus Depot, Narayankhed v. R. Bheemaiah*^[3] and in *Polam Chenna Reddy v. Industrial tribunal-cum-Labour Court, Warangal*^[4], learned single Judges of this Court held that the constitutional court is entitled to interfere with the findings where the punishment imposed is disproportionate to the proven misconduct. It is contended by the learned counsel for the petitioner that there is no misconduct on the part of the petitioner and that assuming that the non-issuance of tickets is treated as misconduct despite the circumstances of the case, there was no allegation of misappropriation and that the imposition of the penalty of dismissal is shockingly disproportionate to the alleged or proven misconduct.

18. In view of the defence of the petitioner and in view of the admission from the checking officials that 10 of the passengers were under drunken state, I consider that the very explanation offered by the petitioner is quite agreeable and deserves to be accepted. Once the explanation of the petitioner is accepted, the very charges are disproved. I, therefore, consider that the enquiry report as confirmed by the Tribunal is perverse and is liable to be set aside. It would appear that the petitioner would have attained superannuation in May, 2013.

The question of ordering reinstatement of the petitioner, therefore, does not arise. However, where charges are not proved against the petitioner, it would be appropriate to set aside the dismissal/removal order and deem it appropriate to consider that the petitioner was in service till the date he attained the superannuation. The petitioner, consequently, shall be entitled to continuity of service and attendant benefits, albeit he shall not be entitled to back wages from the date of his removal from service.

19. Accordingly, the writ petition is allowed.

The award of the Tribunal in I.D.No.20 of 1999 dated 09.10.2002 is set aside. The finding of the Enquiry Officer that the petitioner is guilty of the charges is also set aside. Consequently, the punishment of dismissal/removal of the petitioner from service is set aside. The petitioner is deemed to be in service from the date of his removal till the date he attained superannuation. He accordingly is entitled to continuity of service and attendant benefits. However, he shall not be entitled to back wages during the period he was out of employment. No costs. Miscellaneous Petitions, if any, pending in this writ petition shall stand closed.

Dr. K.G. Shankar, J

Date: 31.12.2013
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- [\[1\]](#) 2011 (1) ALD 38
- [\[2\]](#) (1986) 3 SCC 454
- [\[3\]](#) 2010 (4) ALD 193
- [\[4\]](#) 2009 (5) ALD 293