

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION NO.33261 OF 2011

DATED:16-9-2015

Between:

K. Madhava Reddy ... Petitioner

And

The Depot Manager

APSRTC

Huzurabad Depot

Huzurabad

Karimnagar

Karimnagar District

and others ... Respondents

... Respondents

COUNSEL FOR THE PETITIONER: Ms. S.V. Indira

COUNSEL FOR THE RESPONDENTS: Mr. Ravi Babu, Standing Counsel for

Telangana State Road Transport

Corporation

THE COURT MADE THE FOLLOWING:

ORDER:

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This writ petition is filed for a mandamus to set aside Awards dt.7.4.2011 and 5.7.2011 in I.D. No.153 of 1996 on the file of the Industrial Tribunal-cum-Labour Court, Gadavarikhani.

2. Brief facts leading to filing of this case are stated as under. The petitioner was appointed as Conductor in the erstwhile Andhra Pradesh State Road Transport Corporation in the year 1978. When he was conducting Bus No.AEZ 5390 on the

route Hyderabad to Vavilala, a surprise check was held and ticketing irregularities were noticed leading to the issue of charge Memo dt.15.3.1990. The following are the charges framed against the petitioner.

1. *"You have violated the rule issue, close and start.*
2. *You have collected each Rs.2-25 ps. from 19 passengers (in two batches) i.e., an amount of Rs.42-75 ps. and failed to issue tickets who were found alighting without tickets at Nagampet, having boarded the bus at Jammikunta, ex-stages 7 to 5, even after collecting the requisite fare at their boarding point itself, which constitutes misconduct in terms of Regulation No.28(vi)(a) of APSRTC employees (Conduct) Regulations, 1963.*
3. *You have collected each Rs.2-85 ps. from a batch on four passengers (totally Rs.11-00) and failed to issue tickets to them who were found travelling without tickets, having boarded the bus at Jammikunta and bound for Thanugula ex-stages 7 to 3, which constitutes misconduct in terms of Regulation No.28(vi)(a) of APSRTC Employees (Conduct) Regulations, 1963.*
4. *You have failed to close the ticket tray numbers of all denos., against stage No.5, which constitutes misconduct in terms of Regulation No.28(xxxi) of APSRTC Employees (Conduct) Regulations, 1963.*
5. *You have refused to give your spot explanation at the time of check which constitutes misconduct in terms of Regulation No.28(xxxi) of APSRTC Employees (Conduct) Regulations, 1963.*
6. *You have refused to continue the service from Vavilala to Huzurabad and left the bus along with bus cash and without intimating to the TTIs or to the service driver which constitutes misconduct in terms of Regulation No.28(x) and (xxxii) of APSRTC employees (Conduct) Regulations, 1963.*
7. *You have tried to assault the ticket checking officials which constitutes misconduct in terms of Regulation No.28(viii) of APSRTC employees (Conduct) Regulations, 1963."*

3. The petitioner submitted his explanation on 29.5.1990 to the Charge Memo denying the charges. The enquiry officer appointed by the disciplinary authority has held enquiry and submitted his enquiry report on 24.12.1990 finding the petitioner guilty of all the charges. A show cause notice dt.31.1.1991 was issued to the petitioner proposing his removal from service. On 29.4.1991 the petitioner submitted a detailed explanation to the show cause notice. On 21.6.1991 the petitioner was removed from service. Challenging the said order, the petitioner has filed I.D.

No.153 of 1996 before the Industrial Tribunal, Karimnagar. By Award dt.4.9.1990 the Industrial Tribunal has dismissed the said I.D. Challenging the same, the petitioner filed W.P. No.24815 of 2000. this Court by order dt.15.11.2008 has set aside the Award of the Tribunal and remanded the case to it for fresh consideration on the aspect whether domestic enquiry was validly held or not. By order dt.7.4.2011 the Industrial Tribunal has held that the departmental enquiry was validly held and by Award dt.5.7.2011, it has dismissed the I.D.

4. Learned counsel for the petitioner submitted that the Labour Court has committed a serious error in holding that the departmental enquiry was validly held. She has further submitted that even though proper evidence was brought on record by the respondents, the Labour Court has dismissed the I.D. She has further argued that even assuming that the petitioner's misconduct is proved, punishment of removal from service is disproportionate to the gravity of the charge.

5. Mr. A. Ravi Babu, learned Standing Counsel for the Telangana State Road Transport Corporation, defended the order of the disciplinary authority as well as the Award of the Industrial Tribunal.

6. As regards the preliminary issue relating to the validity of the departmental enquiry decided by the Industrial Tribunal, it has taken into consideration the fact that the enquiry officer has permitted both parties to examine their respective witnesses, that in pursuance of the same, the petitioner has examined himself as W.W.1 and also examined another witness on his side and that on behalf of the management, three witnesses, including the driver of the bus and two TTIs who participated in the check, were examined. Besides these witnesses, a passenger by name Mr. M. Ravindar Rao, was also examined at the instance of the petitioner. In the light of the above facts, the Industrial Tribunal has held, and in my view, rightly that the enquiry was not vitiated by any procedural illegalities or violation of principles of natural justice.

7. As regards the finding against the petitioner relating to his misconduct, the gravamen of the charge against the petitioner is that he has collected fare from two different batches of passengers, namely; Rs.2.25 ps., from 19 passengers, totaling Rs.42.75 ps., and Rs.2.75 ps. from 4 passengers totaling Rs.11/- and failed to issue tickets. The main defence of the petitioner is that because of previous enmity with one of the checking officials, when he was conducting the bus a false case was

foisted, and that as there were more than 100 passengers in the bus, he was unable to issue tickets to some of them and he has not collected the fare.

8. In the enquiry, one of the passengers, namely, Mr. M. Ravindar Rao, S/o. Malahar Rao, was summoned and examined at the instance of the petitioner and he tried to support the case of the petitioner. However, he has categorically admitted that he has paid Rs.45/- for 19 members batch at the rate of Rs.2.75 ps. or Rs.2.25 ps. per head, that he was sitting at the back seat of the bus and that at Nagampet the bus was checked by the TTIs. He has further deposed that during the check he has noticed a scuffle and later the Conductor fell down due to injury and thereafter he was taken to Jammikunta through the witness's friend, and later his friend took the Conductor to Huzurabad hospital. He has further deposed that he and other marriage party had tickets with him and that though they tried to show the tickets, the TTIs have not examined them. He has further deposed that at Nagampet the Conductor told him to keep the tickets as record and later he took the tickets and kept with himself stating that there will be enquiry and they were to be produced. He further deposed that recently the Conductor gave photo copies of the tickets and asked him to produce during enquiry. Accordingly the witness has handed over the photocopies of the tickets.

9. The enquiry officer has stated in his report that there is apparent contradiction between the evidence of the petitioner and that of the passenger, in that, while the passenger has deposed that he tried to show the ticket, the TTIs have not shown interest, the petitioner deposed that as the passengers have evidently thrown away the tickets, they could not show the tickets to the checking officials and that due to fear of being penalized for ticketless travel, they signed the statement against the petitioner. The fact that 19 tickets allegedly issued by the petitioner was not entered in the SR, which was closed with 700 of Rs.2.00 denomination and, 948 of Rs.0.25 paise denomination. Mr. M. Ravindar Rao, the passenger, along with others who were traveling without tickets have signed the statement appeared to have been written by co-passengers to the effect that the petitioner has received the fares but did not issue tickets. Therefore, there is no reason to doubt the veracity of the earlier statement of the passengers. As observed by the enquiry officer if all the passengers who have signed the statement have obtained tickets from the petitioner, they would have refused to sign even if they were forced by the checking officials. Evidently, as a desperate measure, the petitioner has caught hold of one of the ticketless

passengers to depose in his favour. Applying the theory of preponderance of probabilities, I am of the view that the findings rendered by the enquiry officer and accepted by the departmental hierarchy cannot be said to be without basis or perverse.

10. On the analysis as above, this Court has no hesitation to hold that the misconduct of the petitioner stood proved and the order of the disciplinary authority and the Awards of the Industrial Tribunal, both on preliminary issue and also on the main issue, do not suffer from any illegality.

11. As regards the submission of the learned counsel for the petitioner that punishment imposed on the petitioner is disproportionate to the gravity of the charge, I am of the opinion that as the petitioner was found guilty of collecting fare and not issuing tickets to as many as 23 passengers (19+4) which constitutes a serious misconduct, the punishment of removal cannot be said to be disproportionate to the proven misconduct.

12. For the above mentioned reasons, the writ petition fails and the same is accordingly dismissed.

As a sequel to dismissal of the writ petition, W.P.M.P. No.41333 of 2011 shall stand disposed of as infructuous.

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C.V. NAGARJUNA REDDY, J

16-9-2015

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