

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

WRIT PETITION No.8942 of 2001

ORDER:

The Andhra Pradesh State Road Transport Corporation (for short, 'the Corporation') filed this writ petition challenging the award passed by the second respondent - Industrial Tribunal-cum- Labour Court, Anantapur, whereby the second respondent directed the petitioner to reinstate the first respondent with all back wages and all consequential benefits.

02. The first respondent was a Conductor of the Corporation, attached to Dharmavaram Depot. He was initially appointed as an Apprentice Conductor on 11.04.1981 and regularized his services with effect from 11.04.1981. A penalty was imposed on several occasions for cash and ticket irregularities. He was censured 11 times and stoppage of increment was ordered at 12 times prior to his committing the present misconduct, having found guilty.

03. On 27.01.1998 while he was on duty as conductor of Bus bearing No.AP 10 Z 4300 in route Dharmavaram R.S. to Puttaparthi, a check was conducted at stage No.8. During check, it was found that he committed serious misconduct of reissuing tickets which were already issued. On the basis of check report, the first respondent was served with the charge memo dated 17.02.1998 framing the following four charges:

i) For having re-issued the tickets bearing Nos.031/695874 to 877 of Rs.12.00 deno. to a batch of 4 passengers who boarded the bus at Dharmavaram Railway station and bound for Puttaparthi ex. stages 1 to 11, which were already issued in the previous trip as unaccounted from Puttaparthi to Dharmavaram RS which constitutes misconduct under Regulations 28 (xxiii) of APSRTC Employees conduct Regulations, 1963.

ii) For having kept the tickets bearing Nos.031/695873, 878, 879, 881, 882 and 883 of Rs.12/- deno. tickets (E.6) in your cash bag with punching at 11 on 'nundi side' at 01 on 'Waraku side' which was noticed by the checking officials at the time of check which constitutes misconduct under Regulations 28(xxxi) of APSRTC Employees Conduct Regulations, 1963.

iii) For having closed the ticket numbers of Rs.12.00 deno. as 878 instead of closing the actual closing No. of 884 which was noticed by the checking officials at the time of check which constitute misconduct under Regulations 28(xxv) of APSRTC Employees Conduct Regulations, 1963.

iv) For having had an amount of Rs.166.00 (Rupees one hundred and sixty six only) the excess in your bus cash at the time of check which constitutes misconduct under Regulations 28(xxiv) of APSRTC Employees Conduct Regulations, 1963.

04. On receipt of the charge memo, the first respondent submitted a detailed explanation, received by the Corporation Office on 13.02.1998, wherein he totally denied the charges framed and communicated to him, while pleading that he had no intention to commit misconduct or irregularity. On consideration of the explanation, a regular departmental enquiry was ordered and conducted, giving him sufficient opportunity at every stage. During enquiry, one of the officers participated in the check, Sri

A. Venkatayya, was examined in proof of the charges, in the presence of the first respondent. Though the Enquiry Officer afforded opportunity to cross-examine the witnesses several times, the first respondent did not choose to cross-examine him, but certified that the statements of the witnesses were properly recorded and he does not intend to cross-examine the other checking officials. The first respondent himself was examined, to support his defence. However at the conclusion of enquiry, the Enquiry Officer came to definite conclusion that the petitioner was guilty of grave misconduct or gross negligence,

submitted the Enquiry Report to the Depot Manager, Dharmavaram, for imposing necessary penalty. In turn, the writ petitioner furnished copy of the report to the first respondent calling for his written objections, accordingly, he submitted his written objections / comments on 11.08.1998. On consideration of the Enquiry Report and objections, a show cause notice for removal, dated 12.08.1998 was issued to the first respondent. Thereupon he submitted his explanation dated 21.08.1998. Upon fresh consideration of the material on record and the explanation of the first respondent, disciplinary authority passed an order removing the first respondent from service by order dated 26.08.1998, while treating the period of suspension as 'not on duty' for the purpose of leave, wages and increments.

05. Aggrieved by the removal order, the first respondent preferred an appeal before Deputy Chief Traffic Manager, Anantapur, the same was dismissed confirming the order of removal.

06. Having dissatisfied with the order of removal by the second petitioner and confirmation by the appellate authority, the Deputy Chief Traffic Manager, the first respondent filed I.D. No.238 of 1998 before the second respondent challenging the order on various grounds.

07. Before the Tribunal, the Corporation filed its counter and contested the matter, but on the sole ground that no opportunity to cross-examine the witnesses was afforded to the first respondent, as such the enquiry was in violation of principles of natural justice, ignoring the material available on record including the endorsement of the first respondent during trial expressing his intention not to cross-examine any of the witness, passed the impugned order of reinstatement of the first respondent with all consequential benefits including back wages.

08. The award passed by the second respondent – Tribunal under challenge is without any basis and the Tribunal was swayed

away with the submissions without looking into the material available on record and that apart, the order of removal was merged in the order passed by the Deputy Chief Traffic Manager, Ananthapur, thereby the award setting aside the removal order passed by the second respondent does not arise, but the Tribunal on erroneous approach set aside the order of removal instead of setting aside the order in appeal dated 26.12.1998.

09. It is further contended that the misconduct of the petitioner is grave in nature and the Tribunal did not look into the loss of confidence of employee on account of cash and ticket irregularity, failed to consider oral and documentary evidence in proper perspective and committed a serious illegality. The Tribunal while accepting that an opportunity was afforded to the first respondent during domestic enquiry, in paragraph 5 of the Order accepting the ticket irregularities, but in paragraph 7 ignoring the findings in paragraph 5, came to a different conclusion and held that the first respondent was not afforded sufficient opportunity to cross-examine the witnesses and thereby set aside the order passed by the second petitioner and confirmed by the Deputy Chief Traffic Manager, Anantapur, without recording any reasons. Finally, it is contended that the award under challenge is illegal and contrary to the provisions of law, and prayed to set aside the order passed by the second respondent - Tribunal.

10. During course of hearing, learned Standing Counsel for the petitioners - Corporation, Sri Aravala Rama Rao, contended that the Tribunal totally ignored the material on record, more particularly, the endorsement of the first respondent that he has no intention to cross-examine the witnesses and apart from that in paragraph 5, the second respondent - Tribunal concluded that a sufficient opportunity was afforded, but without any reason changed its opinion in paragraph 7 of the order. Therefore, these findings of the Tribunal in paragraph 7 is

inconsistent with paragraph 5, but exercised power under Section 11-A of the Industrial Disputes Act, 1947 (for short, 'the Act') to grant reliefs without considering the fact of such gross negligence/misconduct of the petitioner regarding loss of confidence etc., to support his contention placed reliance on a Judgment of this Court reported in **Depot Manager, APSRTC, Barkatpura Depot v. Mohd. Khan and another**^[1].

11. Whereas the learned counsel for the first respondent, Sri Manohar Reddy Mallasani, argued totally in support of the findings of the second respondent - Tribunal while contending that when the second respondent – Tribunal invoked the jurisdiction under Section 11-A of the Act, unless this Court found such invocation is perverse, the award of the second respondent – Tribunal cannot be set aside and prayed to dismiss the writ petition.

12. Considering the rival contentions, perusing the material available on record, the point that arise for consideration is,

Whether an opportunity was afforded to the first respondent to cross-examine the Management Witnesses and whether plea of violation of principles of natural justice was raised during domestic enquiry and in the appeal. If not, whether such plea can be entertained by the second respondent – Tribunal to set aside the order of removal which was passed by the second petitioner confirmed by the Deputy Chief Traffic Manager, Ananthapur, dated 26.12.1998?

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POINT:

13. The jurisdiction of the Court in judicial review under Article 226 of the Constitution of India is limited and if there is any violation of statutory provision or rule, this Court may interfere with the orders of the Tribunal or Subordinate Courts.

14. 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***^[2], ***Nagendra Nath Bora and another Vs. The Commissioner of Hills Division and Appeals, Assam and others***^[3], ***Sadhu Ram Vs. Delhi Transport Corporation***^[4], ***Parry and Company Limited Vs. P.C. Pal, Judge of the Industrial Tribunal-II, Calcutta and others***^[5], ***Shankar Chakravarti Vs. Birtannia Biscuit Company Limited and another***^[6], ***Municipal Corporation, Faridabad Vs. Siri Niwas***^[7], ***Municipal Council, Sujanpur Vs. Surinder Kumar***^[8] and ***DGM, Oil and Natural Gas Corporation Limited and another Vs. Ilias Abdul Rehman***^[9].

15. In ***Syed Yakoob***¹, 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.

16. 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.”

17. 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.”

18. Similarly, in **Nagendra Nath Bora²**, 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.

19. The learned Standing Counsel appearing for the Corporation drawn the attention of this Court directly to a case pertaining to an Award passed by the second respondent - Tribunal which went up to Supreme Court in **Parry and Company Limited⁴**, wherein the Full Bench of the Apex Court reiterated the same principle.

20. 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.

21. Keeping in mind the limits of this Court to issue a writ of *Certiorari* under Article 226 of the Constitution of India, I would like to advert to the award passed by the second respondent – Tribunal. In paragraph 5 of the award, the Tribunal specifically recorded that in the enquiry, the conductor was given an opportunity to explain his case and also to cross-examine the checking officials, the conductor was fully satisfied with the conditions of the Enquiry Officer and he stated that the report of the Enquiry Officer and other records were produced by the Depot Manager, Dharmavaram, the conductor admitted in his enquiry as well as in the reply to the charge sheet on 26.01.1998 at 18

hours Puttaparthi - Dharmavaram RS trip about 39 passengers boarded at Puttaparthi and after counting the number of passengers, he punched 39 tickets of Rs.12/- from Puttaparthi-Dharmavaram RS but at the last movement since another bus arrived, about 10 passengers alighted from his bus, thereby 10 tickets remained without issuing, which were already punched from stage No.11 to 10. He also added that he thought that he has to bear Rs.120/- due to left over punched tickets and hence issued 4 tickets early morning trip from Dharmavaram RS to Puttaparthi on 27.01.1998 and he had forgotten to endorse on the tickets as wrong punch tickets. The contention of the conductor that among the left over advanced punched tickets from stage 11 to 10 four tickets were issued at 03.00 A.M. Dharmavaram RS to Puttaparthi trip on 27.01.1998.

22. These findings regarding compliance of principles of natural justice is suffice to conclude that sufficient opportunity was afforded to the first respondent to cross-examine the witnesses, but suddenly the second respondent - Tribunal took an 'U' turn in paragraph 7 and concluded that the Enquiry Officer has failed to afford opportunity to cross-examine the witnesses, that the Enquiry Officer has failed to explain as to why opportunity was not given to the first respondent to cross-examine the witnesses on behalf of the Management. In the absence of any explanation, the contention of the first respondent has to be accepted, accordingly accepted. These inconsistencies or nonchalant approach of the second respondent - the Tribunal is totally perverse and the finding recorded by the Tribunal regarding failure to afford opportunity to the first respondent is a grave error in view of the findings recorded in paragraphs 5 and 7. When the second respondent - Tribunal did not consider the material available on record, the award under challenge cannot be sustained at this stage on account of violation of principles of natural justice, due to failure to afford reasonable opportunity to the first respondent to cross-examine the Management Witnesses. Since no plea of violation of principles of

natural justice was raised even in the writ affidavit but no witnesses were examined by both parties. In the absence of specific plea and evidence in support of it, recording any finding is nothing but perverse.

23. The main allegation made against the first respondent is that he reissued the tickets which were already issued by him to the passengers travelling in the bus at the time of check and the explanation of the conductor of the bus before the concerned authority was that when the first respondent removed tickets from the tray to issue those tickets to the passengers in the bus, another bus arrived there and some of the passengers left the bus and boarded in the other bus. Therefore, those tickets were not issued and kept with him and such practice of punching tickets and keeping with the Conductor itself shows that he was gross negligent in discharging his duties.

24. The normal procedure is that whenever the ticket is being issued to the passengers, he will remove the ticket from the ticket tray and punch it depending upon the stage, issue the same after collection of necessary fare from the passenger. Removing tickets at a time and punching those tickets is unknown practice and it is against the Rules. Hence, the explanation offered by the first respondent is not plausible explanation.

25. However, the evidence on record established the admission of the first respondent both in the explanation to the charge memo and other explanation that on 26.01.1998 he punched 10 tickets each worth Rs.12/- denomination to issue those tickets to 10 passengers, who boarded the bus at stage No.11 (Puttaparthy) and punched them at stage 11 and 01 and that out of those punched 10 tickets, he issued four tickets to the passengers, who boarded the bus at Dharmavaram on 27.01.1998 and kept those tickets in his cash bag and that the checking officials found excess cash Rs.166/- in cash bag, he closed the tickets number of 12 deno. as 878 and did not found in SR i.e. Statistical Register on 26.01.1998 for the sale of those tickets. Such

admission in the explanation and in the evidence before the enquiry authorities is suffice to conclude that the first respondent is guilty of gross negligence/ misconduct. But the second respondent - Tribunal totally ignored the material on record, passed award on sympathies. Therefore, non consideration of admissible evidence by the second respondent - Tribunal is an error, warranting interference of this Court while exercising the power under Article 226 to issue writ of *Certiorari*.

26. A similar question came up before this Court in **A.V.Swamy v. A.P.S.R.T.C., represented by its Managing Director and others**^[10] wherein 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.

27. From the principle laid down in the judgment referred to 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.

28. In the present case, the admission of the first respondent – employee besides the other material and variation in the cash bag of the conductor in the bus Rs.166/-, is suffice to conclude that the first

respondent is guilty of misconduct.

29. The Apex Court had an occasion to decide similar question in ***U.P.State Road Transport Corporation v. Suresh Chand Srama***^[11] after reviewing the entire law on quantum of punishment to be imposed against the conductor of the bus of Road Transport Corporation based on the doctrine of proportionality 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.

30. In the facts of the above judgment, the Apex Court went into the fact finding recorded by the courts and concluded that Industrial Tribunal is under obligation to re-appraise and evidence of misconduct of employee, on the sole ground, Appeal filed by the Road Transport Corporation was allowed.

31. In the present case also, the second respondent – Tribunal, while passing the award, did not advert to the evidence available on record and more particularly to find out whether sufficient opportunity was afforded to the first respondent-employee, but recorded the inconsistent findings in two different paragraphs in haphazard manner totally ignoring the explanation of employee and his evidence in enquiry. By applying the principles laid down in ***Suresh Chand Srama's*** case referred to supra, this Court can go into the evidence which is suffice for arriving at conclusion by the Tribunal, if it is perverse and against the settled principles of law, the court can set aside the award passed by the Tribunal.

32. The learned Counsel for the respondent further contended that the punishment imposed against the respondent is harsh and for such irregularity the petitioner cannot be removed from service. The Apex Court in ***Municipal Committee, Bahadurgarh Vs. Krishnan***

Behari^[12] and in **Ruston & Hornsby (I) Limited Vs. T.B. Kadam**^[13] 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**^[14] and **U.P.S.R.TC. Vs. Vinod Kumar**^[15], 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.

33. In **Shri Bhagwan Lal Arya Vs. Commissioner of Police, Delhi and others**^[16], the Apex Court, modified the punishment, relying on its earlier decision in **B.C. Chaturvedi Vs. Union of India**^[17], 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.”

34. 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.

35. In the present facts of the case, the petitioner was removed from service for cash and ticket irregularities misappropriated Rs.166/- and for such misappropriation, the punishment is only dismissal, in view of the law declared by the Apex Court. Hence, the punishment imposed by the second petitioner, the Tribunal cannot be interfered with, but the Tribunal based on the submissions of the first respondent – employee erroneously concluded that sufficient opportunity was not afforded to the first respondent during enquiry by the Enquiry Officer, though no such contention was raised in the writ petition and no evidence is adduced.

36. The learned Standing Counsel for the 2nd petitioner mainly contended that when such serious irregularity is committed by the employee, removal alone is punishment which he deserves and placed reliance on **Mohd. Khan and another** referred to supra wherein this Court held that the scope of interference in writ petition with the award passed by Labour Court is very limited, however, if the finding recorded by the Enquiry Officer or the one arrived at by Labour Court is contrary to evidence on record, the High Court can interfere with it. The denomination of a ticket either not issued or already issued becomes immaterial once an act of dishonesty is proved on the part of the conductor. As per my observation in earlier paras, the finding of the second respondent/ Tribunal is not based on any plea and evidence in support thereof. Hence, the interference is justifiable, as the second respondent committed prejudicial error.

37. Applying the principle laid down in the above judgment to the

present facts of the case this Court, while exercising the judicial review under Article 226 of the Constitution of India, can interfere with the finding of the second respondent - Tribunal when the finding of the Tribunal is contrary to the evidence on record. Hence, the point is answered against the first respondent and in favour of the writ petitioners.

38. Therefore, I find that the finding of the Tribunal is erroneous and contrary to the evidence available on record without any pleading.

39. In the result, the Writ Petition is allowed. Hence the award passed by the second respondent/ Tribunal in I.D. No.238 of 1998 is set aside, confirming removal of the first respondent from service. No costs.

40. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

M. SATYANARAYANA MURTHY, J

Date:26.02.2016

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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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[\[1\]](#) 2014(6) ALT 410 (D.B.)
[\[2\]](#) AIR 1964 SC 477
[\[3\]](#) AIR 1958 SC 398
[\[4\]](#) AIR 1984 SC 1467
[\[5\]](#) AIR 1970 SC 1334
[\[6\]](#) 1979 (3) SCC 371
[\[7\]](#) 2004 (8) SCC 195
[\[8\]](#) 2006 (5) SCC 173
[\[9\]](#) 2005 (104) FLR 300
[\[10\]](#) 2014(5) ALT 554
[\[11\]](#) 2010 (6) SCC 555
[\[12\]](#) 1996 (2) SCC 714
[\[13\]](#) 1976 (3) SCC 71
[\[14\]](#) 2006 (6) SCC 187
[\[15\]](#) 2008 (1) SCC 115

[\[16\]](#) 2004 (4) SCC 560

[\[17\]](#) 1995 (6) SCC 749