

HON'BLE SRI JUSTICE S.V.BHATT

W.P.No.1834 of 2009

ORDER:

The Depot Manager, APSRTC, Mehdipatnam and the Divisional Manager, APSRTC, Charminar Division are the petitioners.

The petitioners challenge the Award dated 25.01.2008 in I.D. No.138 of 2005 on the file of Labour Court-I, Hyderabad, as illegal, arbitrary and unconstitutional. The 1st respondent raised a dispute under Section 2-A(2) of the Industrial Disputes Act,1947 (for short 'the I.D. Act') questioning the order of removal dated 06.10.2003. The Labour Court through the impugned Award held as follows:

"I have given my earnest consideration to the respective submissions made by the counsel for either side and the material available on record.

There is no dispute with regard to the check took place by the checking officials at Nagireddyguda and one passenger by name Kasim alighted from the bus at Nagireddyguda without ticket. On enquiry made by the checking officials the said passenger said that he boarded the bus at Aziznagar and bound to Nagireddygbuda. It is further according to the said passenger that he paid Rs.3/- to the conductor at the place of boarding itself but the conductor did not issue ticket to him. The said statement is written by another co-passenger as he is illiterate person. A thumb impression of said Kasim was obtained. The other two witnesses have also signed on Ex.M-3 statement of the passenger and petitioner/conductor had refused to attest Ex.M3 statement of the passenger. Therefore the signature of the Jeep driver was obtained by the checking officials as per the endorsement made on Ex.M-3,. A charge memo was issued to the petitioner vide Ex.M-4 dt.30.10.2003 and the petitioner/conductor did not give any spot explanation to the said charge memo.

Ex.M-5 is the top punched ticket obtained by the checking officials. Ex.M-6 is the TTI check sheet shows that at the time of checking there were about $45+1=46$ passengers are travelling in the bus. The petitioner conductor submitted his explanation to the charge memo on 5-2-2003 vide Ex.M-8 therein he explained in detail that he was misdirected the old woman who boarded the bus from the front side and another old man who boarded the bus from rear side of the bus. According to him both have confused him saying that the other will buy the ticket for them. Ultimately the old man has paid the fare for himself and asked him to collect the fare from the old woman separately as he did not possess money with him. Similar is the case with the old woman who stated that she do not possess money and requested the petitioner/conductor to collect money from other old man who is at the other side. In the meantime the destination point was arrived and one of them is found without ticket is the explanation given by the petitioner. In fact according to the petitioner no fare was paid to him by the passenger who alighted without ticket. He contended that out of batch of two passengers boarded into the bus they purchased ticket for only one of them. It is also further stated that the old man was in a drunken condition at that time as he was trying to convince them to buy the ticket but unfortunately a check was made and found that the passenger is alighting without ticket. The statement of the passenger is entirely different to the version given by the petitioner/conductor in his explanation. It is contended on behalf of the petitioner that the statement of the passenger is fabricated by affixing thumb impression on a piece of paper. The learned counsel emphasized that the writings are over written on the thumb impressions clearly shows that the thumb impression was obtained on a blank paper and later on it is filled with the relevant matter suitable to the case of the petitioner. On perusal of Ex.M-3 it is very clear that the writings are made over and above the thumb impressions which indicates that first thumb impression was taken on a blank paper and later on the writings are made which continued up to the over space of the thumb

impression put by the passenger. The checking official Sri A.S.Rao has put into a question that whether he is able to produce the passenger who found without ticket for which the reply was he can not produce him. Ex.M-3 statement of the passenger is not attested by the petitioner/conductor and support the charge as framed against him that he did not cooperate with the checking officials. The contention of the petitioner is that the charge memo is served on him on the next date ie. 31-1-2003 that is the reason he did not give any spot explanation to the charge memo given to the petitioner. The explanation submitted by the petitioner to the charge memo shows that he was misdirected by the passengers who are husband and wife boarded the bus from front side by woman and from the rear side by the man. The petitioner also gave his evidence before the enquiry officer to that effect. The enquiry officer ought to have considered the explanation submitted by the petitioner/conductor under given circumstances under which he had been misdirected by the passenger. Since the statement of the passenger appears to be a doubtful as it was recorded subsequently after obtaining thumb impression of the passenger, I am not inclined to believe the statement of the passenger unless it is proved by adducing evidence and by examining the said passenger etc. it is not uncommon that if husband and wife boarded into the bus the woman will board the bus from front door and male member will board the from the rear. Since these couples are age old persons they have depend upon each other to buy ticket and assuring to the conductor.

Whereas there is no doubt that the petitioner who had issued ticket to all the passenger travelling in the bus 42 in number can be failed to issue ticket to these passengers. The explanation given by the petitioner conductor that he was in the process of collecting money and issue ticket but by that time the destination point of the passengers is reach and he alighted without buying the ticket. The learned enquiry officer ought to have taken into consideration all these aspects before concluding that the charges levelled against the petitioner is proved. I am

therefore of the view that the findings made by the enquiry officer is not based on proper evidence and it is therefore perverse.

For the foregoing reasons I hold on the point that the order of removal of the petitioner from service is not justified.

In the result the petition is partly allowed. Respondent is directed to reinstate the petitioner into service with continuity of service and other attendant benefits but without back wages. The award shall be implemented by the respondent within one month from the date of publication of the award. Award is accordingly passed.”

Hence the writ petition.

The allegation against the 1st respondent is that the 1st respondent collected Rs.3/- from a passenger who boarded at Stage No.9 (Aziznagar) and was found alighting at Nagireddyguda, stage No.11. The checking officials confronted passenger alighting without ticket and obtained top punch ticket from the passenger. The 1st respondent was given charge memo and on not being satisfied with the explanation, charge sheet dated 13.02.2003 was issued with the following charges:

“CHARGES:-

1. “ For having collected the requisite fare of Rs.3.00 at the boarding point from a passenger and failed to issue ticket who boarded your bus at Aziznagar and alighting at Nagiredduguda i.e. Ex-stages 9 to 11 for which obtained TPT No.655/616467 E.1 of Rs.3.00 denomination which constitutes misconduct under Reg.28(vi) (a) of APSRTC Employees (conduct) Regulations 1963.”
2. “ For having refused to attest the passengers statement taken in your presence and created trouble to the TTI's in discharging their duties which constitutes mis-conduct under Reg.28(vi) (a) of APSRTC Employee's (cond) Regulations, 1963.”

3. "For having worked without MTD 141 card on 30.01.2003 which constitutes mis-conduct under R.Eg.28 (vi) (a) of APSRTC Employees' (cond) Regulations, 1963."

The Corporation conducted domestic enquiry and basing upon report submitted by the Enquiry Officer, imposed the punishment of removal from service.

The case of 1st respondent is that he has issued tickets to the passengers and because of the attitude exhibited by inspecting officials the circumstances which were true and correct could not be informed to the checking officials and the passengers were brought under pressure to sign statements prepared by the inspecting officials. According to him, there is no re-issue of tickets or failure to issue tickets to passengers. The passenger found is not alone, the passengers have boarded the bus as husband and wife and tickets were available with one of them. According to him, the enquiry conducted was perfunctory and the punishment imposed on the 1st respondent shocked the conscience.

The learned counsel for the petitioners substantially reiterated the contentions which were urged before the Labour Court. The learned counsel except contending the findings recorded by the Labour Court as not based on evidence and probability of case could not persuade this Court to examine the writ prayer within the well established principles of judicial review under Article 226 of the Constitution of India. The power of the Labour Court under Section 11(A) of the I.D. Act while considering the totality of circumstances of the case and modifying the punishment is no more *res-Integra* and there is no dispute on the power of Labour Court to modify the punishment from removal to re-instatement with continuity of service without monetary benefit. Having regard to the facts of the case on

hand and the submissions made by the learned counsel for the parties,
I do not see any reason is made out for interference with the impugned
Award. The writ petition fails and is accordingly dismissed. No order
as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

S.V.BHATT,J

Date:29.02.2016
Stp