

THE HON'BLE SRI JUSTICE DILIP B.BHOSALE
AND
THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT APPEAL No.949 of 2006

JUDGMENT: (per the Hon'ble Sri Justice A.Ramalingeswara Rao)

Heard learned counsel for the appellant and the learned Standing Counsel for the first respondent.

2. This Writ Appeal is directed against the order in W.P.No.17546 of 2004 dated 10.08.2006 passed by the learned Single Judge dismissing the Writ Petition filed by the petitioner/appellant.

3. The appellant joined the service of the first respondent as Conductor in Kakinada Depot on 20.01.1996 on compassionate grounds. On 06.03.2001, while the appellant was conducting the bus on the route Kakinada-Vakapalli, there was a check conducted by the checking officials at Stage No.8, Tatiparti. The checking officials found certain cash and ticket irregularities and issued charge memo to the appellant and he was placed under suspension by the first respondent. The petitioner submitted his explanation on 28.03.2001 to the first respondent. Not satisfied with the same, the first respondent framed the following charges.

“(i) for having collected an amount of Rs.6.50 towards the requisite ticket fare and failed to issue ticket to a passenger who boarded the bus at Gollaprolu bound for Kadavali (Ex.Stages 6 to 10) while you were conducting the vehicle No.8800 on the route Vakapalli on 6.3.2001, which constitutes misconduct under Reg.No.28 (v)(a) and (x) of APSRTC Employees (Conduct) Regulations, 1963.

(ii) for having collected an amount of Rs.35/- from a passenger boarded the bus at Pithapuram bound for Pothunuru along with 10 bags of cement and issued the ticket No.048/19445 of Rs.6.50 denomination and ticket Nos.804/796865 to 871 E.& rs. 0.50 denomination tickets towards luggage fare instead of issuing ticket of Rs.10/- denomination towards L.T. ticket fare for 20 units, thus you have collected and issued lower denomination ticket worth of Rs.3.50 towards passenger ticket and Rs.6.50 towards luggage tickets while you were conducting the vehicle No.8800 on the route Vakapalli on 6.4.2001 which constitutes

misconduct under Reg.No.28 (x) and (xxxii) of APSRTC Employees (Conduct) Regulations, 1963.”

4. An enquiry officer was appointed and he submitted his report on 02.08.2004 holding that the charges were proved. Basing on the said enquiry report, a show cause notice was issued to the appellant on 24.08.2001 as to why he should not be removed from service. The petitioner submitted his explanation on 04.09.2001 and sought for setting aside the enquiry report and to reinstate him into service. The first respondent passed orders on 07.09.2001, removing the appellant from service, duly treating the suspension period as not on duty.

5. Challenging the same, the appellant filed I.D.No.7 of 2002 before the Industrial Tribunal-cum-Labour Court, Visakhapatnam (for short, the Labour Court). Before the Labour Court, the appellant did not examine any one or marked any documents on his behalf. The first respondent also did not examine any one, but marked Exs.M.1 to M.20. The Labour Court, by its order dated 19.04.2004, upheld the order of the first respondent. Challenging the same, the appellant filed W.P.No.17546 of 2004 before this court. This Court noticed that the appellant did not challenge the validity of the domestic enquiry proceedings and the charges against the appellant were proved in departmental enquiry.

Relying on a decision in **Divisional Controller, KSRTC (NWKRTC) V. A.T.Mane**^[1], this Court held that the Writ Petition is liable to be dismissed as once the domestic tribunal came to the conclusion based on evidence, it is not open to the appellate tribunals and courts to substitute their subjective opinion in the place of one arrived at by the domestic tribunal. This Court noted the observations of the Hon’ble Apex Court on the quantum of punishment as follows:

“ Coming to the question of quantum of punishment, one should bear in mind the fact that it is not the amount of money misappropriate that becomes a primary factor for awarding punishment, on the contrary, it is the loss of confidence which is the primary factor to be taken into consideration.”

Taking the above facts into consideration, the Writ Petition was dismissed, by order dated 10.08.2006.

6. The learned counsel for the appellant wanted to raise certain additional grounds which were not raised either before the Labour Court or before the learned Single Judge of this Court. He particularly contended that APSRTC Employees (Conduct) Regulations, 1963 (for short, the Regulations) are not applicable to the instant case, as the Regulations were not notified. The appellant did not place any evidence to show that such a contention was raised before the enquiry officer or before the Labour Court. On the other hand, the learned Single Judge noted that the appellant did not dispute the validity of the domestic enquiry proceedings. In view of the same, it is not open to the appellant to raise the contention with regard to the applicability of the Regulations. The appellant did not bring to the notice of this Court any other Regulations which are applicable to the employees like the appellant.

7. As rightly pointed out by the learned Single Judge, based on the above decision of the Hon'ble Apex Court, the appellant was removed from service after conducting a regular departmental enquiry and the employer lost confidence in the appellant. The report of the domestic enquiry has affirmed by the Labour Court on evidence. The order of the Labour Court was affirmed by the learned Single Judge. In the absence of any error in the order of the learned Single Judge, we are not inclined to interfere with the order passed by the learned Single Judge and the Writ Appeal is liable to be dismissed.

8. Accordingly, the Writ Appeal is dismissed. Miscellaneous petitions pending, if any, stand disposed of. There shall be no order as to costs.

Date: 22.01.2015
TJMR

[\[1\]](#) 2005 (1) SCC 254