

THE HON'BLE SRI JUSTICE A.V. SESA SAI

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WRIT PETITION No.12474 OF 2010

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ORDER:

The Challenge in the present Writ Petition is to the award dated 21.01.2010 passed by the Industrial Tribunal-cum-Labour Court, Visakhapatnam, in I.D.No.76 of 2008, published in the Gazette vide G.O.Rt.No.186, dated 04.02.2010.

2. Petitioner herein entered into the service of the respondent Corporation as a Conductor in the year 1998 and the respondent Corporation removed the petitioner from service with effect from 25.08.2007 on the following charges:

1. "For having violated the rule "Issue and Start" while you were performing duty with vehicle No.937 on the route Addateegala on 01.05.2007 which constitutes misconduct under Clause No.28(xxxi) (xxxii) of Reg.No.28 of APSRTC Employees (conduct) Regulations, 1963.
2. For having failed to issue tickets of Rs.3/- denomination E.2 to a batch of two passengers even after collecting the requisite fare from them at their boarding point itself for their journey from Parimitadaka (AMG) to Jeddangi Annavaram (collected an amount of Rs.50/- and refunded Rs.44/- to them after deducting the fare of Rs.6/- @ Rs.3/- each, but not, issued the tickets to them) duly closing the STAR document upto stage no.4 while you were performing duty with vehicle No.937 on the route Addateegala on 01.05.2007 which constitutes serious misconduct under Reg.No.28 (vi(a), (ix)(a), (ix)(a) of APSRTC Employees' (conduct) Regulations, 1963."

3. Aggrieved by the order of removal, unsuccessfully availing the remedies of appeal and review, petitioner raised I.D.No.76 of 2008 before the Industrial Tribunal-cum-Labour Court, Visakhapatnam. The Tribunal by way of award dated 21.01.2010, dismissed the said industrial dispute and passed a Nil award. Calling in question the validity and legal sustainability of the said award, the present writ petition came to be instituted by the workman.

4. Heard Sri S.M.Subhan, learned counsel, appearing for the petitioner, learned Government Pleader for Labour and Sri S.V.Ramana, learned Standing Counsel for the respondent Road Transport Corporation, apart from perusing the material available before this court.

5. It is contended by the learned counsel for the petitioner that the award of the tribunal is erroneous, contrary to law and opposed to the very spirit and object of the provisions of the Industrial Disputes Act. It is further submitted that non-examination of the passengers is fatal, as such, Tribunal ought to have allowed the I.D. and ought to have directed the reinstatement of the petitioner with all consequential benefits. It is also the submission of the learned counsel that the Tribunal did not assign any valid and proper reasons and failed to appreciate the evidence available on record from proper perspective. It is further submitted by the learned counsel that the order of removal is not in conformity with the circular instructions and on the otherhand, shockingly disproportionate to the charges alleged. Learned counsel for the petitioner, in support of his submissions and contentions, placed reliance on the judgements in the case **Depot Manager, A.P.S.R.T.C. Vs. M.Narasaiah, B.H.K.Rao Vs. Industrial Tribunal-cum-Labour Court, Visakhapatnam and others, Ishwar Chandra Jayaswal Vs. Union of India and others and Md.Rasheed Vs. Managing Director, APSRTC and others.**

5. Per contra, it is strenuously contended by the learned Standing Counsel for the respondent Corporation that there is no illegality nor there is any procedural infirmity in the impugned orders nor there is any perversity in the impugned orders and in the absence of the same, writ petition is not maintainable and the petitioner is not entitled for any relief from this Court under Article 226 of the Constitution of India. It is the further submission of the standing counsel that in view of the gravity of the charges, the authorities are justified in terminating the service of the petitioner and the quantum of amount cannot be the basis for exonerating the petitioner. In support of his submissions and contentions, learned Standing Counsel takes the support of the following judgements:

1. **Union of India and others Vs. Dwaraka Prasad Tiwari,**
2. **Managing Director, North-East Karnataka Road Transport Corporation Vs. K.Murti,**
3. **Divisional Controller, N.E.K.R.T.C. Vs. H.Amaresh,**

4. **U.P.State Road Transport Corporation, Dehradun Vs. Suresh Pal,**
5. **V.Ramana Vs. APSRTC and others,**
6. **Karnataka Bank Ltd. Vs. A.L.Mohan Rao,**
7. **Order in W.P.No.9689 of 2005, dated 01.09.2015, and**
8. **Order in W.A.No.949 of 2006, dated 22.01.2015.**

6. In the above backdrop, now the issue that emerges for consideration of this court is:

Whether the petitioner is entitled for any relief from this Court under Article 226 of the Constitution of India and whether the impugned award is sustainable and tenable?

7. Dispensing with the services of the employees on the allegation/charge of misappropriation is a matter of serious concern and is undoubtedly a stigma on the reputation of the person concerned in the society, as such, authorities are required to take great amount of care and caution before resorting to such an extreme action. Unless the charges are proved by valid, cogent, convincing and unimpeachable evidence, such extreme punishment cannot be inflicted in a mechanical, routine and iniquitous manner.

8. The material available before this court vividly and candidly discloses that the passengers from whom the respondent Corporation officials recorded the statements were not examined by the Enquiry Officer to elicit the realities. This non-examination of the passengers during the course of enquiry by the Enquiry Officer is certainly and undoubtedly fatal to the case of the respondent Corporation. Therefore, the case on hand can be treated as a case without any proper evidence and the allegation of misconduct without sufficient proof. The failure on the part of the delinquent in expressing any objection on the statements of the passengers and attestation of the statements of the passengers by the delinquent cannot be treated as admissions on the part of the petitioner nor the same can be regarded as the basis for infliction of extreme punishment of removal from service, as per the law laid down by the Division Bench of this Court in the case of **Depot Manager, A.P.S.R.T.C. Vs. M.Narasaiah (1 Supra)**. Therefore, the findings recorded contra by the Tribunal cannot be sustained.

9. In order to arrive at a just conclusion, it may be appropriate to refer to the judgments cited by the learned counsel for the petitioner so also learned Standing Counsel for the respondent Corporation.

1. **In the case of Depot Manager, A.P.S.R.T.C. Vs. M.Narasaiah (1 supra), this Court at Paras 15 and 16, held as follows:**

“15. It needs no restatement that dismissal or discharge of a workman is fraught with grave consequences, apart from being stigmatic, to say the least. Graver the consequences, the more stringent proof does it call for. There is no inflexible or invariable legal principle that the Labour Court, which is a Tribunal of fact and law, cannot interfere with departmental findings by re-appreciation of the evidence of whatever nature. It is equivalent true that the Tribunal may not interfere with departmental findings only on a simple premise that another view is equally tenable.

16. Referring to the first charge, it is to be appreciated that the very passenger, who gave a statement at the time of spot inspection that he was issued a used ticket, deposed before the enquiry officer that he had not purchased any ticket, but gave the statement during spot inspection being afraid of the consequences of not taking the ticket. Even the T.T.I., the checking official, has admitted during his examination in course of enquiry that there was a chance that an alighting passenger might have thrown the six rupee denomination ticket on the floor of the bus and that might have been picked up by the passenger. This statement may be appreciated in the circumstance that the used ticket was properly punched showing the stages covering the fare of Rs.6/-. Further, it is borne out by record that the passenger did not readily produce the ticket for inspection before the checking officials, but could produce that after a lot of frisking and searching himself for the ticket. In any event, once the passenger himself admitted that he did not buy the ticket and that he had falsely deposed before the checking officials fearing the consequences, penalising the respondent/ workman cannot be justified. The fact that the passenger's statements are contradictory, and during the course of enquiry he has recanted his earlier statement, cannot detain us from placing reliance on his statement before the enquiry officer. The enquiry officer or the Tribunal ought to have evaluated the relative merits of the contradictory statements of the witnesses, giving benefit of doubt to the respondent/workman. It goes without saying that attesting of the passenger's statement by the respondent/conductor at the time of spot inspection would not amount to any admission of the contents of the statement, but would only amount to attesting the fact of the passenger giving the statement. Even that incident cannot be taken to the prejudice of the respondent.”

2. **In the case of B.H.K.Rao Vs. Industrial Tribunal-cum-Labour Court, Visakhapatnam and others (2 supra), this Court at Paras 3 to 6, held as follows:**

“3. The learned Counsel for the petitioner contended that though the petitioner was charged for the alleged cash and ticket irregularities to a total sum of Rs.5.00 on the ground that he failed to issue tickets to four passengers. The said fact of cash and ticket irregularities was disputed by the petitioner stating that he had issued the tickets to some of the passengers and while he was issuing tickets, the checking officials have entered the bus and in the course of enquiry by the checking officials the tickets were fallen on the ground in the bus and therefore there was some confusion and the passengers apprehending action against them informed the officials that tickets were not issued. Alternatively, it is contended that even assuming that such a charge has been proved against the petitioner, the punishment of removal from service is too excessive and disproportionate to the offence alleged to have been committed by the petitioner-workman. The learned Counsel also contended that the Labour Court has failed to exercise the jurisdiction conferred under [Section 11-A](#) of the Industrial Disputes Act, as it was the duty of the Labour Court to consider the proportionality of the punishment. It is also stated that the Labour Court merely followed a decision of this Court and concluded that it has no power to go into the proportionality of the punishment. It is also stated that a single Judge of this Court has considered the decision, which was relied upon by the Labour Court and held that the said decision was not rendered without reference to the provisions of [Section 11-A](#) of the Industrial Disputes Act. Therefore, it was held by the learned single Judge that the said decision has no application to the cases, which are coming under the provisions of [Section 11-A](#) of the Act. It is therefore contended that in view of the decision of the learned single Judge, the order of the Labour Court is clearly in error. The learned Counsel also relied upon a decision of the Supreme Court in the case of [Colour-Chem Limited v. A.I. Alaspurkar](#), where the Supreme Court has ordered reinstatement of a worker, whose services were terminated, holding that the punishment was shockingly disproportionate. Therefore, it is contended that the petitioner is entitled for reinstatement with all consequential benefits.

4. The learned Standing Counsel for the Corporation, on the other hand, supported the order of the Labour Court.

5. After considering the rival submissions and also the decisions cited before me, I am of the opinion that the order of the Labour Court is not proper and just in confirming the order of removal from service. The Labour Court, though upheld the findings of the Enquiry Officer, failed to consider the proportionality of the punishment in the light of the

provisions of [Section 11-A](#) of the Act. Further, the decision of the Division Bench, which was referred to and relied upon by the Labour Court, was considered by a single Judge of this Court in [Divisional Manager, APSRTC v. E. Raga Reddy](#), and it was held that the said decision of the Division Bench has no application with reference to the cases which are falling under the provisions of [Section 11-A](#) of the Act. Further, the decision of the Supreme Court, which was relied upon by the learned Counsel in case of *Colour-Chem Limited (supra)* also supports the contention of the learned Counsel for the workman. The services of the petitioner were terminated on the ground that he was involved in cash and ticket irregularities involving a sum of Rs.5.00. Even assuming that the said misconduct alleged against the petitioner is proved, still the punishment of removal from service is shockingly disproportionate and is liable to be set aside.

6. Under the above circumstances the order of the Labour Court is set aside insofar as the confirmation of the order of removal passed by the 3rd respondent. Consequently, the 3rd respondent is directed to reinstate the petitioner, within a period of two months from the date of receipt of this order. The petitioner is entitled to the benefit of continuity of service, but without back wages.”

3. **In the case of Ishwar Chandra Jayaswal Vs. Union of India and others (3 supra), the Hon’ble Apex Court at Paras 6 to 8, held as follows:**

“6. The Appellant before us is presently 75 years of age. At the time when the Articles of Charge had been served upon him, he had already given the best part of his life to the service of the Respondent-Indian Railways. It has been contended before us that the three charges that have been sustained against the Appellant reflected only the tip of the iceberg; however, there is no material on record to substantiate this argument of Respondents. In the present case, the Appellant has served the Respondents for a period of twenty three years and removal from service for the two charges levelled against him shocks our judicial conscience. Part III of The Railway Servants (Discipline & Appeal) Rules, 1968 contains the penalties that can be imposed against a Railway servant, both Minor Penalties as well as Major Penalties.

7. We have already noted that it has not been established that the Appellant had, as a matter of habit or on a wide scale, made illegal demands from Railway servants desirous of obtaining a Fit Certificate. However, since two of the three charges have been proved, we are of the considered opinion that the imposition of compulsory retirement i.e. Penalty 6(vii) would have better and more appropriately met the ends of justice. While this would have instilled sufficient degree of fear in the mind of the employees, it would also not have set at naught several years of service which the Appellant had already given to the

Respondent-Indian Railways. We think that deprivation of retiral benefits in addition to loss of service is entirely incommensurate with the charge of the Appellant having taken very small sums of money for the issuance of Fit Certificate to other Railway employees.

8. It is in these premises that the Appeals are accepted and the impugned Order dated 11.10.2010 is set aside. The Appellant shall be deemed to have compulsorily retired under Part-III Penalty 6(vii) of the aforementioned Railway Rules with effect from 22.1.1991. If he is entitled to retiral or other benefits on the said date, the Respondents shall make necessary payment within three months from today. This decision is restricted to the facts of the present case.”

4. In the case of Md.Rasheed Vs. Managing Director, APSRTC and others (4 supra), this Court at Para 8, held as follows:

“8. This finding itself would have been sufficient to doubt the charges, atleast in part. Though the Hon’ble Supreme Court took the view that it is not essential to examine the passengers in the domestic enquiry in the matters of this nature, atleast when the factum of issuance of re-issued tickets is disputed, the Corporation ought to have ensured that the concerned passengers are examined. If it were to be established that the passengers travelled in the same bus on an earlier trip on the same day, a totally different picture would have emerged. The livelihood of not only the appellant but also his entire family is at stake, and it depended upon the version of one or two passengers. The possibility of the passenger, who happened to travel on the same route, showing the ticket purchased by him earlier, to avoid imposition of fine by the checking staff, cannot be ruled out. Though the appellant cannot be given a clean-chit, on such doubts, atleast a case can be made out under Section 11-A of the Industrial Disputes Act, enabling the Labour Court to mould the relief.”

5. In the case of Union of India and others Vs. Dwaraka Prasad Tiwari (5 supra), the Hon’ble Apex Court at Paras 13 & 16, held as follows:

“13. In B.C. Chaturvedi case it was observed: (SCC p.762, para 18)

“18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the

punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.”

16. To put it differently unless the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the Court/Tribunal, there is no scope for interference. Further to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In the normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the Disciplinary Authority or the Appellate Authority to reconsider the penalty imposed.”

6. **In the case of Managing Director, North-East Karnataka Road Transport Corporation Vs. K.Murti (6 supra), the Hon’ble Apex Court at Paras 7 & 8, held as follows:**

“7. We have heard learned counsel appearing for the appellant-Management and perused the records. In our opinion, the order passed by the High Court is erroneous on the face of the record. The High Court, in our opinion, ought to have seen that the misconduct was duly established in the enquiry and despite it, the Labour Court had persuaded itself to reinstate the delinquent in service. The learned Single Judge also confirmed the order passed by the Labour Court. In our opinion, the High Court was not justified in altering the quantum of punishment when the enquiry was held to be fair and proper, charge was proved and no evidence was led before the Labour Court while questioning the order of the Disciplinary Authority dismissing the delinquent workman. Likewise, the High Court also failed to notice the order removing the name of the respondent from the list of badli conductors. The High Court has also erred in taking note of the fact that the punishment imposed on the delinquent official was not shockingly disproportionate to the gravity of the misconduct proved against him coupled with his history and he being a badli conductor. In our opinion, the Division Bench have erred in rejecting the plea of the Management that the Labour Court was not justified in ordering reinstatement of the respondent as regular employee on the ground that such a plea was not raised before the learned Single Judge when as a matter of fact the plea had been taken both before the Labour Court and the learned Single Judge of the High Court.

*8. The learned counsel for the appellant, at the time of hearing, placed strong reliance on the two decisions of this Court, one in **Regional Manager, RSRTC Vs. Ghanshyam Sharma**, which was also a case*

*of bus conductor carrying passengers without issuing tickets. This Court, in the above case, held that carrying the passengers without tickets amounts to dishonesty or grave negligence and for such misconduct punishment of removal from service is justified. This Court also further observed that the Labour Court was not justified in directing the reinstatement with continuity of service but without back wages. This Court has also relied upon a judgment in **Karnataka SRTC vs. B.S. Hullikatti**. In the said judgment, this Court has held that in such cases where the bus conductors carry passengers without ticket or issue tickets at a less rate than the proper rate, the said acts would inter alia amount to either being a case of dishonesty or of gross negligence and such conductors were not fit to be retained in service because such inaction or action on the part of the conductors results in financial loss to the Road Transport Corporation. This Court has also observed that in cases like the present, orders of dismissal should not be set aside. The learned counsel for the appellant also cited judgment in **Divisional Controller, N.E.K.R.T.C. vs. H. Amaresh**. In this case, this Court was considering the case of misappropriation of a small amount of State Road Transport Corporation's fund by a conductor and held it a grave act of misconduct, which resulted in financial loss to the Corporation. This Court also held that punishment of dismissal from service awarded by the Disciplinary Authority did not call for any interference by the Labour Court or the High Court and hence the order of reinstatement passed by the High Court was set aside. This Court also in a catena of decisions held that the Tribunal should not sit in appeal over the decision of any employer unless there exists a statutory provision in this behalf. This Court also observed that the High Court gets jurisdiction to interfere with the punishment in the exercise of its jurisdiction under Article 226 of the Constitution only when it finds that the punishment imposed is shockingly disproportionate to the charges proved."*

7. **In the case of Divisional Controller, N.E.K.R.T.C. Vs. H.Amaresh (7 supra), the Hon'ble Apex Court at Para 18, held as follows:**

"18. In the instant case, the mis-appropriation 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 mis-appropriated 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 mis-appropriated 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

*mis-appropriating 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 Corpn. Vs. B.S. Hullikatti**, 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*

mis-conduct 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."

8. **In the case of U.P.State Road Transport Corporation, Dehradun Vs. Suresh Pal (8 supra), the Hon'ble Apex Court at Para 8, held as follows:**

"8. Normally, courts do not substitute the punishment unless they are shocking disproportionate if the punishment is interfered or substituted lightly in the punishment in exercise of their extraordinary jurisdiction then it will amount to abuse of the process of court. If such kind of misconduct is dealt with lightly and courts start substituting the lighter punishment in exercising the jurisdiction under Article 226 of the Constitution then it will give a wrong signal in the Society. All the State Road Transport Corporations in the country have gone in red because of the misconduct of such kind of incumbents, therefore, it is the time that misconduct should be dealt with iron hands and not leniently."

9. **In the case of V.Ramana Vs. APSRTC and others (9 supra), this Court at Para 19, held as follows:**

"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."

10. **In the case of Karnataka Bank Ltd. Vs. A.L.Mohan Rao (10 supra),**

the Hon'ble Apex Court at Paras 4 & 6, held as follows:

"4. The respondent then filed a writ petition in the High Court. The learned Single Judge of the High Court found that the misconduct had been proved but on a mistaken notion of sympathy held that the correct punishment should be reinstatement without any back wages and without continuity of service except continuity of service for the purpose of terminal benefits.

6. In our view, a gross misconduct of this nature does merit termination. We fail to see what other type of misconduct would merit termination. It is not for the courts to interfere in cases of gross misconduct of this nature with the decision of the disciplinary authority so long as the inquiry has been fair and proper and misconduct proved. In such matters, it is for the disciplinary authority to decide what is the fit punishment. In any case on such a misconduct, it could never have been said that termination of service is not the appropriate punishment."

11. In the Order in W.P.No.9689 of 2005, dated 01.09.2015, this Court held as follows:

"In the light of the law laid down by the Supreme Court in the aforestated decisions, this Court finds no reason to interfere with the Nil Award passed against the petitioner-Conductor. Once the Conductor was shown to have caused loss of revenue to the Road Transport Corporation, it was established that he failed to live up to his fiduciary obligation to the employer. In such a case, the quantum of the amount involved in the misappropriation or loss would be of no significance as the loss of confidence on the part of the employer remains the same. The case on hand was therefore not a fit one for exercise of discretionary jurisdiction under Section 11-A of the Act of 1947. The Award of the Labour Court holding to this effect therefore does not warrant interference either on facts or in law."

12. In the Order in W.A.No.949 of 2006, dated 22.01.2015, this Court at Paras 5 to 7, held as follows:

"5. ...

... The Labour Court, by its order dated 19.04.2004, upheld the order of the first respondent. Challenging the same, the appellant filed W.P.No.17546 of 2004 before this court. This Court noticed that the appellant did not challenge the validity of the domestic enquiry proceedings and the charges against the appellant were proved in departmental enquiry. Relying on a decision in Divisional Controller, KSRTC (NWKRTC) V. A.T.Mane (2005 (1) SCC 254), this Court held that the Writ Petition is liable to be dismissed as once the domestic tribunal came to the conclusion based on evidence, it is not open to

the appellate tribunals and courts to substitute their subjective opinion in the place of one arrived at by the domestic tribunal. This Court noted the observations of the Hon'ble Apex Court on the quantum of punishment as follows:

“ Coming to the question of quantum of punishment, one should bear in mind the fact that it is not the amount of money misappropriate that becomes a primary factor for awarding punishment, on the contrary, it is the loss of confidence which is the primary factor to be taken into consideration.”

Taking the above facts into consideration, the Writ Petition was dismissed, by order dated 10.08.2006.

6 . The learned counsel for the appellant wanted to raise certain additional grounds which were not raised either before the Labour Court or before the learned Single Judge of this Court. He particularly contended that APSRTC Employees (Conduct) Regulations, 1963 (for short, the Regulations) are not applicable to the instant case, as the Regulations were not notified. The appellant did not place any evidence to show that such a contention was raised before the enquiry officer or before the Labour Court. On the other hand, the learned Single Judge noted that the appellant did not dispute the validity of the domestic enquiry proceedings. In view of the same, it is not open to the appellant to raise the contention with regard to the applicability of the Regulations. The appellant did not bring to the notice of this Court any other Regulations which are applicable to the employees like the appellant.

7. As rightly pointed out by the learned Single Judge, based on the above decision of the Hon'ble Apex Court, the appellant was removed from service after conducting a regular departmental enquiry and the employer lost confidence in the appellant. The report of the domestic enquiry has affirmed by the Labour Court on evidence. The order of the Labour Court was affirmed by the learned Single Judge. In the absence of any error in the order of the learned Single Judge, we are not inclined to interfere with the order passed by the learned Single Judge and the Writ Appeal is liable to be dismissed.”

10. There is absolutely no dispute with regard to the law laid down by the Hon'ble Apex Court with regard to the scope of the enquiry under Article 226 of the Constitution of India. At the same time, it needs to be noted that when the punishment is shockingly disproportionate and is inflicted without being preceded by

proper enquiry, the interference of this court under Article 226 of the Constitution of India is certainly permissible to correct the same.

11. In the instant case, it is an admitted reality that during the course of enquiry, the enquiring authority did not make any effort to examine the passengers to elicit the truth. In the considered opinion of this court, such material infirmity would render the entire proceedings invalid. Basing on such improperly conducted enquiry, the services of employee who has been working since long time, cannot be mechanically dispensed with.

12. Another significant and vital aspect which needs to be noted is that the Industrial Tribunal did not consider the aspect of proportionality of punishment in the light of the mandatory provisions of Section 11(A) of the Industrial Disputes Act.

13. In the facts and circumstances of the case, the judgments on which the learned Standing Counsel placed reliance would not render any assistance to the respondent Corporation. On the otherhand, the judgments cited by the learned counsel for petitioner are squarely applicable to the facts and circumstances of the present case.

14. Having regard to the facts and circumstances of the case, writ petition is partly allowed, setting aside the award dated 21.01.2010 passed by the Industrial Tribunal-cum-Labour Court, Visakhapatnam, in I.D.No.76 of 2008 and the respondents are directed to reinstate the petitioner with continuity of service and half of the back wages.

15. Miscellaneous petitions pending consideration, if any, in the Writ Petition shall stand closed in consequence. No order as to costs.

A.V.SESHA SAI, J

26th November, 2015

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