

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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WRIT PETITION No.15559 OF 2001

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, 1949 is filed by the petitioner, R. Lingaiah, to issue a writ of *certiorari* quashing the Award dated 09.01.2001, passed in I.D. No.105 of 1998 by the Industrial Tribunal-cum-Labour Court, Godavarikhani, Karimnagar, 1st respondent herein, which was published in G.O.Rt. No.563, Labour Employment Training & Factories (LAB.I) Department, dated 05.03.2001 as it is arbitrary, illegal and, consequently, direct the 2nd respondent to re-instate the petitioner into service with continuity of service and back wages, in the interest of justice.

The case of the petitioner, in brief, is that he was appointed as conductor on 24.02.1992; worked with utmost satisfaction of superiors and discharged his unblemished duties. On 18.02.1998, while the petitioner was conductor in the A.P.S.R.T.C bus bearing No.5216, plying between Jagtial-Peddapalli, strictly following the rule of "Issue and Start", issued tickets to all passengers, who have boarded the bus. While the bus was proceeding, three passengers boarded the bus at Mallial X road, stage No.3/4 bound, out of which two were bound to Manala and one for Takkallapalli, Stage No.5, collected requisite fare from each passenger and issued three tickets of Rs.3/- denomination, bearing Nos.836, 837 and 838.

When the bus reached Stage 4/5, the T.T.Is conducted check; wherein, one passenger among the three, who boarded the bus at Mallial X road, Stage No.3/4 and bound to Takkallapalli, from whom a fare of Rs.3/- was collected at the stage of boarding and issued ticket, was found without ticket, as he might have lost the ticket due to his inebriated condition. Though the petitioner protested the same, a

charge memo dated 28.02.1998 was served on the petitioner with the following charges:

- “1) For having violated the Rule ‘Issue and Start’, which constitutes misconduct under Regulation 28(vi)(a) of the APSRTC Employees (Conduct) Regulations, 1963.
- 2) For having failed to issue ticket to a passenger despite collecting the requisite fare of Rs.3/- who boarded your bus at Mallial X Road and bound for Takkallapalli, Ex-Stages from $\frac{3}{4}$ to 5, which constitutes misconduct in terms of Regulation 28(vi)(a) of the APSRTC Employees (Conduct) Regulations, 1963.
- 3) For having closed the ticket tray numbers of all denominations up the point of check *i.e.*, Stage No.5 without completing above ticket issue, which constitutes misconduct under Regulation 28(xxxii) of the APSRTC Employees (Conduct) Regulations, 1963.”

On receipt of the charge memo, the petitioner filed his explanation but without considering his contentions about non supply of documents and spot explanation, evidence and statements of passengers, an order of removal was passed by the 2nd respondent authorities, after conducting necessary enquiry. Aggrieved by the order of removal, the petitioner preferred an Appeal and Review before the Deputy Chief Traffic Manager and Regional Manager, Karimnagar but they were dismissed *vide* proceedings Nos.PA/19(253)/98-RM:KR, dated 28.09.1998 and Peshi/19(69)/98-RM:KR, dated 04.11.1998, without proper consideration of his objections.

Aggrieved by the orders passed in Appeal and Review, the petitioner preferred I.D. No.105 of 1998 before the 1st respondent, challenging his order of removal; wherein the 1st respondent, without considering the grounds in proper perspective with reference to evidence available on record, totally ignored its response to re-appraise the evidence and confirmed the order of removal. Thus, the impugned order passed by the 1st respondent is illegal and the same

is liable to be *set-aside* and prayed to allow the Writ Petition, reinstate the petitioner with all consequential benefits, including continuity of service and back wages.

The 2nd respondent filed counter-affidavit denying material allegations, admitting holding of enquiry against the petitioner for his misconduct, passing an order of removal, after enquiry, and getting confirmed the same by appellate and revisional authorities; consequently, dismissal of I.D. No.105 of 1998 by the 1st respondent.

The specific contention of the 2nd respondent is that, at every stage of enquiry, sufficient and adequate opportunity was afforded to the petitioner, strictly adhering to the procedure prescribed under the A.P.S.R.T.C. Employees (Conduct) Regulations, 1963. The respondent denied the contention that officials of the 2nd respondent threatened the ticket less passengers with heavy fine, if they fail to give statements against the petitioner; so also inebriated condition of the ticket less passenger found in the bus during check *etc.*,

The conduct of the petitioner was not satisfactory throughout; he was slapped with several penalties like stoppage of 4 increments; fine on one occasion, put off duty on one occasion, censured and suspended once respectively. Thus, the petitioner, due to his misconduct, at every stage, did not work to the satisfaction of the 2nd respondent authorities; therefore, there is no illegality in the order passed by the 1st respondent confirming the orders of authorities of 2nd respondent and prayed for dismissal of the Writ Petition.

During course of hearing Smt. S.V. Indira, learned counsel for the petitioner, mainly contended that as the petitioner was removed from service, he is suffering from starvation along with his family members and the reason for arriving such conclusion by the 1st respondent is only due to his failure to appreciate the evidence on

record. If the evidence is appreciated with reference to the contentions, the 1st respondent would have allowed the I.D. No.105 of 1998, setting-aside the orders passed by the authorities of 2nd respondent; therefore, requested this Court to reappraise the entire material to come to an independent conclusion, uninfluenced by the orders passed by the authorities of 2nd respondent and the order of the 1st respondent, prayed to allow this Writ Petition, ordering reinstatement of the petitioner with consequential benefits including continuity of service and back wages.

Whereas, learned Standing Counsel appearing for the 2nd respondent-APSRTC, would contend that the scope of judicial review under Article 226 of the Constitution is limited and this Court, normally, cannot interfere with the fact findings recorded by the departmental authorities and the 1st respondent, unless there is a material irregularity; power of this Court, under Article 226, is only to decide whether the penalty imposed against the petitioner is disproportionate to the gravity of the misconduct and in violation of statutory provisions or Rules while conducting domestic enquiry. In view of the limited scope of judicial review, this Court need not interfere with the fact findings recorded by various authorities including the 1st respondent and prayed for dismissal of the Writ Petition.

Considering rival contentions and perusing material available on record including the order of the 1st respondent, the sole point that arises for consideration is:

Whether the petitioner committed any cash and ticket irregularities? If so, whether the punishment imposed against the petitioner is disproportionate to the gravity of misconduct and liable to be set-aside?

POINT: Undisputedly, the petitioner was working as conductor

in the APSRTC bus bearing No.5216, at the relevant time when the check was conducted by the T.T.Is, where three passengers were found ticket less and after recording their statements and verification of the tickets tray, the T.T.Is *prima-facie* concluded that the petitioner is guilty of gross negligence. It is equally an undisputed fact that the petitioner was served with a charge memo dated 28.02.1998 and afforded an opportunity to file explanation to the charges, conducted enquiry and ultimately concluded that the petitioner was guilty of gross negligence, as defined under Regulation 28. The petitioner subsequently filed Appeal and Review before the competent authorities, which were dismissed; later, he filed I.D. No.105 of 1998 but the 1st respondent dismissed the same confirming the orders passed by the authorities of 2nd respondent.

The main endeavour of learned counsel for the petitioner is that 2nd respondent failed to supply necessary documents and did not consider the evidence in proper perspective, while finding him guilty for misconduct as per Regulation 28. In fact, before any authority, including the 1st respondent, no plea of violation of procedure was raised but, strangely for the first time in this writ petition, violation of statutory rules like non supply of documents and failure to consider the evidence of passengers was raised. Such contentions cannot be accepted for the first time in the writ petition unless the petitioner had suffered prejudice on account of non supply of documents; even otherwise, it is an undisputed fact that the petitioner attended to the domestic enquiry before the concerned authority and preferred Appeal and Review, aggrieved by the orders passed by the competent authority, who conducted domestic enquiry, and before the 2nd respondent, the petitioner did not raise any specific contention about their failure to afford reasonable opportunity to the petitioner. While exercising power of judicial review, under Article 226, this Court has to confine to its jurisdiction to decide violation of any statutory provisions

or rules in conducting enquiry and imposing penalty and this Court cannot interfere with the fact findings recorded by the 2nd respondent sitting as a court of Appeal. Therefore, failure to appreciate the evidence of the witnesses examined before the domestic enquiry *etc.*, cannot be looked into, since it is beyond the scope of judicial review. However, all the authorities of 2nd respondent and the 1st respondent concurrently held that the petitioner is guilty of misconduct under Regulation 28 regarding a fact finding; such fact finding does not call for interference in view of the limited powers of judicial review available to this Court under Article 226 of the Constitution.

The jurisdiction to issue a writ of *certiorari* is a supervisory one and in exercising it, the Court is not entitled to act as a Court of Appeal. That necessarily means that the findings of fact arrived at by the inferior Court or the Tribunal are binding. An error of law apparent on the face of the record could, however be corrected by a writ of *certiorari*, but not an error of fact. Thus, a writ of *certiorari* could also be issued if it is shown that in recording a finding of fact, admissible and material evidence has not been admitted, or inadmissible evidence affecting the impugned finding has been admitted but finding of fact could not be challenged in such proceedings on the ground that the relevant material evidence was insufficient to sustain the finding as held by the Apex Court in ***Syed Yakoob Vs. K.S. Radhakrishnan and others***^[1], ***Nagendra Nath Bora and another Vs. The Commissioner of Hills Division and Appeals, Assam and others***^[2], ***Sadhu Ram Vs. Delhi Transport Corporation***^[3], ***Parry and Company Limited Vs. P.C. Pal, Judge of the Industrial Tribunal-II, Calcutta and others***^[4], ***Shankar Chakravarti Vs. Birtannia Biscuit Company Limited and another***^[5], ***Municipal Corporation, Faridabad Vs. Siri Niwas***^[6], ***Municipal Council,***

Sujanpur Vs. Surinder Kumar^[7] and ***DGM, Oil and Natural Gas Corporation Limited and another Vs. Ilias Abdul Rehman***^[8].

In ***Syed Yakoob***¹, while the order refusing to grant permission under the Motor Vehicles Act, 1939 was challenged. However, in view of the law declared by the Apex Court, the jurisdiction of this Court to issue a writ of *certiorari* is limited and the Court while exercising power of judicial review under Article 226 to issue a writ of *certiorari* cannot interfere with the fact findings.

In ***Municipal Corporation, Faridabad***⁶, the Apex Court held as follows:

“16. No reason has been assigned by the High Court as to why the exercise of discretionary jurisdiction of the Tribunal was bad in law. In a case of this nature, it is trite, the High Court exercising the power of judicial review, would not interfere with the discretion of a Tribunal unless the same is found to be illegal or irrational.”

In ***Municipal Council, Sujanpur***⁷, the Apex Court held as follows:

“8. The High Court's jurisdiction to issue a writ of *certiorari* though is limited, a writ of *certiorari* can be issued if there is an error of law apparent on the face of the record. What would constitute an error of law is well known. In the Judicial Review of Administrative Action, IV Edition page 136, S.A De Smith has summed up the position-

“(5). The concept of error of law includes the giving of reasons that are bad in law or (if there is a duty to give reasons) inconsistent, intelligible or, it would seem, substantially inadequate. It includes also the application of a wrong legal test to the facts found, taking irrelevant considerations into account and failing to take relevant considerations into account, exercising a discretion on the basis of any other incorrect legal principles, misdirection as to the burden of proof, and wrongful admission or exclusion of evidence, as well as arriving at a conclusion without any supporting evidence.”

9. The Labour Court and the High Court also proceeded wrongly on the premise that the burden of proof to establish non-completion of 240 days of work within a period of twelve

months preceding the termination, was on the management. The burden was on the workman. Equally well settled is the principle that the burden of proof, having regard to the principles analogous to Section [106](#) of the Evidence Act that he was not gainfully employed, was on the workman. It is also a trite law that only because some documents have not been produced by the management, an adverse inference would be drawn against the management.”

Similarly, in ***Nagendra Nath Bora***², the constitutional Bench of the Apex Court reiterated the same principle and held that issue of *certiorari* on findings that the impugned order had been vitiated by errors of fact and not of law apparent on the face of the record is erroneous since the power of interference may extend to quashing of impugned order on ground of mistake apparent on face of records but under Article 227 power of interference is limited to see that the Tribunal functions within limits of its authority. Therefore, interference by this Court either under Article 226 or under Article 227 is not justified.

The learned standing counsel appearing for the 2nd respondent-APSRTC drawn the attention of this Court directly to a case pertaining to an Award passed by the Industrial Tribunal which went up to Supreme Court in ***Parry and Company Limited***⁴, wherein the Full Bench of the Apex Court reiterated the same principle.

In view of the principles laid down by the Apex Court, the jurisdiction of this Court to issue a writ of *certiorari* under Article 226 is limited and this Court cannot interfere with the fact findings recorded by the Tribunal.

In view of the fact findings, the petitioner committed a grave irregularity, which amounts to misconduct, under Regulation No.28(vi) (a) and (xxxii) of the APSRTC Employees (Conduct) Regulations, 1963 since the petitioner did not issue tickets to three passengers.

The only contention of learned counsel for the petitioner is that the penalty imposed against the petitioner is disproportionate to the

gravity of the misconduct attributed to him. No doubt, the petitioner failed to collect fair of Rs.3/- each from the three passengers. It is not the case of the 2nd respondent that the petitioner issued tickets to the passengers and they lost their tickets; there is some discrepancy in the evidence with regard to issue of tickets in the domestic enquiry; however, the same was disbelieved since there is a possibility of winning over the witnesses by the petitioner. Even otherwise, the fact findings recorded by the domestic enquiry officer, appellate authorities and the 1st respondent cannot be interfered by this Court. Though the alleged cash and ticket irregularity is only a petty sum of Rs.9/-, it is a serious matter of concern since the services of employee with employer more particularly the conductor with the 2nd respondent depends upon confidence; when the employer loses confidence on the employee, it is difficult for the employer to continue him in service. In such circumstances, the employee who committed irregularity for a paltry sum of Rs.9/- is also liable to be punished in accordance with law.

A similar question came up before this Court in ***A.V. Swamy Vs. A.P.S.R.T.C., Represented by its Managing Director and others***^[9], it was held that when cash and ticket irregularities are committed by the conductor of a bus and charged for the misconduct of collecting fare from the passengers, failure to issue tickets, it is essential to check the cash balance with the conductor by checking officials so that the said issue can be clinchingly concluded. Non-examination of the passengers is not an universal principle to establish that in each and every departmental enquiry, the passengers from whom spot statements were obtained by the checking officials should be examined, unless findings of Disciplinary Authority are entirely based on those statements of passengers without there being any other material to bring home the misconduct of the delinquent workman.

From the principle laid down by this Court in the decision referred supra, it is clear that if the findings of the disciplinary authority are totally based on the statements of passengers; examination of passengers is imperative and that the cash balance is required to be checked to connect the delinquent employee with such cash and ticket irregularities. In the present case, the statements of ticket less passengers were recorded on the spot and some of them were examined before the domestic enquiry officer before examining T.T.Is, who conducted check of the bus. In such case, non-examination of other ticket less passengers is not fatal to the present case; even otherwise, the fact findings do not call for interference of this Court, in view of the limited scope of judicial review under Article 226 of the constitution, unless it is shown that the Tribunal miserably failed to appreciate the evidence. In this case, the only contention of petitioner is that statement of ticket less passenger about his inebriant condition was not taken into consideration, but as it is an afterthought same cannot be taken into consideration.

The Apex Court had an occasion to decide the similar situation in ***U.P. State Road Transport Corporation Vs. Suresh Chand Srama***^[10]; wherein, after reviewing entire law on the quantum of punishment and penalty to be imposed against the conductor of the bus of Road Transport Corporation based on the doctrine of proportionality, the Apex Court held that while deciding a case, the Court is under obligation to record reasons, however brief the same may be, as it is a requirement of principles of natural justice. Non-observance of the said principle would vitiate the judicial order.

In the facts of above decision, the Apex Court went into the factual findings recorded by the Courts and concluded that the Industrial Tribunal is under obligation to reappraise the evidence and decide the misconduct of the employee; on this sole ground, Appeal

filed by the Road Transport Corporation was allowed. In the present case, the 1st respondent recorded reasons in brief for his conclusions. By applying the principle laid down in the above decisions, the findings recorded by the 1st respondent cannot be interfered since the order of the 1st respondent is a reasoned one.

One of the contentions of Smt. S.V. Indira, learned counsel for the petitioner, is that the punishment is totally disproportionate to the misconduct and for embezzlement of such a petty amount, punishment of dismissal could not be justified for the reason that it is not the amount embezzled by a delinquent employee but the *mens-rea* to misappropriate the public money be seen.

The Apex Court in ***Municipal Committee, Bahadurgarh Vs. Krishnan Behari***^[11] and in ***Ruston & Hornsby (I) Limited Vs. T.B. Kadam***^[12] held that in a case involving corruption, there cannot be any other punishment than dismissal and no sympathy be shown to such employees and thereby no interference is called for. Decisions of the Apex Court in ***NEKRTC Vs. H. Amaresh***^[13] and ***U.P.S.R.TC. Vs. Vinod Kumar***^[14], are directly to the point in issue wherein it was held that the punishment should always be proportionate to the gravity of misconduct and, however, in case of corruption/misappropriation, the only punishment is dismissal.

In ***Shri Bhagwan Lal Arya Vs. Commissioner of Police, Delhi and others***^[15], the Apex Court, modified the punishment, relying on its earlier decision in ***B.C. Chaturvedi Vs. Union of India***^[16], where the question fell for consideration was whether the High Court/Tribunal can direct the authorities to reconsider punishment with cogent reasons in support thereof or reconsider themselves to shorten the

litigation and observed as follows:

“18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.”

If the principle laid down by the Apex Court in ***B.C. Chaturvedi***¹⁶, is applied to the present facts of the case, it is not proper for this Court to set-aside or reduce the penalty unless the punishment imposed by the appellate authority shocks the conscience of this Court.

In the present facts of the case, the petitioner was removed from service for cash and ticket irregularities misappropriating a petty amount of Rs.9/- and lost confidence of his employer, 2nd respondent herein and for such misappropriation of petty amount, the punishment is only dismissal in view of the law declared by the Apex Court. Hence, and in view of the earlier punishments imposed against the petitioner, I am not inclined to interfere with the fact findings recorded by the 1st respondent so also the punishment imposed against the petitioner.

In view of my foregoing discussion, I find no illegality or irregularity in the order passed by the authorities of 2nd respondent imposing punishment against the petitioner as confirmed by the 1st respondent, warranting interference of this Court. Hence, the finding of

1st respondent herein is confirmed holding this point in favour of the
2nd respondent and against the petitioner.

Accordingly, the Writ Petition is dismissed.

In consequence, miscellaneous petitions, if any, pending in this
Writ Petition, shall stand dismissed. No order as to costs.

**M. SATYANARAYANA MURTHY,
J**

Date: 26-02-2016.
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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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Date. 26-02-2015

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- [\[1\]](#) AIR 1964 SC 477
 - [\[2\]](#) AIR 1958 SC 398
 - [\[3\]](#) AIR 1984 SC 1467
 - [\[4\]](#) AIR 1970 SC 1334
 - [\[5\]](#) 1979 (3) SCC 371
 - [\[6\]](#) 2004 (8) SCC 195
 - [\[7\]](#) 2006 (5) SCC 173
 - [\[8\]](#) 2005 (104) FLR 300
 - [\[9\]](#) 2014 (5) ALT 554
 - [\[10\]](#) 2010 (6) SCC 555
 - [\[11\]](#) 1996 (2) SCC 714
 - [\[12\]](#) 1976 (3) SCC 71
 - [\[13\]](#) 2006 (6) SCC 187
 - [\[14\]](#) 2008 (1) SCC 115
 - [\[15\]](#) 2004 (4) SCC 560

[\[16\]](#) 1995 (6) SCC 749