

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 22818 OF 2006

ORDER:

This writ petition is filed questioning the Award, dated 07.06.2005, passed in I.D.No.140 of 2000 on the file of the Labour Court, Guntur.

2. The case of the petitioner is that he was appointed as Conductor in the year 1985 and while he was on service from Bhimavaram to Narasapuram, the Zonal Enforcement Squad, Vijayawada, caused a check and on finding irregularities, he was charge sheeted with the following five charges:

“1. For having failed to observe the rule “Issue and Start” while you were conducting the vehicle No.9168 on the route BVRM – NSP (M) on 12.08.99, which constitutes misconduct under Reg.28 (xxxii) of APSRTC Employees (Conduct) Reg.1963.

2. For having collected Rs.99/- from a batch of 33 passengers (Labourers) and failed to issue tickets to them, who boarded the bus at Bhimavaram and bound Bethapudi, ex.stages 01 to 03, even though collected the requisite fare from them at the boarding point itself i.e., Bhimavaram, while you were conducting the vehl.No.AP9Z:9168 on the route BVRM to Narasapuram (M) on 12.08.99, which constitutes to misconduct under Regulation 28 (vi) (a) of APSRTC, Employees (Conduct) Regulations 1963.

3. For having closed all the ticket denominations in the S.R. up to stage No.2, without issuing tickets to a batch of 33 passengers, even though collected the requisite fare, while you were conducting the vehl.No.AP9Z:9168 on the route BVRM to Narasapuram on 12.08.99, which constitutes to misconduct under Regulation 28 (xxxii) of APSRTC Employees (Conduct) Regulation 1963.

4. For having found missing the ticket block Nos.298/514700 of Rs.2/-, 097/310732 of Rs.2.25ps, 238/003100 of Rs.2.25ps, 238/003100 of Rs.2.25ps, 356/280500 of Rs.5/- and a86/275575 of Rs.8/- E.1, which were taken by you as per Way Bill No.0452/20599105 (Tray No.205) on 12.08.99 for NSP (M) service, while you were conducting the vehicle No.AP9Z:9168 on the route Bhimavaram – Narasapuram (M), by you which amounts to misconduct under Reg.28 (v) of APSRTC Employees (Conduct) Regulation 1963.

5. For having failed to remit the sale proceeds of tickets bearing No.356/280500 to 599 E.100 tickets of Rs.5/- deno., amounting to Rs.500/- which were sold by you vide SR bearing No.3446843 dt.26.03.99, which is misappropriation of corporation revenue, it amounts to serious misconduct under Reg.28(x) of APSRTC Employees (Conduct) Reg.1963.”

3. Petitioner failed to submit his explanation to the charges framed. Enquiry was ordered and in the enquiry the statement recorded at the spot was marked as exhibit and the petitioner had also admitted that he had failed to issue tickets to 33 passengers of Rs.3/- each. Further, the petitioner did not produce the ticket blocks of Rs.2/-, Rs.2.25/-, Rs.5/- and Rs.8/- and also did not remit Rs.500/- in relation to Rs.5/- ticket denomination. All the charges against the petitioner were proved and he was removed from service. The petitioner without filing inter departmental appeal or revision, invoked the jurisdiction of the Labour Court by filing I.D.No.140 of 2000. The Labour Court dismissed the said I.D. by award, dated 07.06.2005, as there was no material to interfere with the domestic enquiry. Questioning the said award, the present writ petition is filed.

4. Learned counsel for the petitioner vehemently appeals to the court that the petitioner rendered unblemished service to the

respondent-Corporation and on the fateful day, even as per the evidence of the person representing the group of 33 persons, the fare for 33 passengers was handed over to the Conductor and then they went to the last seats of the bus to find out the vacant seats and in the meanwhile checking officials had checked the bus. Relying on the said evidence, learned counsel submits that there was no time for issuing of the tickets. The finding of the enquiry officer ought not to have been sustained and the dismissal on that ground may be set aside. Learned counsel also pleads that even assuming that the charges have been proved against the petitioner, considering the unblemished service rendered by him, the Labour Court ought to have exercised the power under Section 11-A of the Industrial Disputes Act, 1947 and ought to have modified the punishment suitably as the punishment imposed is disproportionate to the charges said to be proved against the petitioner.

5. On the other hand, learned counsel for the respondent-Corporation by placing reliance on the judgment of the Supreme Court in ***U.P.State Road Transport Corporation vs. Suresh Chand Sharma***¹ submits that in cases of embezzlement on money of the Corporation notwithstanding the quantum of money, the only punishment is dismissal from service.

6. Having considered the respective submissions, it is a case where practically the finding of fact by the Enquiry Officer was not challenged

¹ (2010) 6 SCC 555

by the petitioner before the disciplinary authority. Even thereafter petitioner did not choose to challenge the same before the department in appeal nor he sought review of the order of the disciplinary authority. Even before the Labour Court no attempt was made on behalf of the petitioner by bringing some evidence or other to discredit the findings recorded by the Enquiry Officer. The Labour Court had taken into consideration of all the aspects and further the conduct of the petitioner while on one hand claiming the block of tickets were forgotten by the petitioner in the depot and on the other hand closing the SR in relation to the same were found to be a deliberate attempt to camouflage the embezzlement.

7. In *U.P.State Road Transport Corporation's* case it was held as follows:

“21. We do not find any force in the submissions made by Dr.J.N.Dubey, learned Senior Counsel for the employee that for embezzlement of such a petty amount, punishment of dismissal could not be justified for the reasons that it is not the amount embezzled by a delinquent employee but the *mens rea* to misappropriate the public money.

22. In *Municipal Committee, Bahadurgarh v. Krishnan Behari* ²this Court held as under:

“ 4. ... In a case of such nature-indeed, in cases involving corruption—there cannot be any other punishment than dismissal. Any sympathy shown in such cases is totally uncalled for and opposed to public interest. The amount misappropriated may be small or large; it is the act of misappropriation that is relevant.”

Similar view has been reiterated by this Court in *Rustom and Hornsby (1) Ltd. V. T.B.Kadam*,³ *U.P.SRTC v. Basudeo Chaudhary*⁴, *Janatha Bazar (South*

² (1996) 2 SCC 714

³ (1976) 3 SCC 71

⁴ (1997) 11 SCC 370

*Kanara Central Coop. Wholesale Stores Ltd.) v. Sahakasri Noukarara Sngha*⁵,
*Karnataka SRTC v. B.S.Hullikatti*⁶ and *Rajasthan SRTC v. Ghanshyam Sharma*⁷.

23. In *NEKRTC v. H.Amaresh*⁸ and *U.P.SRTC v. Vinod Kumar*⁹ this court held that the punishment should always be proportionate to the gravity of the misconduct. However, in a case of corruption/misappropriation, the only punishment is dismissal.

24. Thus, in view of the above, the contention raised on behalf of the employee that punishment of dismissal from service was disproportionate to the proved delinquency of the employee, is not worth acceptance.”

8. Considering the facts and circumstances of the case and in the light of the judgment of the Supreme Court, referred supra, that there cannot be any lenience in the cases of embezzlement of the Corporation's money, the order of the Labour Court cannot be found fault in any manner.

Accordingly, the Writ Petition is dismissed. As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

JUSTICE CHALLA KODANDA RAM

December 30, 2016
LMV

⁵ (2000) 7 SCC 517

⁶ (2001) 2 SCC 574

⁷ (2002) 10 SCC 330

⁸ (2006) 6 SCC 187

⁹ (2008) 1 SCC 115