

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

WRIT PETITION No.7311 OF 2005

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DATED 29th SEPTEMBER, 2015

Between:

K.Peraiah

.. Petitioner

and

The Depot Manager,
A.P.S.R.T.C. Chirala Depot,
Prakasam District, and others.

.. Respondents

THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION No.7311 OF 2005

ORDER

Aggrieved by the Nil Award dated 06.12.2004 passed by the Labour Court, Guntur, in I.D.No.149 of 2000, the petitioner-workman is before this Court.

The petitioner-workman was a Conductor in the service of the Andhra Pradesh State Road Transport Corporation (APSRTC). He was alleged to have committed certain cash and ticket irregularities while conducting the bus service from Chirala to Inkollu on 27.01.1999. He was removed from service on 28.06.1999. The same was confirmed in appeal on 31.01.2000. He then invoked the jurisdiction of the Labour Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (for brevity, 'the Act of 1947'). By the Award under challenge, the Labour Court accepted the findings recorded against the petitioner by the APSRTC authorities and, opining that it was not a fit case for exercising discretion under Section 11-A of the Act of 1947, dismissed the petition.

The two main charges against the petitioner-workman were:

(1) He collected Rs.3/- from a passenger and issued a Rs.2.50 Ps. denomination ticket and a Re.0.50 denomination ticket though Rs.3/- denomination tickets were available in the tray.

(2) He issued tickets of Rs.3/- denomination to a batch of nine passengers, without punching them, after noticing the checking officials.

As regards the first charge, the defense of the petitioner-workman was that the passenger had first asked for a ticket to a particular

destination, whereupon he issued him the Rs.2.50 Ps. denomination ticket but thereafter, he changed his mind and asked for a ticket to a further stage and he accordingly issued him an additional Re.0.50 Ps. denomination ticket.

As regards the second charge, the initial claim of the petitioner-workman in response to the charge sheet was that after passing Swarna stage, nine passengers boarded the bus and paid him Rs.30/- but he felt a reeling sensation at that point of time and fell unconscious. The spot statement made by the petitioner-workman was however to the contrary and he did not claim therein that he fell unconscious. During the enquiry, the petitioner-workman again changed his version. According to him, the nine passengers who boarded the bus to go to Thimirthipadu paid him Rs.30/- but there was some confusion about the number of passengers. He therefore did not issue tickets to them immediately even though he had collected the fare from them and was in the process of pulling the tickets from the tray when the bus reached Thimirthipadu and the check took place. As the petitioner kept changing his stand during the course of the enquiry, the Labour Court held that his contradictory statements proved the charge. Accordingly, the Labour Court passed a Nil Award.

Heard Sri V.Narasimha Goud, learned counsel for the petitioner, and Sri P.Durga Prasad, learned standing counsel for the APSRTC.

It is no doubt true that there was no consistency in the stand taken by the petitioner-workman. However, irrespective of the same, the charges leveled against him had to be proved independently during the course of the enquiry as the major punishment of removal from service was sought to be imposed upon him. Mere contradictions in his stance were therefore not enough to draw an inference straightaway that he was guilty. The petitioner's explanation dated 09.06.1999 to the show cause notice dated 28.06.1999, proposing his removal from service, is placed on record and reflects that his defense therein was that the nine passengers boarded the bus two furlongs before Stage No.6 and that he was in the process of issuing tickets to them and altering the S.R. when

the check took place. He stated that he had torn the tickets and was trying to punch them when the checking officials boarded the bus and interrupted him in the process of issuing the said tickets. He pointed out that during the enquiry the checking official had stated in his deposition that he had taken the tickets from the hands of the Conductor and the same was also confirmed by the leader of the group of nine passengers. Overlooking this evidence, the Enquiry Officer had held him guilty and he therefore prayed for dropping of the proceedings against him.

The Labour Court recorded a finding that the petitioner-workman had failed to issue tickets to the nine passengers and that the bus had reached Thimirthipadu when the check took place. However, the deposition of the TTI who was examined during the enquiry was to the contrary. In his cross-examination, he admitted that when the check took place, the petitioner-Conductor was in the middle of the bus and was in the process of issuing Rs.3/- denomination tickets to the passengers and the same were taken away from his hands. He further admitted that there was a turning at that location and that the next stage was not visible. This deposition of the TTI was completely overlooked by the authorities of the APSRTC as well as the Labour Court. In the light of this evidence, it was clear that the check did not take place at the final stage, Thimirthipadu, and the petitioner-Conductor was actually in the process of issuing tickets to the passengers when the check took place. The very foundation for holding the charge in this regard proved against him therefore stood dislodged in the light of this evidence. Notwithstanding the same, he was held guilty of the charges and was visited with the dire punishment of removal from service.

The question however is whether this Court would be entitled to interfere in the matter by reappraising the evidence.

Sri V.Narasimha Goud, learned counsel, placed reliance on case law in support of his contention that it would be open to this Court in exercise of writ jurisdiction to correct the factual errors committed by the Labour Court.

In ***THE DEPOT MANAGER, A.P. STATE ROAD TRANSPORT CORPORATION, BARKATPURA DEPOT, HYDERABAD V/s. MOHD.***

KHAN^[1], a Division Bench of this Court observed that though the scope of interference in a writ petition with the Award passed by the Labour Court is limited, in the event the finding recorded by the Enquiry Officer or the one arrived at by the Labour Court is contrary to the record, the High Court cannot ignore it. That was also a case where the evidence of the passenger, which was in favour of the Conductor, was ignored and a finding of guilt was returned against him. The Division Bench therefore confirmed the order of the learned Single Judge holding to the effect that the Labour Court had committed a serious error in omitting the passenger's statement and held that the case was a fit one for interference.

In ***M/s. ATLAS CYCLE (HARYANA) LTD. V/s. KITAB SINGH***^[2], it was held thus:

‘11. It is settled law that when the Labour Court arrived at a finding overlooking the materials on record, it would amount to perversity and the writ Court would be fully justified in interfering with the said conclusion. We are conscious of the fact that the High Court exercising writ of certiorari would not permit to assume the role of the appellate Court, however, the Court is well within its power to interfere if it is shown that in recording the said finding, the Tribunal/Labour Court had erroneously refused to admit the admissible and material evidence, or had erroneously admitted any inadmissible evidence which has influenced the impugned finding, the writ Court would be justified in exercising its remedy. In other words, if a finding of fact is based on no evidence that would be regarded as an error of law which can be corrected by a writ of certiorari.’

In ***UNION OF INDIA V/s. H.C.GOEL***^[3], the Supreme Court held:

‘20. ... In dealing with writ petitions filed by public servants who have been dismissed, or otherwise dealt with so as to attract Article 311(2), the High Court under Article 226 has jurisdiction to enquire whether the conclusion of the Government on which the impugned order of dismissal rests is not supported by any

evidence at all. It is true that the order of dismissal which may be passed against a Government servant found guilty of misconduct, can be described as an administrative order; nevertheless, the proceedings held against such a public servant under the statutory rules to determine whether he is guilty of the charges framed against him are in the nature of quasi-judicial proceedings and there can be little doubt that a writ of certiorari, for instance, can be claimed by a public servant if he is able to satisfy the High Court that the ultimate conclusion of the Government in the said proceedings, which is the basis of his dismissal, is based on no evidence. ...'

In ***DELHI CLOTH AND GENERAL MILLS CO. V/s. LUDH BUDH***

SINGH^[4], the Supreme Court held that a finding recorded by an Enquiry Officer ignoring the material admissions made by a party in favour of an accused, is not a question of mere appreciation of evidence, but really recording a finding contrary to the evidence adduced before him.

In ***DEPOT MANAGER, APSRTC, MEDAK V/s. MOHD. ISMAIL***^[5],

a Division Bench of this Court held that the misconduct of a delinquent should be proved sufficiently in a departmental enquiry.

In ***K.BALA RAMA RAJU V/s. HIGH COURT OF ANDHRA***

PRADESH, HYDERABAD^[6], a Division Bench of this Court held that normally under Article 226, this Court would not interfere with the findings recorded in the departmental enquiry as a matter of course and would not assume the role of an Appellate Authority. However, this would not mean that in no circumstance can the Court interfere. The powder of judicial review takes in its stride the domestic enquiry as well, and this Court can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse. The Division Bench found that the Enquiry Officer in that case just believed certain statements and disbelieved others and there was therefore no valid material to justify the finding arrived at ultimately by him.

Sri P.Durga Prasad, learned standing counsel, on the other hand, contended that as per the law laid down by the Supreme Court in ***DIVISIONAL CONTROLLER, N.E.K.R.T.C. V/s. H.AMARESH***^[7], once a domestic Tribunal, based on evidence, came to a particular conclusion, it would normally not be open to the Courts to substitute their subjective opinion in the place of the one arrived at by the domestic Tribunal. Significantly, that was a case where the Enquiry Officer, on a careful consideration of all aspects of the case, unhesitatingly held that the delinquent was guilty of the charges.

The case on hand is materially different as regards this crucial aspect. As pointed out *supra*, the Enquiry Officer did not take into account the deposition of the TTI which clearly established that the version put forth by the petitioner-workman was true. Though the petitioner-workman raised this aspect before the Disciplinary Authority in his explanation to the show cause notice proposing his removal from service, it was not even considered. The entire material having been placed before it, the Labour Court also chose to remain oblivious to these aspects. Therefore, the finding arrived at against the petitioner, being at variance with the crucial deposition of the TTI, is clearly untenable. The benefit of doubt necessarily had to be given to the petitioner-workman in the light of the said evidence.

The punishment of removal from service visited upon the petitioner-workman was therefore unsustainable. Even if he was to be held guilty of the lesser charge of violating the rule of issue and start, the punishment was shockingly disproportionate and the case on hand was a fit one for exercise of discretion under Section 11-A of the Act of 1947. The petitioner's changing stands during the disciplinary proceedings must also weigh against him to some extent. As it is open to this Court also to exercise jurisdiction under Section 11-A of the Act of 1947, it is not necessary to remand the matter to the Labour Court at this stage for that purpose.

The Award under challenge is accordingly set aside. The

petitioner shall be reinstated in service. He shall however not be entitled to backwages as interference is primarily on the ground of the proportionality of the punishment in terms of the proved charge. He shall also not be entitled to any monetary benefits during the period he was out of service. Continuity of service shall however be extended to him for the purpose of reckoning his pensionary benefits and for attendant benefits, such as notional increments. He shall however not be entitled to any seniority by virtue of this continuity of service and shall take the last place in terms of seniority as on the date of his reinstatement.

The writ petition is allowed to the extent indicated above. Pending miscellaneous petitions, if any, shall stand dismissed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

29th SEPTEMBER, 2015
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- [\[1\]](#) 2015 (4) ALD 173
 - [\[2\]](#) AIR 2013 SC 1172
 - [\[3\]](#) AIR 1964 SC 364
 - [\[4\]](#) AIR 1972 SC 1031
 - [\[5\]](#) 1996 (4) ALD 749 (D.B.)
 - [\[6\]](#) 2009 (5) ALD 1 (DB)
 - [\[7\]](#) (2006) 6 SCC 187