

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

WRIT PETITION No.18573 OF 2004

ORDER:

1 This Writ Petition is filed under Article 226 of the Constitution of India, seeking a writ of Certiorari by calling the records related to and in connection with the Award of the Labour Court-III, Hyderabad in I.D.No.97 of 2002, which was published in the gazette vide G.O.Rt.No.539 dated 29.03.2004 and to set aside the same to the extent of rejecting the relief of back wages with all consequential benefits to the petitioner.

2 The facts germane to the filing of the present Writ Petition are as follows:

3 The petitioner was appointed as conductor in the first respondent Corporation on 06.04.1999 on compassionate grounds due to sudden demise of her husband. On 13.11.2001 the petitioner was conducting the bus bearing No.2435 on the route Nawabpet to Mahaboobnagar. After the bus crossed Rudraram village, checking officials inspected the passengers and found two passengers travelling without tickets though they paid the ticket fare to the petitioner. On the spot the checking officials issued a charge memo to the petitioner. Thereafter, the 2nd respondent issued charge sheet to the petitioner as if she failed to issue tickets by collecting the fare from two passengers to which the petitioner submitted her explanation. Being not satisfied with the same, the 2nd respondent initiated disciplinary proceedings and ordered for departmental enquiry. After completion of enquiry, the enquiry officer submitted a report stating that the charges levelled against the petitioner were proved. The 2nd respondent issued a show cause notice to the petitioner calling her explanation as to why she shall not be removed from service to which also the petitioner submitted her explanation.

Ultimately, the 2nd respondent imposed punishment of removal from service on the petitioner, vide order dated 15.05.2002. Aggrieved by the same, the petitioner preferred an appeal to the Divisional Manager, which was considered and rejected by order dated 29.11.2002. Thereafter, challenging the order of removal from service, dated 15.5.2002 of the second respondent, the petitioner filed an application under Section 2 (A) of the Industrial Disputes Act, 1947 and the same was numbered as I.D.No.97 of 2002 on the file of Court – III, Hyderabad. The Labour Court, after affording reasonable opportunity to both parties, allowed the I.D.No.97 of 2002, confirming the findings recorded by the enquiry officer, however, modified the punishment from removal of service to that of appointment as fresher, but the petitioner is not entitled to back wages and any other attendant benefits. Hence the present Writ Petition.

4 The 2nd respondent filed counter *inter alia* contending that the petitioner, having accepted to join the service as fresher, in pursuance of the order of the Labour Court, is estopped from challenging the order of the Labour Court.

5 The learned counsel for the petitioner submitted that the punishment imposed against the petitioner was shockingly disproportionate to the gravity of the alleged misconduct. He further submitted that the findings of the enquiry officer and the Labour Court that the petitioner committed cash and ticket irregularities are perverse as they were not based on material admissible under law.

6 *Per contra* the learned standing counsel for the respondents 1 and 2 submitted that the Labour Court, having accepted the findings recorded by the enquiry officer, ought not to have directed the respondents to appoint the petitioner as conductor afresh. He further submitted that the Labour Court modified the punishment imposed by the 2nd respondent by taking a lenient view and hence this is not

a fit case to allow the Writ Petition.

7 The admitted facts that can be culled out from the record are that the petitioner was appointed as conductor in the first respondent organization on 06.04.1999 on compassionate grounds due to sudden demise of her husband. The petitioner was conducting the bus bearing No.2435 on the route Nawabpet to Mahaboobnagar on 13.11.2001. The checking officials issued a charge memo on the spot to the petitioner alleging that she failed to issue tickets to two passengers having collected ticket fare from them while conducting the bus bearing No.2435. The checking officials recorded the statements of the passengers on the spot and obtained their signatures. After completion of necessary formalities, the 2nd respondent issued a charge sheet to the petitioner with the following charges:

(i) For having violated the Rule Issue & State which constitutes misconduct under Reg.28 (xxxii) of APSRTC Employees (Conduct) Regulations, 1963.

(ii) For having collected the requisite fare of Rs.4/- each (total Rs.8/-) from two passengers at boarding point itself and failed to issue tickets to them and they were found travelling without tickets, they boarded the bus at Nawabpet and bound for Korkonda, Ex-Stage 5 to 4/3, which constitutes misconduct under Reg.28 (vi a) & (xxxi) of APSRTC Employees (Conduct) Regulations, 1963.

(iii) For having closed the Tray Nos. of all dens. In the SR up to stage No.4, without completing the above ticket issues, which constitutes misconduct under Reg.28 (xxxii) of APSRTC Employees (Conduct) Regulations, 1963.

8 The enquiry officer, after conducting a detailed enquiry and after affording reasonable opportunity to the petitioner, arrived at a conclusion that the charges levelled against the petitioner were proved. Ultimately, the 2nd respondent passed a final order on 15.05.2002 terminating the services of the petitioner.

9 It is a settled principle of law that any domestic enquiry conducted in violation of the principles of natural justice is *non-est* in the eye of law. A perusal of the record reveals that the petitioner filed a Memo under Section 11 (A) of the Industrial Disputes Act before the Labour Court to the effect that she was not disputing the procedural aspects of domestic enquiry. This itself clearly indicates that the petitioner herself accepted that the enquiry was conducted in a transparent manner and in accordance with law. In such circumstances, the question that falls for consideration in this Writ Petition is ***‘whether the findings recorded by the enquiry officer as confirmed by the Labour Court – III, Hyderabad are perverse as contended by the learned counsel for the petitioner’.***

10 It is the case of the respondents that the petitioner committed cash and ticket irregularities while conducting the bus bearing No.2435 on 13.11.2001 on the route from Nawabpet to Mahaboobnagar. It is not in dispute that two passengers boarded the bus at Nawabpet to go to Korakonda Ex-Stage 5 to 4/3. The checking officials, in their routine course, stopped the bus at Rudraram village and checked the passengers and found two passengers boarded the bus at Nawabpet to go to Korakonda without ticket. As per the statements of the passengers, they boarded the bus at Nawabpet to go to Korakonda and paid the fare to the petitioner, but the petitioner did not issue tickets to them. The checking officials recorded the statements of the passengers and obtained the signature of the petitioner. This clearly indicates that the checking officials examined those two passengers in the presence of the petitioner only. As seen from the award, the enquiry officer gave a specific finding that S.R was closed at Stage No.4. This clearly indicates that the two passengers were travelling without ticket from the boarding point to alighting point. This also creates a suspicion that the petitioner allowed the passengers to travel without

issuing ticket after having collected the fare from them. It is the duty of the conductor to verify whether each and every passenger was issued ticket or not and then only he / she has to give signal to the driver of the bus to proceed. The enquiry officer meticulously scrutinized the material placed before him and arrived at a conclusion that the petitioner committed cash and ticket irregularities, which acts of the petitioner constitute misconduct under regulation Reg.28 (vi a) & (xxxi) of APSRTC Employees (Conduct) Regulations, 1963.

11 This Court carefully perused the award of the Labour Court. The learned Presiding Officer of the Labour Court considered Exs.M.1 to M.18 meticulously in order to arrive at a conclusion whether the findings recorded by the enquiry officer are sustainable either on facts or in law. After satisfying himself with the material placed before him, the Presiding Officer of the Labour Court came to the conclusion that the findings recorded by the enquiry officer are sustainable. It is a settled principle of law that this Court shall not lightly interfere with the findings recorded by the enquiry officer as well as the Presiding Officer of the Labour Court, while exercising jurisdiction under Article 226 of the Constitution of India. If the findings were given on no evidence, or based on evidence, which is not legally admissible, then they can be termed as perverse. In such circumstances, this Court can set aside the findings of the enquiry officer or the Labour Court. Having regard to the facts and circumstances of the case, I am unable to accede to the contention of the learned counsel for the petitioner that the findings recorded by the enquiry officer, as confirmed by the Labour Court, are perverse.

12 The next question that falls for determination is ***‘Whether the punishment imposed against the petitioner is shockingly disproportionate to the gravity of the proved misconduct?’***

13 To substantiate the argument, the learned counsel for the petitioner has drawn my attention to the ratio laid down in ***B.H.K.Rao vs. Industrial Tribunal - cum - Labour Court, Visakhapatnam***^[1]. As per the principle enunciated therein, if the punishment was shockingly disproportionate to the gravity of misconduct, termination of the services of the workman is not justified.

14 On the other hand, the learned standing counsel for the respondents has drawn my attention to the following decisions:

Karnataka State Road Transport Corporation v. B.S.Hullikatti^[2]

wherein the Hon'ble apex Court held at para Nos.5 and 6 as under:

5. 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. Further-more, 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.

6. 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.

Managing Director, North – East Karnataka Board Transport Corporation vs. K. Murti^[3] wherein the Hon'ble apex Court held at para Nos.7 and 8 as under:

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 reported in ***Regional Manager, RSRTC v. Ghanshyam Sharma*** {(2002) 10 SCC 330}, 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*** (2 supra). 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.

The same principle was reiterated in ***U.P. State Road Transport Corporation vs. Suresh Chand Sharma***^[4].

15 Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am of the considered view that the contention of the learned counsel for the petitioner that the punishment imposed against the petitioner is shockingly disproportionate to the gravity of misconduct is not worth credence. On the other hand, the Labour Court has already taken a lenient view and modified the punishment imposed on the petitioner by the 2nd respondent from removal of service to that of appointment as fresher, but without back wages and other attendant benefits. Further, the APSRTC has not challenged the judgment of the Labour Court to the extent of directing the respondents to appoint the petitioner into service afresh. Therefore, the finding of the Labour Court to that extent has become final and the same is binding on the respondents.

16 For the foregoing discussion, I see no grounds much less valid grounds to interfere with the well considered award passed by the Labour Court – III, Hyderabad in I.D.No.97 of 2002. Therefore, it is not a fit case to allow the Writ Petition and accordingly this Writ Petition is liable to be dismissed.

17 In the result, the Writ Petition is dismissed. No order as to costs. As a sequel to the dismissal of this Writ Petition, miscellaneous petitions, if any, pending in this Writ Petition, shall stand dismissed.

T. SUNIL CHOWDARY, J.

Date:29-04-2016
Kvsn

[\[1\]](#) 2000 (1) ALT 538
[\[2\]](#) (2001) 2 SCC 574
[\[3\]](#) (2006) 12 SCC 570
[\[4\]](#) (2010) 6 SCC 555