

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.2120 of 2004

ORDER:

Heard Sri B.Mayur Reddy, learned counsel for the petitioner. None appears for 1st respondent even though notice in the Writ Petition has been served on him.

2. The petitioner Corporation has filed this Writ petition calling for the records relating to the Award dt.26-08-2003 in I.D.No.142 of 2001 of 2nd respondent-Industrial Tribunal-cum-Labour Court, Warangal.
3. The 1st respondent was employed as a Conductor in the petitioner Corporation. On 25-09-2000, a check was exercised on bus No.3531 on the route from Garala to Khammam at stage No.4 while the petitioner was on duty as a Conductor. The ticket officials found certain cash and ticket irregularities and a charge memo was issued to him.
4. The charges framed were:
 - 1) alleged failure on the part of 1st respondent to observe the Rule Issue and start;
 - 2) that there was a failure on the part of 1st respondent to issue ticket to a passenger after collecting requisite fare of Rs.3/-; and
 - 3) alleged failure to close the tray nos. of S.R. of stage No.4 against columns of Rs.3/- to Rs.6/- deno and by closing columns of Rs.7.50 to Rs.15/- and Rs.1/-.
5. The 1st respondent submitted an explanation denying the charges but the enquiry officer found all the charges to be

proved. Punishment of removal from the service was imposed on the petitioner.

6. The 1st respondent questioned the same by filing an application under Section 2-A (2) of the Industrial Disputes Act, 1947 (for short 'the Act') and sought reinstatement into service with all consequential benefits. The said petition was numbered by 2nd respondent as I.D.No.142 of 2001.
7. By consent of both sides, Exs.M-1 to M-19 were marked. By award dt.26-08-2003, 2nd respondent held that the domestic enquiry was validly held. It also held that the charges were proved against 1st respondent. But it held that 1st respondent had not acted with any *mala fide* intention to misappropriate the amount. It therefore held that the punishment of removal from service imposed on 1st respondent is harsh and the appropriate punishment would be postponement of annual increments with cumulative effect on reinstatement. It directed the petitioner to reinstate the 1st respondent into service as Conductor with continuity of service, back wages and attendant benefits. But however directed that two increments of 1st respondent should be stopped with cumulative effect.
8. Questioning the same, this Writ Petition is filed by petitioner-Corporation.
9. It is the contention of the learned counsel for the petitioner that having held that the domestic enquiry was valid and that charges are proved against 1st respondent, the 2nd respondent could not have granted relief of reinstatement, back wages and

continuity of service apart from attendant benefits by merely imposing punishment of withholding of two increments with cumulative effect. He contended that the rule of issue and start is mandatory and 1st respondent could not have started the bus before issuing the tickets. He also contended that the existence of *mala fide* intention is not a *sine qua non* for punishing 1st respondent because this is not the criminal case and the question of *mens rea* would not arise. He therefore contended that the Tribunal has not correctly exercised jurisdiction under Section 11-A of the Act.

10. The learned counsel for the petitioner also relied upon the judgment of the Supreme Court in **Karnataka State Road Transport Corporation Vs. B.S.Hullikatti**, wherein the Supreme court held that it is the responsibility of the bus conductor to collect correct fare from the passengers to deposit the same to the Corporation, that they act in a fiduciary capacity and it would be a case of gross misconduct if knowingly they do not collect any fare or the correct amount of fare. In the said case, the Supreme Court set aside the order of the Labour Court directing reinstatement and 50% back wages when a Conductor of the said Corporation issued tickets of a lesser fare than what was to be collected from the passenger, even though it was not proved that he had collected the higher amount of fare from the passengers. The High Court had directed reinstatement with full back wages and the letters patent appeal against the said order was also dismissed. However, the Supreme Court held that imposing lesser punishment in such cases is on account of misplaced sympathy by the Labour Court; that the principle of *res ipsa loquitur*, namely, the facts speak for themselves, would

apply; and charging 50 paise per ticket less from many passengers could only be for getting financial benefit by the Conductor. It observed that the order of dismissal would not have been set aside by the Labour Court. But having regard to the fact that in that case, the Conductor already superannuated the order of reinstatement was not set aside, it was directed that the Conductor would not be entitled to any back wages although he would be entitled to retrial benefits.

11. Having regard to the said decision, I am of the opinion that the 2nd respondent ought not to have gone into the state of mind of 1st respondent when he did not issue ticket to the passengers after collection of the fare, particularly, when the charges were held proved in the enquiry and the finding of guilt of 1st respondent was not disturbed by the Labour Court. Collection of fare without issuing tickets would only be for the financial benefit of 1st respondent. He is not entitled to collect the fare and retain it for himself without issuing th ticket to the passenger and depositing the money with the Corporation. Bus Conductors like 1st respondent act in a fiduciary capacity and it would be a case of gross misconduct if they do not issue tickets after collecting fare.

12. In this view of the matter, I am of the opinion that the Court below had erred in interfering with the quantum of punishment imposed by the petitioner on 1st respondent in exercise of its power under Section 11-A of the Act. Therefore, the Award dt.26-08-2003 in I.D.No.142 of 2001 of the Industrial Tribunal-cum-Labour Court at Warangal is set aside and the punishment of

removal from service imposed by the petitioner on 1st respondent is upheld.

13. With the above directions, the Writ Petition is allowed. No costs.

14. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 20-03-2015

kvr