

HON'BLE SMT JUSTICE ANIS

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Writ Petition No. 1744 of 2003

ORDER:

This Writ Petition is filed for the following substantive relief:

“..... to issue writ order or direction more particular one in the nature of Writ of Certiorari and after calling for the records in I.D.No.144/1995, dt.7-3-2000 on the file of the Hon'ble 1st respondent and consequently set aside the award in I.D.No.144/1995, dt.7-3-2000 by granting continuity of service, attendant benefits, back wages and to grant two (2) increments to the petitioner and pass such other order or orders as the Hon'ble court may deems fit and proper under the circumstances of the case.”

2. The brief averments in the petition are that the petitioner was appointed as a Conductor in the respondent corporation in the year 1975. Initially, he was posted at Kothagudem Depot and since his appointment, he has been discharging his duties to the utmost satisfaction of his superiors. While so, when the petitioner was performing his duties on 20.02.1993, a check was exercised by the checking officials on route Sarvapur between stage 28/27 at about 2.00 p.m. Though there were no irregularities on the part of the petitioner, he was issued with a charge sheet alleging certain cash and ticket irregularities. The charges were framed against the petitioner alleging that he failed to observe the rule 'Issue and Start' and failed to issue tickets to two passengers without collecting the fare. Further, the petitioner was charged that he allowed one passenger to travel beyond the stage. The respondent corporation appointed an Enquiry Officer to conduct an enquiry into the charges. The Enquiry officer, without following the principles of natural justice, conducted an enquiry, made the petitioner guilty of the charges and issued a show cause notice to

the petitioner. Thereafter, the petitioner was removed from service vide proceedings dated 18.08.1993. Against the termination order, the petitioner filed an appeal to the appellate authority and the same was rejected. Thereupon, the petitioner raised an industrial dispute under Section 2-A (2) of the Industrial Disputes Act, 1947 before the first respondent. During the course of enquiry, the first respondent held that the procedure followed by the Enquiry Officer was valid and passed the award on 07-03-2000 directing the respondent management to reinstate the petitioner into service as a fresh recruit. The petitioner stated that the award of the Tribunal is illegal and perverse insofar as denying continuing of service, attendant benefits and back wages and imposing punishment of stoppage of two increments with cumulative effect. Therefore, the petitioner constrained to file the present Writ Petition on the ground that he neither defrauded the revenue of the corporation nor had any fraudulent intention. Further, though the first respondent set aside the removal order by coming to a conclusion that the petitioner has no malafide intention, imposed punishment of stoppage of two increments, which is nothing but dragging the petitioner to work for a lesser pay on reinstatement and the said order is illegal and beyond the scope of the first respondent, and finally prayed the Court to allow the Writ Petition.

3. The second respondent filed counter before the first respondent Tribunal contending that on 20.02.1993, checking officials exercised check on the bus conducted by the petitioner and found cash and ticket irregularities. On issuing charge sheet with four charges, domestic enquiry was conducted against the petitioner. The Enquiry Officer found all the charges as proved. The punishment of removal is just and reasonable and there are

no merits in the petition.

4. The learned counsel for the writ petitioner argued that the Tribunal having not considered the record, imposed punishment of stoppage of two increments with cumulative effect and the said order is not based on any evidence. It is further argued that the more than one punishment cannot be imposed against the petitioner as it is against the circular order issued by the A.P.S.R.T.C. It is also argued that the Tribunal categorically held that there is no malafide intention which can be attributed against the petitioner and that it is only proved negligence of the petitioner in not issuing the tickets. Therefore, prayed the Court to set aside the finding of the Tribunal regarding punishment of stoppage of two annual increments with cumulative effect.

5. On the other hand, the learned Standing Counsel for A.P.S.R.T.C. contended that the Tribunal, basing on the evidence on record, rightly passed the award and the said finding of the Tribunal needs no interference. It is also argued that the petitioner had an intention to defraud the corporation and the monetary loss is not an issue, and relied on a case-law reported in *Regional Manager, RSRTC Vs. Ghanshyam Sharma*^[1], wherein the Hon'ble Supreme Court held at Para 5 as follows:

“Furthermore, we agree with the observations of the Single Judge in the present case that the Labour Court was not justified in interfering with the punishment of dismissal. Though under Section 11-A the Labour Court has jurisdiction and powers to interfere with the quantum of punishment, however the discretion has to be used judiciously. When the main duty or function of the conductor is to issue tickets and collect fare and then deposit the same with the Road Transport Corporation and when a conductor fails to do so, then it will be misplaced sympathy to order his reinstatement instead of dismissal.”

The learned counsel further relied on a case-law reported in *Managing Director, North-East Karnataka Road Transport Corpn.*

Vs. K.Murti^[2], wherein the Hon'ble Supreme Court held as follows:

“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.”

The learned counsel further relied on a case-law reported in *V.Ramana Vs. APSRTC and others*^[3], wherein the Full Bench of this Court held at Para 16 as follows:

“It is not a well settled principle of law that the High Court while exercising its jurisdiction under Article 226 of the Constitution of India cannot sit in appeal over an order of the disciplinary authority. The High Court is not concerned with the adequacy or reliability of the evidence. In *High Court of Judicature v. Shashikant S. Patil*, (2000) 1 SCC 416, the Supreme Court held that if there is some legal evidence on which findings can be based, then adequacy or even reliability of that evidence is not a matter to be canvassed before the High Court under Article 226 of the Constitution of India.”

In Para 19, it is held as follows:

“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.”

6. Now, the point for consideration is -

Whether the petitioner is entitled to set aside the award in

I.D.No.144 of 1995, dated 07.03.2000, by granting continuity of service, attendant benefits, back wages and two increments with cumulative effect to the petitioner as prayed for?

7. Point:

A perusal of the record shows that there is no dispute that the petitioner was appointed as Conductor in the year 1975 in the respondent corporation. Initially, the petitioner was posted at Kothagudem depot. On 20.02.1993, a check was exercised by the checking officials on route Sarvapuri between stage 28/27 at about 2.00 p.m. and during the surprise check, the checking officials found certain cash and ticket irregularities and basing on the same, a charge memo was issued. Thereafter, charges were framed and domestic enquiry was conducted against the petitioner. In the enquiry, all the four charges were found proved against the petitioner. Thereafter, the petitioner was removed from service. Aggrieved by the dismissal order, the petitioner preferred appeal before the appellate authority and the same was rejected. Thereupon, the petitioner raised an industrial dispute before the Industrial Tribunal-cum-Labour Court at Warangal. On 7th March, 2000, the Tribunal passed award setting aside the dismissal order and held that the petitioner is entitled for reinstatement as conductor only as a fresh recruit, but denied continuity of service, attendant benefits and back wages. The Tribunal in the said award also stopped two increments with cumulative effect.

8. The learned counsel for the petitioner contended that already the Tribunal held that the petitioner is not entitled for back wages and continuity of service and he should be reinstated into service as a fresh recruit, therefore stoppage of two annual increments with cumulative effect is against the circular order issued by

A.P.S.R.T.C. and relied upon the orders passed by this Court in Writ Petition No.4853 of 2006, wherein this Court held as follows:

“From the ratio laid down as extracted above, it is quite evident that the order of removal is no bar for appointing the said workman as a fresh candidate. In the present case too, the Tribunal has accepted the fact that the case on facts warrants that it has to be viewed leniently. In both cases above, the order of removal was not disturbed. Keeping the said order in tact, taking a lenient view, the charged workmen were rehabilitated, so to say, with a fresh lease of career. On the contrary, in the present instance, the order of removal passed by the disciplinary authority was in fact set aside. Consequently, the Tribunal has felt that to serve the interests of justice, the petitioner should be given fresh appointment. Going by the same reckoning, if it is a fresh appointment, wiping off the entire past career (sic.) and benefits that had arisen there from, it should be viewed as a clean slate without having any blot. In that event, imposing a further punishment of deduction of four increments from a cadre where the petitioner is yet to be born is absolutely onerous and unsustainable. I am afraid that the ratio laid down in the decisions relied on by the learned Standing Counsel has no relevance to the facts of the present case. Even otherwise, in those case, those fresh appointment was ordered, no further conditions were imposed affecting the fresh career to be commenced on fresh appointment.”

The learned counsel also relied on the orders passed by this Court in Writ Petition No.18657 of 2003, wherein this Court held at Para 11 as follows:

“Learned counsel for the respondent also fairly conceded that the petitioner is not entitled to set aside the award insofar as the Tribunal not awarding any back wages. Thus it is a fresh appointment wiping off entire past career and benefits that has arisen therefrom. In that event, imposing of further punishment of retention of three annual increments is absolutely onerous and unsustainable. Therefore the petitioner is entitled to set aside the order so far as deferment of three annual increments is concerned and rest of the award is unaltered.”

9. The contention of the learned Standing Counsel for APSRTC that when charge sheet irregularities were found proved, the disciplinary authority rightly passed the removal order. It is further contended that there is negligence on the part of the petitioner for not collecting cash and not issuing tickets and thereby his services were terminated. It is further argued that the Writ Petition filed by the petitioner for setting aside the orders of the Industrial Tribunal is not justified as the main duty on the person of the conductor is to issue tickets, collect fare and then deposit the same with his corporation and when the petitioner failed to do so, the disciplinary authority rightly passed the order of removal.

10. There is no dispute about the ratio laid down by the Hon'ble Supreme Court in the above judgments. The fact remains that when the petitioner challenged the dismissal order before the Industrial Tribunal, the Tribunal set aside the dismissal order and reinstated the petitioner as a fresh recruit without continuity of service and back wages and besides that stopped two annual increments with cumulative effect. On the other hand, the order of the Tribunal was not challenged by the corporation. Therefore, the order of the Tribunal insofar as reinstatement of the petitioner into service as a fresh recruit became final.

11. Now, coming to the stoppage of two annual increments are concerned, this Court in W.P.No.4853 of 2006 clearly held that when fresh appointment is ordered, no further conditions were imposed affecting the fresh career to be commenced on fresh appointment. In that event, imposing of further punishment of stopping two annual increments is absolutely onerous and unsustainable. Therefore, the petitioner is entitled to set aside the order so far as stoppage of two annual increments is concerned

and the rest of the award is unaltered.

12. Accordingly, the Writ Petition is allowed in part to the extent indicated above. No order as to costs.

Consequently, Miscellaneous Petitions, if any, pending in this Writ Petition shall also stand closed.

ANIS, J

Date: 22.07.2016
Anr

THE HON'BLE SMT. JUSTICE ANIS

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[\[1\]](#) (2002) 10 S.C.C. 330

[\[2\]](#) (2006) 12 S.C.C. 570

[\[3\]](#) 2001(5) ALD 427 (FB)