

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

WRIT PETITION No.616 of 2004

ORDER:

This Writ Petition has been filed by the Andhra Pradesh State Road Corporation (for short 'the Corporation') to call for records relating to Award dt.07-08-2003 in I.D.No.53 of 2002 of the Industrial Tribunal-II, Hyderabad published on 15-09-2003 setting aside the order of removal imposed on 1st respondent on 15-07-1999 by the Corporation and directing reinstatement of 1st respondent into service with continuity of service and 50% back wages, and to quash the same.

2. The 1st respondent was employed as Conductor in the Corporation. On 15-04-1999 he was entrusted the second shift duty in the rout No.9-A of Jeedimetla Depot of the Corporation. As per the schedule of the Corporation, the 1st respondent performed six trips in the route and the last trip was from Sreeramnagar Colony to Jeedimetla Depot stages 14 to 11. While he was conducting the last trip, the Checking Officials exercised check on the bus at stage No.13 Jeedimetla cross roads at about 20.25 hours. They detected allegedly that 1st respondent had failed to issue tickets despite collecting the requisite fare of Rs.14/- @ Rs.2/- per head from a batch of seven passengers who were found alighting without tickets at Chintal cross roads (Green Hotel) having board the bus at Sreeramnagar stages 14 to 13.

3. A charge memo dt.12-05-1999 was issued to 1st respondent setting out this charge and pointing out that it

constitutes misconduct in terms of Regulation 28(vi-a) of the APSRTC Employee's Conduct Regulations, 1963.

4. The 1st respondent submitted his explanation dt.14-05-1999 to the charge sheet denying the allegations. He stated that while he was performing his last trip from Sreeramnagar colony to Jeedimetla stages 14 to 11, the passengers in question under the charge, boarded the bus at stage No.13 at Chintal cross roads with an impression that the bus was going towards Secunderabad station. It is stated that when the passengers were alighting from the bus without making any journey, at that time the Checking officials of the Corporation exercised the check on the bus, by halting these passengers and enquired from them. According to 1st respondent, the passengers categorically stated that they wanted to go to Secunderabad station and that they have boarded at stage No.13 only and on the suggestion of 1st respondent, they were alighting from the bus and they did not pay any amount towards tickets. He alleged that the Checking Officials demanded the passengers to pay a fine of Rs.500/- apart from ticket fare, but without collecting the said amount, they collected only ticket amounts for top punched tickets. The TTIs dictated the passenger's statement, got it written by 1st respondent himself and a statement with signature and address of one of the passenger was obtained. He alleged that it was dictated by one of the Checking official but not by the passenger, and there was no attestation on the said statement by any co-passenger or by service driver. He alleged that the Checking Officials dictated and got written the spot explanation by 1st

respondent and they misguided him informing that if he did not abide the suggestion of the Checking Officials, they would frame another case for insubordination and so

1st respondent had written the alleged passenger statement with his own writing and also the alleged spot statement on the dictation of the Checking Officials.

5. A domestic enquiry was conducted and the Enquiry Officer by order dt.15-07-1999 imposed punishment of removal from service on 1st respondent.

6. Petitioner preferred an appeal before the Divisional Manager and also a Review petition to the Regional Manager. Both the appeal and Revision were rejected.

7. Therefore, the petitioner filed an application under Section 2-A(2) of the Industrial Disputes Act, 1947 (for short 'the Act') challenging his removal from service.

8. In the said application, he stated that the domestic enquiry was conducted without paying him any subsistence allowance and thereby he suffered and could not properly defend his case. He therefore sought for reinstatement with back wages, consequential benefits, attendant benefits and continuity of service.

9. Counter affidavit was filed by petitioner denying these allegations and stating that the charge made against him is true. It was pointed out that the Checking Officials confronted ticket less passengers and also the 1st respondent; they discovered that

1st respondent after collecting requisite fare of Rs.14/- @ Rs.2/-

at the boarding point itself, did not issue tickets and that he had closed the S.R. upto stage -12. The petitioner contended that the statements of 1st respondent as well as one of the passengers were written by

1st respondent himself since the ticket-less passengers were illiterate and that 1st respondent had attested the statement of the passenger as correct. It stated that the Checking Officials obtained the top punched tickets for the 7 ticket less passengers at the time of check and alleged that there were only 15 passengers in the bus including the 7 ticket less passengers at the time of check. It also stated that as per the passengers statement recorded on the spot, it was clear that they had boarded the bus at Sreeramnagar to Chintal cross road and they had also tendered Rs.14/- @ Rs.2/- per head and that 1st respondent had not issued tickets to them till they alighted the bus. It also alleged that the 1st respondent himself in his spot explanation confirmed that he failed to issue tickets to seven passengers in spite of collecting fare till their time of alighting. It disputed the contention of 1st respondent that passengers had intended to go to Secunderabad but they have boarded the bus in question without knowing that it is going to Jeedimetla and he had asked the passengers to alight in the same place where they boarded the bus and in the meantime the check was exercised.

10. The Labour Court held that the domestic enquiry was vitiated on the ground of non-payment of subsistence allowance and directed both sides to lead evidence. On behalf of petitioner, M.Ws.1 and 2 were examined and Exs.M-1 to M-9 were marked.

The 1st respondent also examined two witnesses.

11. By an award dt.07-08-2003, the Tribunal held that 1st respondent was guilty of charge leveled against him. However, it held that in exercise of power under Section 11-A of the Act, the order of removal passed against the 1st respondent was illegal and not appropriate and he would be entitled to reinstatement with 50% of back wages.
12. Questioning the same, this Writ Petition is filed by the petitioner Corporation.
13. The learned counsel for petitioner Corporation contended that 1st respondent had not questioned the findings recorded by the Tribunal that he had collected the fare from 7 passengers and not issued tickets to them; when such a finding is recorded by the Tribunal, it could not have interfered with the punishment of removal imposed by petitioner under the influence of misplaced sympathy and directed his reinstatement with 50% back wages along with continuity of service. He relied upon **Karnataka State Road Transport Corporation Vs. B.S.Hullikatti, V.Ramana Vs. A.P.SRTC and others, Divisional Controller, N.E.K.R.T.C. Vs. H.Amresh and U.P. State Road Transport Corporation, Dehradun Vs. Suresh Pal**, and contended that the Supreme Court had time and again deprecated the practice of interfering with the punishment imposed on an employee like a Conductor of the petitioner Corporation, who is acting in a fiduciary capacity.
14. The learned counsel for 1st respondent, on the other hand, contended that the finding recorded by the Tribunal about

the guilt of 1st respondent is not correct; that the Tribunal has jurisdiction under Section 11-A of the Act to interfere with the quantum of punishment and having regard to the amount involved in the incident i.e. Rs.14/-, it is not proper for the petitioner to insist on

1st respondent's removal from service. He relied upon **the Depot Manager, A.P.S.R.T.C., Medak Vs. Sri Mohd. Ismail and another and C.Basaiah Vs. Depot Manager, APSRTC, Tandur, R.R.District and others** and contended that the punishment of removal from service would be very harsh particularly when

1st respondent has been reinstated into service by the petitioner Corporation in 2004 itself. He contended that if this Court were now to interfere with the quantum of punishment by the Tribunal, it would ruin the 1st respondent's life and his family.

15. I have noted the submissions of both sides.

16. The admitted facts are that 1st respondent was employed as Conductor in the petitioner Corporation and the Tribunal, in its Award dt.07-08-2003 in I.D.No.53 of 2003 has held that the charge framed against 1st respondent of having failed to issue tickets despite collecting fare of Rs.14/- @ Rs.2/- per head from a batch of 7 passengers, who were found alighting without tickets at Chintal cross road (Green Hotel) after having boarding the bus at Sreeram Nagar, is proved. The 1st respondent has not questioned this finding by challenging the same in this Court under Article 226 of the Constitution of India. Therefore, it is not open to 1st respondent to canvass the correctness of the said

finding in the Writ Petition filed by petitioner in this Court.

17. There is no dispute about the proposition that the bus conductors act in a fiduciary capacity and that it is their responsibility to collect the correct fare from passengers and deposit the same with the petitioner Corporation. They are not expected to collect fares and not issue tickets to passengers and it is their duty to issue tickets to passengers after collecting correct fare. In **Karnataka State Road Transport Corporation** (1 supra), the Supreme Court has held:

“5. On the facts as found by the Labour Court and the High Court, it is evident that there was a short-charging of the fare by the respondent from as many as 35 passengers. We are informed that the respondent had been in service as a Conductor for nearly 22 years. It is difficult to believe that he did not know what was the correct fare which was to be charged. Furthermore, the appellant had during the disciplinary proceedings taken into account the fact that the respondent had been found guilty for as many as 36 times on different dates. Be that as it may, the principle of res ipsa loquitur, namely, the facts speak for themselves, is clearly applicable in the instant case. Charging 50 paise per ticket less from as many as 35 passengers could only be to get financial benefit by the Conductor. This act was either dishonest or was so grossly negligent that the respondent was not fit to be retained as a Conductor because such action or inaction of his is bound to result in financial loss to the appellant-Corporation.

6. It is misplaced sympathy by the Labour Courts in such cases when on checking it is found that the Bus Conductors have either not issued tickets to a large number of passengers, though they should have, or have issued tickets of a lower denomination knowing fully well the correct fare to be charged. It is the responsibility of the Bus Conductors to collect the correct fare from the passengers and deposit the same with the Company. 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.”

18. Thus, the Court held that misplaced sympathy should not be shown in cases where tickets were not issued or tickets of

lower denomination than the correct fare were issued. Having regard to the fact that in that case the respondent had superannuated from service, it did not interfere with the order of reinstatement passed by the Labour Court.

19. This view was reiterated in **V.Ramana** (2 supra). Although the said case did not arise out of a challenge to the order passed by the Labour Court or Industrial Tribunal under Section 11-A of the Act, the Supreme Court considered the question of quantum of punishment by applying the principles of Section 11-A of the Act. It rejected the contentions that these were minor lapses and that smallness of the amount should be considered and punishment of termination from service was not appropriate. It held, after considering the principles of proportionality of punishment, that unless the punishment imposed by the disciplinary authority shocks the conscience of the Court/Tribunal, there is no scope for interference. It held that the Conductor holds a post of trust and punishment of removal from service is appropriate for a person guilty of breach of trust. It relied upon the judgment in **Karnataka State Road Transport Corporation** (1 supra).

20. Similar view was expressed in **Divisional Controller, N.E.K.R.T.C.** (3 supra), wherein the Supreme found fault with the Labour Court's view in directing reinstatement in spite of a finding that the Conductor had not returned Rs.360.95 Ps. found with him. The Labour Court had substituted the punishment of dismissal from service with reinstatement and 75% of the back wages, which was confirmed by the Single Judge of the High Court of Karnataka at Bangalore and Division Bench of the said High Court. The Court held:

*“12. In the instant case, the misappropriation of the funds by the delinquent employee was only Rs.360.95. This Court has considered the punishment that may be awarded to the delinquent employees who misappropriated funds of the Corporation and the factors to be considered. This Court in a catena of judgments held that the loss of confidence as the primary factor and not the amount of money misappropriated and that the sympathy or generosity cannot be a factor which is impermissible in law. When an employee is found guilty of pilferage or of misappropriating a Corporation's funds, there is nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of dismissal. In such cases, there is no place for generosity or misplaced sympathy on the part of the judicial forums and interfering therefore with the quantum of punishment. The judgment in **Karnataka State Road Transport Corporation v. B.S. Hullikatti** [(2001)2 SCC 574] was also relied on in this judgment among others. Examination of passengers of vehicle from whom the said sum was collected was also not essential. In our view, possession of the said excess sum of money on the part of the respondent, a fact proved, is itself a misconduct and hence the Labour Court and the learned Judges of the High Court misdirected themselves in insisting on the evidence of the passengers which is wholly not essential. This apart, the respondent did not have any explanation for having carried the said excess amount. This omission was sufficient to hold him guilty. This act was so grossly negligent that the respondent was not fit to be retained as a conductor because such action or inaction of his was bound to result in financial loss to the appellant irrespective of the quantum.”*

21. It held that even though the charge of misappropriation was proved beyond any doubt, the Labour Court had erroneously taken a lenient and sympathetic view and the learned Single Judge and the Division Bench ought not to have upheld the said order.

22. Again in **U.P. State Road Transport Corporation, Dehradun** (4 supra), 20 passengers were traveling when check was done by the Checking Official of the U.P.S.R.T.C. Although the Corporation imposed punishment of dismissal from service and the same was upheld by the Labour Court, it was set aside by a learned Single Judge who directed reinstatement of the

respondent into service by substituting the punishment of dismissal with punishment of one censure entry and stoppage of two increments with cumulative effect without back wages. The Supreme Court held that having found the charge against respondent conductor to be proved, it was not open to the High Court to interfere with the quantum of punishment.

23. In **Depot Manager, APSRTC, Medak** (5 supra) cited by 1st respondent, a Division Bench of this Court was dealing with a case of a driver of the petitioner Corporation, who was found negligent because of which an accident occurred in which several passengers were injured along with the Conductor. The vehicle in question was also found to be damaged. After a domestic enquiry, the punishment of removal from service was imposed on the respondent therein. The High Court confirmed the fact that the respondent was guilty of the charges framed against him, but while considering the proportionality of the punishment, it observed :

“23. The next question to be considered under Section 11A of the Industrial Disputes Act is whether the penalty imposed by the Disciplinary Authority is proportionate to the gravity of the misconduct proved against the delinquent. The disciplinary Authority has pointed out that the misconduct proved against the delinquent is quite serious in nature resulting in injuries to 35 passengers and the conductor, and heavy damage to the vehicle. If we were to decide this case in the year 1987 or 1988, probably we would not have interfered with the punishment imposed by the Disciplinary Authority. The delinquent was reinstated into service by virtue of the impugned award passed by the Labour Court more than eight years back, and it is not brought to our notice that after reinstatement, the delinquent caused any accident on account of his negligence or committed any other misconduct. In that view of the matter and taking into account the totality of the facts and circumstances of the case, we think that it is just and proper not to disturb the reinstatement awarded by the Labour Court. But, we do not find any justification to award back wages to

the delinquent”.

24. The said case did not arise out of an incident where there is a breach of fiduciary duty, so the principle laid down therein cannot be extended to cases like the one on hand where breach of fiduciary duty has been established.

25. The learned counsel for the 1st respondent strongly placed reliance on the award of the Labour Court and contended that if the 1st respondent is removed from service now, it would cause grave prejudice to 1st respondent. He also relied on the passage in **C.Basaiah** (6 supra) wherein a learned Single Judge of this Court observed:

“9.The facts mentioned above would have their own impact, upon the charges framed against the petitioner. Though technically, the passengers were found without tickets, the gravity thereof gets diluted to a substantial extent, if the explanation offered by them is taken into account. Here again, the examination is with reference to the quantum of punishment.

10. The duties assigned to the Conductor carry with them, an amount of trust, on behalf of the Corporation. Irrespective of the amount involved, the intention of a person employed as a Conductor, while dealing with the tickets and cash, assumes importance. The judgment of the Supreme Court relied upon by the Labour Court is clear on this aspect. At the same time, it must not be forgotten that, as part of the duty, the Conductor has to issue tickets to hundreds of persons everyday, and a small lapse, which does not reflect misuse of faith, cannot lead to deprivation of livelihood. An element of human rights also exists, in the matters of this nature. It is not only the livelihood of the employee, but also that of his family members and dependants. While there cannot be any compromise with the requirement as to honesty in discharge of duties, minor lapses should not lead to deprivation of livelihood to an employee and his family. Before the service of an employee, running into few decades, is put an end to, a careful analysis of the matter is needed.

11. It has already been pointed out that no penalty was levied from the passengers, and tickets were issued to them, by collecting the balance fare of 0-50ps. each. The statement of the passengers that they were in the process of tendering the change of 0-50ps. each, was not at all

rebutted by the Corporation. The Corporation itself reinstated the petitioner into service, on the basis of the award dated 20.8.1997, passed by the Labour Court. Nothing objectionable was found during this period, against the petitioner. 10 years thereafter, he was removed on the basis of the judgment of this Court in WP No. 19656 of 1998. In the totality of the circumstances, this Court is of the view that punishment of stoppage of two increments, with cumulative effect, and denial of back wages, in the place of order of removal, would meet the ends of justice.”

26. In my opinion, this decision turned on the facts of that case where the statement of passengers that they were in the process of tendering change of 0.50 ps was not at all rebutted by the Corporation. So it is not applicable to the present case.

27. In the light of the above discussion, I am of the opinion that once the Tribunal has found that 1st respondent is guilty of the charge in not issuing tickets after receiving Rs.14/- from 7 passengers, it was not open to the Tribunal to show misplaced sympathy and directed reinstatement of the 1st respondent into service with 50% back wages. The 1st respondent was admittedly discharging duty of a fiduciary nature and once he commits breach of such a duty, unless severe punishment is imposed, interest of justice would not be served. Therefore, I do not agree with the contention of the learned counsel for 1st respondent that 1st respondent's reinstatement by the Tribunal need not be interfered by this Court.

28. In this view of the matter, the Writ Petition is allowed, and the award dt.07-08-2003 in I.D.No.53 of 2002 of the Industrial Tribunal-II, Hyderabad is set aside and the punishment of removal from service imposed on 1st respondent stands

confirmed. However, any payments made to 1st respondent till date shall not be recovered from him. No costs.

29. As a sequel, miscellaneous petitions pending, if any, shall stand disposed of.

JUSTICE M.S. RAMACHANDRA RAO

Date: 23-03-2015

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