

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.6059 OF 2002

ORDER

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The case of the petitioner is that he was working as a conductor in the respondent Corporation since 01.08.1996. He was served with a charge sheet on 27.07.1997 with the following charges:

- (a) The conductor has collected Rs.436/- from a bath of four passengers at the rate of Rs.107/- per head at their boarding point itself i.e., B.H.F.I. and bound for Markapur, ex.stages 17 to 7 and issued the unconcerned tickets of Rs.60/- den., i.e., 017/760190, 008/027995, 027993, 008/027999 and Rs.40/- denomination i.e., 053/464421, 463424, 463425 and 463426 which were not shown in his way bill No.0745/04797054, dated 15.07.1997 and S.R.Nos.A4/1818893 and 894.
- (b) The conductor has issued tickets Nos.151/930496 to 499 of Rs.9-00 denomination un-serially from running block i.e., last four tickets of the block, to the above batch of four passengers.

He was suspended vide proceedings dated 22.07.1997.

Thereafter, the petitioner submitted explanation to the charge sheet on 04.08.1997. In pursuance to the same, an enquiry officer was appointed and the enquiry officer submitted his report on 10.10.1997. Subsequently the petitioner was issued a show cause notice on 21.11.1997 proposing the punishment of removal to which the petitioner submitted explanation on 08.12.1997. Without considering the said explanation, the petitioner was removed from service vide proceedings dated 09.12.1997. Against the same, the petitioner preferred an appeal before the 2nd respondent and the same was rejected vide proceedings

dated 13.04.1998 confirming the order of the 1st respondent. Even the review petition filed before the 3rd respondent also ended in rejection vide proceedings dated 10.08.1998. Thereupon, the petitioner raised an Industrial dispute before the 4th respondent in I.D.No.264/1998 and an award was passed on 31.05.2001 confirming the order of removal passed by the respondent authorities vide G.O.Rt.No.2896 dated 08.11.2001. Aggrieved by the same, the present writ petition is filed.

Learned counsel for the petitioner submits that the enquiry officer conducted enquiry without following the procedure envisaged under the APSRTC Regulations and without following the principles of natural justice. He also contends that the disciplinary authorities as well as the appellate and review authorities have not considered the case of the petitioner and defence of the petitioner in proper perspective, as such, the award of the Labour Court confirming the punishment of removal by the respondent authorities have to be set aside. He also contends that the punishment of removal from service is shockingly disproportionate for the charges levelled against the petitioner and the Labour Court has not considered the case of the petitioner under Section 11 (A) of the Industrial Disputes Act, 1947 (for short 'the Act'). He also submits that the statements of unconcerned persons have been recorded and basing on the same, the order of removal was passed. In support of his contentions he relied on judgment reported in ***U.P. State Road Transport Corporation versus Subhash Chandra Sharma and Others***^[1].

On the other hand, learned counsel for the respondent Corporation submits that sufficient opportunity was granted to the petitioner. Since the explanation submitted by the petitioner in pursuant to the charge sheet was not satisfactory, enquiry officer was appointed and the enquiry officer following due procedure of law, conducted enquiry and filed a report dated 10.10.1997. After considering the said report, the Disciplinary authorities passed order of removal. The

appellate and review authorities have also considered the petitioner's case in proper perspective. The Labour Court also found that the preliminary enquiry was conducted in accordance with Rules and upheld the same. In support of his contentions he relied on judgments reported in ***U.P.State Road Transport Corporation, Dehradun versus Suresh Pal***^[2] and ***Divisional Controller, N.E.K.R.T.C versus H. Amaresh***^[3]. He also contends that the charges levelled against the petitioner are serious in nature, as such the punishment of removal from service is appropriate punishment and the Labour Court has exercised its discretion under Section 11 of the Act and passed an award. Therefore, no interference is called by exercising power of judicial review under Article 226 of Constitution of India.

In this case, it is to be seen that the petitioner was issued charge sheet to which he filed an explanation. However, as the same was not convincing, the respondent authorities appointed an enquiry officer. The Labour Court also discussed about the aspect of non consideration of explanation filed by the petitioner and found that the respondent authorities have considered the same and also the statements of I.K.Pati, who has conducted the check and found that proper procedure was followed while conducting enquiry. Even in respect of 2nd charge, the Labour Court held that enquiry was conducted in accordance with the procedure wherein it has found that the passengers were examined and that they were issued unconcerned tickets. The Labour Court in para 15 of the Award stated about the gravity of the charges and held that punishment is proportionate and the same does not warrant interference under Section 11 A of the Act.

In ***U.P.State Road Transport Corporation, Dehradun's case (supra 2)*** the Supreme Court held that

“Normally, the courts do not substitute the punishment unless they are shockingly disproportionate and 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 the courts start substituting the lighter punishment in exercising the jurisdiction under Article 226 of 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 misconduct of such kind of incumbents, therefore, it is time that misconduct should be dealt with an iron hand not leniently.”

Divisional Controller, N.E.K.R.T.C’s case (supra 3) the Supreme Court held that

Para 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, (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. *“Coming to the question of quantum of punishment, this Court in [Divisional Controller, KSRTC \(NWKRTC\) vs. A.T. Mane](#), (2005) 3 SCC 254 has held as under:-*

“Coming to the question of quantum of punishment, One should bear in mind the fact that it is not the amount of money misappropriated 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. In our opinion, when a person is found guilty of misappropriating the Corporation's funds, there is nothing wrong in the Corporation losing confidence or faith in such a person and awarding a punishment of dismissal.”

23. *“We may also beneficially refer to a judgment rendered by a 3 Judges Bench of this Court reported in (2005) 3 SCC 401 [M.P. Electricity Board vs. Jagdish Chandra Sharma](#). This Court held that the tribunals would not sit in appeal over the decision of the employer unless there exists a statutory provision in this behalf. Moreover, Labour Courts must act within the four corners of the statute concerned, in terms of the provisions thereof. When the Labour Court having held that charge No.4 stood proved, no interference by the learned Single Judge or by the Division Bench was called for. In the instant case, the jurisdiction vested with the Labour Court has been exercised capriciously and arbitrarily in spite of the finding that Charge No.4, with regard to the pilferage, has been proved beyond any doubt. In our opinion, the conclusion arrived at by the High Court in ordering reinstatement was shockingly disproportionate in the nature of charge No.4 found proved. When charge No.4 is proved, which is grave in nature, interference with the punishment of dismissal cannot be justified. Similarly, 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.”*

In the instant case, the Labour Court has thoroughly discussed the contentions raised by the petitioner and came to the conclusion that the enquiry was conducted in accordance with the procedure holding

that the charges are proved. The Labour Court has also considered the case of the petitioner under Section 11 A of the Act and refused to grant any relief. The Apex Court in the above referred judgments held that unless the punishment is shockingly disproportionate, this Court cannot interfere with the punishment imposed by exercising judicial review under Article 226 of Constitution of India. This Court cannot re-appreciate the evidence and set aside the findings of fact arrived by Disciplinary, Appellate authority and Labour Court. This Court can only examine the process of decision making but not the merits of the decision.

Accordingly, I do not see any merit in the writ petition and hence the same is dismissed. No order as to costs.

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

A.RAJASHEKER REDDY,J

Date: 18.09.2015
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[\[1\]](#) (2000) 3 SCC 324

[\[2\]](#) (2006) 8 SCC 108

[\[3\]](#) (2006) 6 SCC 187