

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

WRIT PETITION No.5308 OF 2004

ORDER:

This writ petition is filed by the workman seeking issuance of a writ of certiorari to quash the award passed by the Industrial Tribunal-cum-Labour Court, Warangal in I.D.No.85/2001, dated 30.06.2003.

2. Heard the learned counsel for the petitioner as well as the learned counsel for the 2nd respondent/Management.

3. The petitioner was the Conductor in the APSRTC. It is alleged that on 21.07.2000 he was found to have committed some cash and ticket irregularities while conducting bus bearing No.2461 in the route Korukonda to Ramavaram, for which a charge sheet was issued to him on 28.07.2000 framing the following charges;

- i) "For having failed to observe the rule "Issue and start" which is misconduct under Regulations 28 (xxxii) of APSRTC Employees (Conduct) Reg.1963.
- ii) For having failed to issue tickets even after collecting the requisite fare at the boarding point itself to three individual passengers found travelling without tickets having boarded your bus at Ramavaram and bound for Edurugadda ex-stages No.6 to 2 which is a misconduct under Regulations 28 (vi) (a) of APSRTC Employees (Conduct) Reg.1963.
- iii) For having closed the tray Nos. of all denominations upto stage No.3 in the SR, without completing the above ticket issues which is a misconduct under Regulations 28 (xxxii) of APSRTC Employees (Conduct) Reg.1963.

Thereafter, enquiry was conducted and basing on the enquiry report dated 03.10.2000, a show cause notice of removal dated 17.11.2000 was issued to the petitioner. Though the petitioner submitted his explanation to the show cause notice, he was removed from service by proceedings dated 02.12.2000. Aggrieved thereby, the petitioner preferred appeal and review petition, which were rejected on

12.02.2001 and 19.02.2001 respectively. The petitioner raised industrial dispute being I.D.No.85/2001 before the Industrial Tribunal-cum-Labour Court, Warangal. However, the Industrial Tribunal dismissed the said industrial dispute by award dated 30.06.2003. The award of the Labour Court was published on the notice board on 20.09.2003 vide G.O.Ms.No.1533, Labour Employment Training & Factories (Lab.I) Department, dated 12.08.2003. Questioning the award of the Tribunal, the present writ petition is filed.

4. The Management/APSRTC filed detailed counter denying the contentions of the petitioner. It is stated that the petitioner was appointed as daily wage conductor on 06.05.1981 and he is bereft of clean record as he was inflicted the following punishments during his service;

1. Censured	23 times
2. Pay reduced	2 times
3. Annual increment deferred with Cumulative effect	3 times
4. Annual increment deferred without Cumulative effect	20 times
5. Removed from service	2 times
6. Suspension	4 times

It is stated that in the check conducted on 21.07.2000, the petitioner was found to have committed certain cash and ticket irregularities, basing on the check report and other material evidence, the petitioner was placed under suspension and a charge sheet dated 28.07.2000 framing 3 charges, as mentioned supra, was issued. A fair and proper enquiry was conducted duly following the principles of natural justice and in accordance with CC&A Regulations, 1963 and the Enquiry Officer held that the charges were proved against the petitioner. After issuing show cause notice and considering the explanation of the petitioner, termination proceedings were issued. The petitioner was

unsuccessful before the appellate and reviewing authorities, as well as before the Industrial Tribunal, which do not warrant any interference.

5. The question that arises for consideration is whether the award passed by the Labour Court is proper.

6. The charge against the writ petitioner, who joined as a Conductor in APSRTC in the year 1981, is that he committed cash and ticket irregularities on 21-07-2000. He has failed to maintain the *issue and start* rule and has failed to issue tickets to three passengers even though he collected amount from them @ Rs.3.50 ps., each and even without issuing the tickets, closed the S.R., which shows the intention of the Conductor to cause loss to the Corporation. In the spot statements recorded, the writ petitioner admitted the lapse and the passengers also stated that they paid the amount to the Conductor who failed to issue the tickets. Charge memo was issued and after obtaining the explanation, regular departmental enquiry was ordered and the Enquiry Officer submitted his report on 03-10-2000, which was accepted by the competent authority and the writ petitioner was removed from service since the charges are proved against the writ petitioner were proved and they were grave in nature. The writ petitioner carried the matter to the Industrial Tribunal and by Judgment, dated 30-06-2003, the learned Judge of the Industrial Tribunal-cum-Labour Court found the charges against the delinquent to be proved and upheld the order of dismissal passed by the management. In coming to the said conclusions, the Tribunal has relied upon several authorities, more particularly, that of the Supreme Court reported in **KSRTC v. B.S.HULLIKATTI^[1]**; **REGIONAL MANAGER, RAJASTHAN STATE ROAD TRANSPORT CORPORATION v. GHANASHYAM SHARMA^[2]**; and **REGIONAL MANAGER, UTTAR PRADESH RTC ETAWAH AND OTHERS v. HOTI LAL AND ANOTHER^[3]**.

7. The contention of the writ petitioner is that both the authorities have not taken into consideration the material on record in proper perspective and have erroneously passed the impugned orders. It is contended that he took all the precautions for issuing tickets to all the passengers but the three passengers who were found to be ticketless have in fact did not pay any amount and consequently no tickets were issued to them. It is his contention that out of three passengers, the amount was said to have been paid to one passenger who was sitting in the front side and when asked, the two passengers informed him that the ticket was bought by the passenger sitting in front. Such a statement was given by one of the passengers by name A.Laxmi during the enquiry but the same was not considered in proper perspective. The evidence of the writ petitioner during the course of enquiry that he has issued tickets to all the passengers at the starting point itself and did not violate any rules and only after having been satisfied that the tickets have been issued to all the passengers, he closed the SR at stage No.3. He submits that there was no *mala fide* intention on his part in closing the SR.

8. On the other hand, the contention of the management is that there were only about 37 passengers in the bus, that the bus was not over-crowded and that the explanation of one of the passengers by name Laxmi and the explanation of the writ petitioner that they informed that the ticket has been bought cannot be accepted. The contention of the writ petitioner that the cash available with him was not counted also cannot be countenanced since the passengers stated before the checking officials that they paid a total sum of Rs.10.50 ps, but the Conductor failed to issue the tickets. The respondent further submits that the evidence has been properly appreciated by both the authorities and also the Industrial Tribunal. The writ petitioner has preferred an appeal and also review petitions, which were dismissed by the Deputy Traffic Manager and the Regional Manager.

9. It is further placed on record that this is not the only incident where the writ petitioner indulged in acts of omissions and commissions causing loss to the Department. He has a history which clearly shows that the writ petitioner do not deserve any lenient approach since on 23 occasions censures were awarded to him. His pay was reduced two times and the annual increments were deferred with cumulative effect three times and as many as 20 times the annual increments were deferred with cumulative effect and as a matter of fact, he was placed under suspension four times and was also removed from service on two occasions. In spite of these records, the writ petitioner did not mend his ways and he appears to be incorrigible person and therefore he has been rightly dismissed from service for the proven charges. The record about his past conduct has been produced and the service register maintained by the department reflects the above punishments.

10. It is however made clear that the past conduct of a delinquent employee cannot be taken into consideration in adjudging the delinquency or otherwise of a delinquent employee during the course of enquiry when he is put up with a specific charge. When enquiry is ordered with specific charges, only the material in respect of that charge has to be considered, but not the past conduct. The past conduct of an employee may be relevant in determining the quantum of punishment but certainly not in finding him guilty or otherwise insofar as the present charges are concerned. It is noticed from the record that while finding the delinquent guilty of the present charges, neither the Enquiry Officer, appellate authority, revisional authority nor the Industrial Tribunal have taken into consideration his past conduct. Only the material insofar as the present charges are concerned was considered and has been imposed the punishment.

11. Learned Counsel appearing for the writ petitioner relied upon a recent decision of our High Court reported in **A.V.SWAMY v.**

APSRTC, MUSHEERABAD, HYDERABAD^[4] and in paras 10 and 13 it is held as under:-

“Undeniably, the spot statements of the passengers were recorded in the petitioner's presence. Indeed, the petitioner did attest the said statements. It is, however, not correct to say that having attested the said statements given by the passengers, the petitioner is estopped from controverting the veracity of the statements issued by the passengers. The attesting of the statements of the passengers by the conductor, if at all, only amounts to an acknowledgement of the fact that those statements were recorded in his presence. In any event, the contents of those statements do not bind the delinquent conductor simply on the premise that he attested them. Accordingly, the observation of the Labour Court that the petitioner did not record his objection on Ex. M. 3 (the passengers' statements) does not pass the judicial muster.

The Labour Court has also further observed that it is not the evidence before the domestic inquiry, but the material on record that has to be considered. I do not, however, see any distinction, much less contradiction in "evidence" and "material on record". The spot statements of the passengers cannot be elevated to be placed on the pedestal of inviolability, as was done by the Labour Court. The delinquent workman is always at liberty to contest the every statement made by either the passengers or by the officials of the Corporation. Though the learned counsel for the petitioner has laid much emphasis on the fact that passengers who gave the statements were not examined during the course of domestic inquiry, there cannot be any universal principle established that in each and every departmental inquiry, the passengers from whom the spot statements were obtained should be examined. It is, however, entirely a different thing if the findings during the course of disciplinary enquiry are entirely based on those statements of the passengers without there being any other material to bring home the misconduct of the delinquent workman. In other words, the spot statements made by the passengers, in the absence of their examination in the domestic inquiry, could at best be used as corroborative evidence, but not sole evidence to establish the guilt of the

delinquent workman. In this instance, the checking officials i.e., TTIs, have deposed that the petitioner collected the fare from the passenger but did not issue the ticket. With equal vigour, the petitioner in his defence denied it. It is not the case of the Corporation that the petitioner has admitted his lapses during spot check and later retracted it. Neither can we find any tell tale signs of the misconduct of the workman left on the record, which are patent without even the aid of passenger statements. Though the allegation on the part of the petitioner that he was forced by the checking officials to close the S.R. was rightly disbelieved by the authorities without any further material on record, the contention of the petitioner that the passenger himself did not take the ticket but only stated when the checking was effected that he paid the fare for which no ticket was given, however, could not be brushed aside.”

The above authority lays down the proposition of law with which there is no dispute. In determining the guilty or otherwise, each case has to be adjudged on the material on record and in the instant case, the writ petitioner has been found to have not only did not issue tickets to three passengers even though he collected the amounts but has also did not follow the *issue and start* rule and also closed the SR even without verifying that all 37 passengers in the bus have taken the tickets. The three passengers who were found to be ticketless were travelling for a short distance and since the bus was not over-crowded, the writ petitioner could not have missed the fact that out of 37 passengers, three passengers are travelling without ticket, if really he had not taken the amount from them as claimed. The explanation of the writ petitioner that two of the three passengers informed him that the passenger sitting in the front has been entrusted with the purchase of tickets cannot also be believed for the reason that it would not have been difficult for him to verify from the passenger sitting ahead to verify as to whether she has purchased three tickets. All the circumstances point towards the guilt of the writ petitioner that he has taken the amount from them but failed to issue the tickets, thereby causing loss

to the Corporation and pecuniary gain for himself. Such a conduct on the part of a Conductor cannot be countenanced and there are catena of authorities which say that a Conductor is supposed to maintain high standards of integrity and he is trusted by the department for collection of fare from the passengers, issuing tickets properly and handing over the collections to the authorities concerned.

12. On behalf of the respondent/management, the following authorities of the Supreme Court are relied upon in support of what is stated above.

13. In **KARNATAKA STATE ROAD TRANSPORT CORPN. V. B.S.HULLIKATTI**^[5], the Supreme Court laid down as under in paras 5 and 6:-

“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.

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.”

14. In **MD.NORTH-EAST KARNATAKA ROAD**

TRANSPORT CORPN. V. K.MURTI^[6], the Supreme Court held as under in paras 8 and 9:-

“The learned Counsel for the appellant, at the time of hearing, placed strong reliance on the two decisions of this Court, one reported in : (2002)ILLJ234SC (Regional Manager, RSRTC v. 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 reported in *Karnataka SRTC v. B.S. Hullikatti* ((2001) 2 SCC 574). 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 reported in *Divisional Controller, N.E.K.R.T.C. v. H. Amaresh*_(2006) 6 SCC 187). 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.

In the instant case, the position held by the employee (conductor) is one of faith and trust. A conductor holds the post of trust. A person guilty of breach of trust should be imposed punishment of removal from service. The respondent's conduct in not collecting the requisite fare at the designated place from persons who had travelled were in violation of various regulations contained in the provisions of the Corporation C & D Regulations, 1971.”

15. In **U.P.SRTC v. SURESH CHAND SHARMA**^[7] the Supreme Court made the observations in paras 11 and 13 as under:-

“The Labour Court has considered the matter at length and came to the conclusion that enquiry had been conducted strictly in accordance with law. There has been no violation of the principles of natural justice or any other statutory provision. The employee was given full opportunity to defend himself, cross examined the witnesses examined by the Corporation. The Enquiry Officer has rightly appreciated the evidence and found the charges proved in respect of both the incidents. The Disciplinary Authority has taken a right decision accepting the enquiry report and punishment order was passed after serving second show cause to the employee.

The Labour Court recorded a finding of fact that in respect of both the mis-conducts the passengers were found travelling without tickets and they had already paid fare to the employee/Conductor. Thus, it is not a case where the said employee could not issue the ticket and recover the fare from the travelling passengers, rather the finding has been recorded that after recovering the fare from the passengers, he did not issue tickets to them. Thus, there was an intention

to misappropriate the fare recovered from the passengers who were found travelling without tickets at both the times.”

16. The facts of the above cases are similar to the one in hand and the dismissal of the Conductor was upheld by the Supreme Court after referring to several Judgments and ultimately held that the contention of the employee that punishment of dismissal from service was disproportionate to the proved delinquency of the employee is not worth acceptance. In **U.P.SRTC v. SURESH PAL**^[8], the Supreme Court held at paras 7 and 8 as under:-

“Short question for our consideration in the present case is whether the punishment which has been modified by the learned Single Judge is justified or not? The learned Single Judge found that the punishment awarded in the present case is disproportionate to the guilt of the delinquent. So far as, the guilt of the petitioner is concerned, in the domestic enquiry it has been found that the petitioner is guilty of not issuing tickets to the twenty passengers and the same finding of the domestic enquiry has been upheld by the Labour Court & High Court. The petitioner was a conductor and holding the position of trust. If incumbent like the petitioner starts misappropriating the money by not issuing a ticket and pocketing the money thereby causing loss to the Corporation then this is a serious misconduct. It is unfortunate that the petitioner was appointed in 1988 and in the first year of service he started indulging in mal practice then what can be expected from him in the future. If this is the state of affair in the first year of service and if such persons are allowed to let off to the light punishment then this will be a wrong signal to the other persons similarly situated. Therefore, in such cases the incumbent should be weeded out as fast as possible and same has been upheld by the Labour Court. We are firmly of the view that such instances should not be dealt with lightly so as to pollute the atmosphere in the Corporation and other co-workers.

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.”

17. Applying the above authorities to the facts of the present case, I have no hesitation in holding that the writ petitioner is not entitled to any relief. Even at the cost of repetition, it can be stated that the principles of natural justice were followed by the Department through out the proceedings right from checking to the disposal of the review petition and the Industrial Tribunal also recorded conclusive findings that the evidence on record clearly proved the guilt of the writ petitioner and the punishment of dismissal can by no stretch of imagination be said to be disproportionate to the nature of delinquency committed by the writ petitioner. As already noticed above, the past conduct of the writ petitioner also speaks volume about his way of performing the duties while serving as a Conductor in the Corporation right from 1981 till December, 2000, the date on which ultimately dismissed from service. There are no merits in the writ petition and the same is liable to be dismissed confirming the award passed by the Industrial Tribunal-cum-Labour Court, Warangal in I.D.No.85/2001, dated 30-06-2003.

18. In the result, the writ petition is dismissed. No costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

M.S.K.Jaiswal, J

Date: 19th January, 2016
Dsr/smr

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- [\[1\]](#) 2001-I-LLJ 725
 - [\[2\]](#) 2002(2) LLN 1118
 - [\[3\]](#) 2003(1) LLN 834
 - [\[4\]](#) 2014 (6) ALD 661
 - [\[5\]](#) (2001) 2 SCC 574
 - [\[6\]](#) (2006) 12 SCC 570
 - [\[7\]](#) (2010) 6 SCC 555
 - [\[8\]](#) (2006) 8 SCC 108