

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

WRIT PETITION NO.6172 OF 2005

Between:

V.C. Sekhar

.. Petitioner

and

Chairman-cum-Presiding Officer,
Industrial Tribunam-cum-Labour
Court, Anantapur and another

.. Respondents

DATE OF JUDGMENT PRONOUNCEMENT : 13th AUGUST, 2015

SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE SANJAY KUMAR

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| 1. | Whether Reporters of Local newspapers
may be allowed to see the judgment? | Yes/No |
| 2. | Whether the copies of judgment may be
marked to Law Reporters/Journals | Yes/No |

3. Whether His Lordship wishes to see the fair copy of the judgment? Yes/No

THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION NO.6172 OF 2005

ORDER

Unsuccessful before the Industrial Tribunal-cum-Labour Court, Anantapur, in I.D.No.320 of 2001 filed by him, the petitioner-workman is before this Court by way of this writ petition challenging the nil Award dated 27.03.2004 passed therein.

The petitioner was a Conductor in the service of the Andhra Pradesh State Road Transport Corporation (APSRTC). He was removed from service by the APSRTC under proceedings dated 14.09.2000. The said removal was subjected to challenge before the Industrial Tribunal-cum-Labour Court, Anantapur, in I.D.No.320 of 2001 under Section 2A(2) of the Industrial Disputes Act, 1947 (for brevity, 'the Act of 1947'). The case against the petitioner-Conductor was that while conducting the bus service on the route Kotanka – Anantapur, he committed certain cash and ticket irregularities. The following charges were framed against him.

'CHARGES:

1. For having violated the rule issue and start which constitutes misconduct under Reg.28 (xxxii) of APSRTC Employees (Conduct) Reg.1963.
2. For having collected the requisite fare of Rs.6/- from each of a batch of 8 passengers at the boarding point itself, subramanyam temple Kotanka, stage No.8 but failed to issue tickets to them till they alight at the time of check at Garladinne stage No.5 which constitutes misconduct under Reg.28(vi) & (a) & (x) of APSRTC Employees (Conduct) Reg.1963.

3. For having closed the ticket numbers of all denominations in the SR against stage No.5 which constitutes misconduct under Reg.28 (xxxiii) of APSRTC Employees (Conduct) Reg.1963.'

Upon considering his explanation and being dissatisfied therewith, the APSRTC instituted an enquiry into the matter. Upon completion of the enquiry, the petitioner-Conductor was found guilty of the charges leveled against him and the APSRTC acting thereupon, issued a show-cause notice proposing removal of the petitioner from service. He, however, did not choose to respond thereto and ultimately, the APSRTC issued proceedings dated 14.09.2000 removing him from service.

The Labour Court framed the following points for consideration.

1. Whether the findings of the Enquiry Officer are based on record ?
2. Whether the punishment is grossly disproportionate to the proved misconduct ?

Before the Labour Court, it was not the case of the petitioner-Conductor that there was any lacuna in the enquiry. The contention of the petitioner-Conductor was that he had earlier been given a merit certificate and was also rewarded for returning a bag containing Rs.25,000/-, when it was found by him. It is on this basis that he argued that the charge against him could not be believed. This aspect was kept in mind by the Labour Court while dealing with the case, as the Labour Court was of the opinion that an honest person should not be allowed to suffer if at all his version was probable. However, the Labour Court found that the evidence on record was clinching. Eight passengers were found alighting from the bus at the time of the check without tickets. They claimed that they had paid the ticket fare to the petitioner-Conductor at the boarding point but he failed to issue them tickets. The further charges against the petitioner-Conductor were that he closed the SR against stage No.5 and did not follow the rule of 'Issue and Start'. The petitioner-Conductor, on the other hand, claimed that one day earlier to the check,

while he was conducting the bus service on the same route, he detected one jeep illicitly operating on the route and when he objected thereto, the persons in the jeep quarreled with him. He alleged that the same persons boarded the bus on the date of the check and bearing a grudge against him, they made a false statement at the time of the check that they had paid the bus fare to him.

The passengers in question were stated to have traveled from stage 8 to stage 5. The Labour Court, taking this fact into consideration, observed that if they had failed to purchase tickets and quarreled with the petitioner-Conductor, he ought to have asked the driver to stop the bus and made them alight from the bus immediately. However, the petitioner-Conductor admittedly allowed them to travel from stage 8 to stage 5 and he had also closed the SR against stages 7 and 6. The Labour Court also observed that no passenger seemed to have boarded the bus at either stage 7 or stage 6 and that there would have been no difficulty for the petitioner-Conductor to stop the bus and ask the eight passengers in question to get down, if they had not paid him the ticket fare. When the petitioner-Conductor was asked to give his spot explanation, he chose not to do so stating that he was not feeling well as some passengers had beat him with stones and stated that he would give his statement subsequently. Had it really been true that the eight passengers who had made incriminating statements against him were the same persons whom he had to deal with on the earlier day, the Labour Court opined that the petitioner-Conductor would have definitely mentioned the said fact by way of a spot explanation immediately. The Labour Court also pointed out that out of the said eight passengers, four were woman passengers and therefore, the version put forth by the petitioner-Conductor was not probable.

Given these factors, the Labour Court concluded that the version put forth by the Traveling Ticket Inspector was more probable than that of the petitioner-Conductor. As the charges proved against the petitioner-Conductor involved loss of revenue to the APSRTC, the Labour Court

opined that it was not a fit case to exercise powers under Section 11A of the Act of 1947 in the context of proportionality of the punishment. As regards the claim of the petitioner-Conductor that he had maintained a clean record and was honest, the Labour Court found that the APSRTC contested the said claim by referring to the fact that the petitioner was censured on no less than 14 occasions and his annual increments were withheld earlier for his involvement in cash and ticket irregularities. Given the totality of the aforesaid circumstances, the Labour Court held that the termination of the petitioner-Conductor from service was justified and accordingly dismissed the ID.

Smt. Pushpinder Kaur, learned counsel for the petitioner, contended that the fact that the petitioner was earlier rewarded for his honesty ought to have been taken into consideration by the Labour Court while dealing with the matter. She further stated that there was a contradiction in so far as the charge relating to closure of the SR was concerned, as the Charge Memo dated 28.02.2000 stated to the effect that the petitioner-Conductor had failed to close the SR against stage No.5, whereas the Charge Sheet stated to the contrary that he had closed the ticket numbers of all denominations in the SR against stage No.5.

No doubt, there is a discrepancy in the charge in so far as this aspect of the matter is concerned. But even eschewing this charge from consideration, this Court is of the opinion that the findings on the other two charges would be sufficient to sustain the order of removal from service visited upon the petitioner-Conductor, which was upheld by the Labour Court.

Smt. Pushpinder Kaur, learned counsel, would contend that this Court should examine and weigh the facts of the matter. It is however significant to note that the petitioner did not allege in the writ petition that the findings recorded against him, be it by the APSRTC or by the Labour Court, were perverse. In the absence of such an allegation, this Court normally would not sit in appeal over the decision. Needless to state, it is only the decision making process which is subjected to review by this

Court in writ jurisdiction and only in the event of perversity being alleged, factual aspects of the matter would be looked into. In the absence of such an allegation, it would not be open to the petitioner to seek to reopen the enquiry on facts in this writ petition. However, given the peculiar facts of this case and as the petitioner's character is also at stake, this Court deems it appropriate to also examine the case on facts.

Significantly, there is no explanation forthcoming even at this stage as to why the petitioner-Conductor did not immediately have the bus stopped if as many as eight passengers refused to pay the bus fare and why he did not have them alight from the bus. It is a matter of record that the said eight passengers traveled from stages 8 to 5 and nothing was done by the petitioner-Conductor to either collect the fare from them or to make them alight from the bus for having failed to pay the ticket fare. As rightly pointed out by the Labour Court, a Conductor in the APSRTC owes a fiduciary obligation to it to safeguard its revenues. Irrespective of whether the petitioner-Conductor actually received the ticket fare from the eight passengers in question or whether they chose not to pay him such fare, the fact remains that the action of the petitioner-Conductor in allowing them to travel from stage 8 to stage 5 without the requisite tickets invariably caused loss of revenue to the APSRTC. In effect, the petitioner failed to discharge his fiduciary obligation to his employer. This Court therefore finds no ground to interfere with the factual findings recorded against the petitioner by the APSRTC and thereafter, by the Labour Court.

Smt. Pushpinder Kaur, learned counsel, placed reliance on the following case law in support of her contentions.

In **S. PULLA REDDY V/s. DEPOT MANAGER, APSRTC, CUDDAPAH DIST.**^[1], a learned Single Judge of this Court took note of the fact in that case that the Conductor offered to have his personal cash verified when the check was carried out in his bus, but the Inspector did not do so. The learned Judge was of the opinion that verification of such personal cash would have been conclusive for holding that the

Conductor was liable for the alleged misconduct of reissuing the tickets, but by abstaining from verifying the cash, the Inspector intentionally left the issue open to controversy. As similar facts are not obtaining presently, this Court is at a loss to understand as to how this decision furthers the case of the petitioner.

The unreported judgment dated 31.10.2013 of a learned Judge of this Court in W.P.No.4853 of 2006 is also of no help to the petitioner. The said case dealt with the removal of a Conductor from service owing to cash and ticket irregularities who was directed to be appointed afresh by the Labour Court with an additional punishment. The petitioner in that case alleged recording of perverse findings by the Labour Court. Considering the individual facts of that case, the learned Single Judge modified the Labour Court's Award to the extent of setting aside the additional punishment of deduction of annual increments with cumulative effect. The principle laid down in the aforesaid judgment which was on the foundation of the facts obtaining therein is in no way helpful to the petitioner-Conductor in the present case.

Another unreported judgment dated 18.11.2013 passed in W.P.No.15237 of 2007 is cited by Smt. Pushpinder Kaur, learned counsel. This case also related to a Conductor who was removed from service owing to cash and ticket irregularities. On facts, the learned Judge found that the APSRTC could not establish conclusively that there was any reissuance of tickets by the Conductor and accordingly granted relief. This judgment is therefore of no avail as the facts were wholly dissimilar.

Reliance is also placed on ***A.V. SWAMY V/s. THE A.P.S.R.T.C. REP. BY ITS MANAGING DIRECTOR***^[2]. However, perusal of this judgment reflects that interference in the matter was on the ground of proportionality of punishment. In the present case, this Court is in complete agreement with the finding of the Labour Court that in a case involving loss of revenue to the employer, powers under Section 11A of

the Act of 1947 should be sparingly used. In the light of the admitted fact that the petitioner-Conductor took no action between stage 8 and stage 5 though the eight passengers in question failed to pay him ticket fare, if his version is to be accepted, he stood disentitled from seeking exercise of powers by the Labour Court under Section 11A of the Act of 1947.

Lastly, Smt. Pushpinder Kaur, learned counsel, placed reliance on the Judgment dated 16.11.2010 passed by this Court in W.P.No.4024 of 2008. This judgment was confirmed in appeal in W.A.No.174 of 2011 dated 30.09.2013. That was a case which involved perversity in the findings recorded against the Conductor and therefore, the principle laid down therein would not further the case of the petitioner as the petitioner herein failed to establish any perversity in the findings recorded against him.

To sum up, it is not in dispute that the eight passengers in question traveled from stage 8 to stage 5 and were found alighting from the bus without tickets. The petitioner-Conductor failed to give a spot explanation and no reason is forth coming even now as to why he did not immediately point out that the said eight passengers bore a grudge against him owing to the previous day's incident. That apart, four out of these eight passengers were women. Even if the version of the petitioner-Conductor were to be believed that no ticket fare had been paid to him, he had to justify as to why he allowed the said passengers to travel and why he did not ask the bus to be stopped immediately so as to compel them to get down from the bus. In the light of these admitted facts, the failure on the part of the petitioner-Conductor to live up to his fiduciary obligation to the APSRTC is clearly established. This Court therefore finds no reason to interfere with the Award passed by the Labour Court holding to that effect.

The writ petition is devoid of merit and is accordingly dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

13th AUGUST, 2015

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[\[1\]](#) 1997(2) ALD 558
[\[2\]](#) 2014(6) ALD 661 = 2014(5) ALT 554