

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

WRIT PETITION No.10964 OF 2004

ORDER:

This writ petition is filed by the workman seeking issuance of a writ of mandamus, declaring the Award of the 2nd respondent-Industrial Tribunal-cum-Labour Court, Ananthapur in I.D.No.92/2001, dated 20.11.2003, as illegal, arbitrary and contrary to law and consequently, direct the respondent-APSRTC to reinstate the petitioner into service with all consequential benefits including back wages forthwith.

2. The petitioner was appointed as Conductor in the APSRTC under compassionate grounds in lieu of death of his father while he was in service on 03.02.1992. It is alleged that on 06.09.2000 he was found to have committed some cash and ticket irregularities while conducting bus bearing No.AP9Z-3587 in the route Hindupur to Siddigiri, for which a charge sheet was issued to him on 23.09.2000 framing the following charges;

- i) "For having violated the rule Issue & Start while he was conducting Bus No.3587 on route Hindupur-Siddagiri on 06.09.2000, which constitutes misconduct;
- ii) For having failed to issue valid tickets to a batch of two passengers who boarded the bus No.3587 conducted by him on the route Hindupur-Siddigiri on 06.09.2000 at Hindupur and found without tickets at Parigi Ex-Stages 1 to 3 even after collecting the requisite fare of Rs.8/- from them at their boarding itself which constitutes misconduct;
- iii) For having closed the ticket numbers of all denominations in the S.R.up to the stage No.3 Parigi without completion of issuing valid tickets to a batch of two passengers who boarded the Bus at Hindupur and found alighting at Parigi Ex-States 1 to 3, while he was conducting Bus No.3587 on route Hindupur to Siddigiri on 06.09.2000 which constitutes misconduct;
- iv) For having not cooperated with the TTIs when the irregularities committed by him was noticed by them and

instigated the passengers traveling in the bus, local people against the TTIs refused to attest and to receive check report, charge memo while he was conducting the Bus 3587 on route Hindupur-Siddigiri on 06.09.2000 which constitutes misconduct;

The petitioner submitted his explanation to the charge memo. Dissatisfied with his explanation, the respondent Corporation ordered domestic enquiry and basing on the enquiry report dated 08.12.2000, a show cause notice of removal was issued to the petitioner. Though the petitioner submitted his explanation to the show cause notice, he was removed from service by proceedings dated 08.01.2001 of the 1st respondent. Aggrieved thereby, the petitioner raised industrial dispute being I.D.No.92/2000 before the Industrial Tribunal-cum-Labour Court, Anantapur. However, the Industrial Tribunal dismissed the said industrial dispute by award dated 20.11.2003. Questioning the said award, the present writ petition is filed.

3. The Management/APSRTC filed counter denying the contentions of the petitioner. It is stated that a check was exercised on 06.09.2000 while the petitioner was conducting the bus on route Hindupur to Siddigiri and found to have committed certain cash and ticket irregularities. The checking officials recorded the statements of the passengers and issued a memo to the petitioner. The petitioner submitted his explanation. The respondent/Management did not accept his explanation and enquiry was ordered. The Enquiry Officer after going through the available records and depositions of witnesses submitted his report on 08.12.2000 holding the petitioner guilty of the charges leveled against him. After issuing show cause notice, an order of removal was passed on 08.01.2001. The petitioner approached before the Labour Court and the Labour Court also considered the evidence and material on record and rightly rejected the claim of the petitioner.

4. The contention of the learned counsel for the petitioner is that

the Management and the Industrial Tribunal failed to consider that the passengers gave false statements apprehending imposition of fine for not having tickets and during enquiry, they admitted the said fact, but the Enquiry Officer basing on the statements given at the time of checking the bus, erroneously found the petitioner guilty of the charges. It is further contended that basing on false statements of the passengers, he was imposed severe punishment of removal from service, which is improper.

5. The learned counsel for the respondent/Management submits that considering the fact that the passengers gave spot statements that they have given ticket price to the petitioner but the petitioner did not issue tickets voluntarily, the Tribunal dismissed the industrial dispute, which does not warrant for any interference.

6. The question that arises for consideration is whether the award passed by the Labour Court is proper.

7. The admitted fact is that the petitioner was working as a Conductor ever since the year 1992. He has been removed from the service in the year 2001. On 06.09.2000, he was on duty in the bus going from Hindupur to Siddigiri and at Stage No.3, the inspecting officials checked the bus and at that time, they found that from two passengers the Conductor collected Rs.8/- but did not issue tickets, thereby committed an act of misconduct. The explanation of the petitioner/Conductor was that the said two passengers did not tender any fare amount to him and hence he has not issued tickets to them, and due to fear of imposition of fine, they gave false statements to the checking officials that they tendered the fare amount, but the conductor did not issue tickets to them. However, the petitioner/Conductor failed to verify as to who remain ticketless passengers in the bus. During the course of enquiry, it has been proved that even though the amount was collected, the petitioner/Conductor failed to issue tickets to those two passengers.

8. The other charges are with regard to making the entries in the S.R. sheet and not maintaining properly the issue and closure data. The Enquiry Officer found the petitioner/Conductor guilty on 08.12.2000 and after following the due procedure, the petitioner has been removed from service. Thereafter, the petitioner preferred I.D.No.92 of 2001 and after enquiry, the Labour Court, Ananthapur, by Award, dated 20.11.2003, has dismissed the Industrial Dispute confirming the punishment of removal from service.

9. The contention of the petitioner/Conductor is that during the course of departmental enquiry, excepting for the spot report prepared by the checking officials, no other evidence was produced. During course of enquiry one of the persons who claimed to have paid the amount, has stated that he has forgotten to tender the bus fare to the conductor. But the Enquiry Officer, without taking into consideration the said statement of the passenger, basing on the earlier statements of the passengers, recorded at the time of checking, erroneously came to the conclusion that the petitioner is guilty of the charges leveled against him.

10. The petitioner gave a statement before the Enquiry Officer. After considering the evidence on record, the Enquiry Officer found the petitioner/Conductor guilty and imposed the punishment of removal. Therefore, it cannot be said that no reasonable opportunity was afforded to the petitioner during the course of domestic enquiry.

11. Learned Counsel appearing for the petitioner relied upon a decision of Supreme Court reported in ***Nirmala J.Jhala v. State of Gujarat***^[1] wherein it is laid down that the evidence recorded in preliminary enquiry cannot be used in regular enquiry as the delinquent is not associated with it and opportunity to cross-examine the persons examined in such enquiry is not given. It is further laid down that using such evidence would be violative of the principles of natural justice. There is no dispute about the said proposition of law.

If the witness who has been examined during the preliminary enquiry and has not been examined during the domestic enquiry, reliance cannot be placed upon the statement of such a witness during the course of preliminary enquiry for the reason that no opportunity was afforded to the delinquent to subject such a witness to cross-examine so as to determine the truthfulness or otherwise of such a witness. However, in the instant case, the official by name J.V.P.Sarathi, who has checked the vehicle at the relevant point of time, has been examined during the course of domestic enquiry and he was also subjected to cross-examination. Therefore, there is no substance in the submission of the learned Counsel appearing for the petitioner/Conductor that the domestic enquiry was vitiated for want of reasonable opportunity to the petitioner to cross-examine the material witness who was examined during the course of preliminary enquiry.

12. The other charges are, no doubt, procedural in nature but they all show that the petitioner/Conductor was negligent in maintaining the statistical record properly, thereby keeping it open for certain tickets to be misused for deriving certain advantages thereof. The explanation of the petitioner that at the relevant point of time, he was not negligent and the alleged two passengers gave false statements in order to save their skin etc., cannot be a valid explanation for improper discharge of duties by the Conductor.

13. Learned Counsel appearing for the respondent/APS RTC relied upon the following authorities in support of his contention that the petitioner/Conductor being entrusted with the responsible job of trust and confidence, has failed to discharge his duties diligently and thereby the punishment of removal is just, proper and reasonable and by no stretch of imagination, can it be said that the said punishment is disproportionate to the gravity of the charge.

14. In ***MD.North-East Karnataka Road Transport Corpn. V. K.Murti***^[2] the Supreme Court after referring to several decisions on

the subject held as under in para 9:-

“In the instant case, the position held by the employee (Conductor) is one of faith and trust. A Conductor holds the post of trust. A person guilty of breach of trust should be imposed punishment of removal from service. The respondent’s conduct is not collecting the requisite fare at the designated place from persons who had travelled were in violation of various regulations contained in the provisions of the Karnataka State Road Transport Corporation Servants (Conduct and Discipline) Regulations, 1971.”

15. In ***Divisional Controller, N.E.K.R.T.C v. H.Amaresh***^[3] the Supreme Court at para 13 held as under:-

“This Court in the Judgment *Regional Manager, Rajasthan State Road Transport Corporation v. Ghanshyam Sharma (3-Judges) (2002(2) LLN 1118)*, held that the proved acts of misconduct either to a case of dishonesty or of gross negligence and bus Conductors who by their actions and inactions cause financial loss to the Corporation ought not to be retained in service.”

16. In ***V.Ramana v. APSRTC***^[4] a Full Bench of this Court, after referring to several decisions on the subject, held as under in para 19:-

“For the reasons aforementioned, we are of the opinion that the quantum of amount misappropriated or embezzled by a delinquent official may not be taken into consideration in deciding the adequacy or otherwise of the punishment and the punishment of removal from service for such embezzlement or misappropriation cannot be termed as shockingly disproportionate.”

17. From the above authorities, it is evident that a Conductor who do not perform his duties in accordance with the rules and causes loss to the Corporation is not entitled to be continued in service irrespective of the quantum of amount that is involved. In the instant case, the petitioner/Conductor has not issued the tickets to two

passengers though collected ticket fare of Rs.8/- from them. He is also guilty of other irregularities in maintaining the statistical record such as improper punching of tickets and not making the proper entries in the record. The explanation of the petitioner/Conductor is wholly untenable.

18. The Enquiry Officer and the other statutory authorities, for valid reasons, ordered for his removal from service. The Labour Court, after having gone through the entire material on record, did not interfere with the said punishment.

19. Learned Counsel appearing for the petitioner/Conductor submits that considering the nature of the material on record, the petitioner/Conductor may be directed to be reinstated into service as a fresh candidate and he is prepared to forego his service and monetary benefits till the date of reinstatement. In other words, learned Counsel submits that the removal order be set aside by directing the reinstatement of the petitioner without any back wages or continuity of service. This relief, in my opinion, cannot be granted to the petitioner/Conductor for the reason that he has lost the trust and confidence of the employer. Therefore, the petitioner/Conductor is not entitled to any relief. All the authorities have properly appreciated the material on record and removed the petitioner/Conductor from the service. There are no merits in the writ petition and the same is liable to be dismissed.

20. The Writ Petition is accordingly dismissed. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.S.K.JAISWAL,J

Date: 02.12.2015

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[\[1\]](#) (2013) 4 SCC 301

[\[2\]](#) (2006) 12 SCC 570

[\[3\]](#) 2006(3) L.L.N.697

[\[4\]](#) 2001(5) ALD 427 (FB)