

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION NO.538 OF 2010

ORDER:

This writ petition is filed by the Depot Manager, APSRTC, Asifabad, Adilabad District, challenging the award, dated 10-01-2008 in I.D.No.94 of 2005 passed by the 2nd respondent-Chairman-cum-Presiding Officer, Industrial Tribunal-cum-Labour Court, Godavarikhani, Karimnagar District (for short 'the Tribunal').

2. Facts of the case are that the 1st respondent herein was appointed as a Conductor on daily wage basis on 16-04-1996 and subsequently, his services were regularized as Conductor Grade II w.e.f.01-01-1998. He suffered penalties by deferment of annual increments for four times and suspension for one time. However, while discharging the duties in bus No. AP10-Z-892 on 06-10-2003 on route Kagaznagar to Babasagar, a check was exercised at stage No.14 at about 19.30 hours by the checking officials of Karimnagar. During the check, a cash irregularity of Rs.18/- by re-issue of ticket of Rs.6/- each to three lady passengers was found. The checking officials confiscated the said tickets after obtaining statements from the passengers and from the 1st respondent. A charge memo was prepared and was issued to the 1st respondent. He was placed under suspension on 14-10-2003 and was charge sheeted mentioning the two charges. The 1st respondent submitted his explanation to the charge sheet, which was found unsatisfactory. An Enquiry Officer was appointed and after enquiry, he submitted a report. After submission of report by the Enquiry Officer, show-cause notice was issued to the 1st respondent for removal of service and the 1st respondent submitted his reply on 15-03-2004. After considering the reply, an order of removal of 1st respondent from service was passed on 27-03-2004. Though the 1st respondent preferred an appeal and review against the order of removal, they were rejected on 01-07-2004 and 13-07-2005 respectively. Challenging the removal, the 1st respondent filed I.D. No.94 of 2005 before the Tribunal, which passed impugned order, dated 10-01-2008 setting aside the removal of the 1st respondent from service and directing reinstatement without back-wages. It also

directed reckoning of service rendered by him for the purpose of pensionary benefit and not for increment or promotion and it also recorded that the conduct of the 1st respondent for the next two years shall be observed. Pursuant to the said order, dated 10-01-2008, the 1st respondent was reinstated in service. But, the very award itself is challenged in the present writ petition.

3. The charges levelled against the 1st respondent is as follows:

“1. For having violated the rule issue and start which is serious misconduct in terms of Reg.28 (xxxii) of AOPSRTC employees (conduct) Regulations, 1963.

2. For having collected an amount of Rs.18/- @ Rs.6/- from each from three lady passengers who boarded your bus at Sirpur and bound for Muthyampet ex-stages 11 to 14 and issued invalid tickets bearing Nos.178/334807, 178/334814 to 334815 of Rs.7/- deno., to the above passengers, which were already issued and accounted at stage No.7 i.e., Kagaznagar, thus you have recollected the already issued tickets from earlier boarded passengers and again reissued the same to the above said passengers which is serious misconduct in terms of Reg.28 (xxiii) of APSRTC employees (conduct) Regulations, 1963.”

4. As stated above, against the order of removal from service, the 1st respondent preferred I.D.No.94 of 2005 and no oral evidence was let in either on behalf of the petitioner herein or on behalf of the 1st respondent herein. The 1st respondent herein marked Exs.W1 to W3 and the management marked Exs.M1 to M26.

5. The Tribunal accepted the findings recorded by the Enquiry Officer in respect of the above charges. The 1st respondent took a plea that the statement of lady passengers was recorded after checking and her Thumb Impression was obtained without reading the contents. She later on denied the irregularity and stated that the 1st respondent was not responsible for the irregularity. The Tribunal after taking into consideration the admission made by the 1st respondent before the checking officials, brushed aside the plea taken at a later point of time before the Tribunal stating that the statement was obtained without giving him sufficient time to think over the matter. The Tribunal recorded the finding with regard to the charges in favour of the petitioner herein and against the 1st respondent herein. However it felt that the punishment

imposed against the 1st respondent herein for the irregularity of Rs.18/- is shockingly disproportionate and modified the punishment as stated above with the following observations.

“When the powers U/Sekc.11-A of the ID Act are being invoked by this court is required to examine the connected parameters namely nature of the charge proved in this case is reissued three tickets an amount of Rs.18/- to the illiterate 3 lady passengers. In this case the petitioner's length of the service, he was initially engaged as a conductor on daily wage basis in the year 1996 and he was regularized in the year 1998 and the date of removal is 2004, so he worked in the corporation for 8 years. The past record of the petitioner imposed by the respondent against the petitioner 5 times, but removal is the first time. The petitioner counsel contended the citation filed by the respondent law officer's Apex Court judgment 8 passengers having tickets with them, but they were invalid tickets used and accounted in the SR in the earlier trip. Modified the award of the Labour Court which has been reinstated in service but directed without back wages. The respondent law officer cited decision is applicable as it is similar to the facts of the present case. In this case only 3 tickets. The misconduct of the petitioner is not a corruption or theft fabrication of documents etc., and these misconducts are sufficient to impose major punishment, but in this case the misconduct of reissue of 3 tickets an amount of Rs.18/- only. For that punishment imposed by the respondent-management corporation is disproportionate to the misconduct of the petitioner. Some minor punishment would have been sufficient. In this case the petitioner is aged about 45 years and there is no scope for getting of any alternative employment at this over age. The fault committed by the petitioner there is no check for that mistake committed by the petitioner the punishment given by the respondent to the petitioner is excessive. In this case the passenger witness not supported the respondent-management case as she was produced and examined by the petitioner side. The petitioner had already suffered the punishment of suspension and all these years from the date of removal without job moved around the court. The court must appreciate the nature of misconduct reissuing of three tickets Rs.18/- only, its effect the attended circumstances under which the misconduct has been done out of ordinary human weakness. On the punishment of removal from service, he and his family members are suffering for food and facing financial problems. It is seen that the question of severity of punishment has to be considered in the strict comparison with the misconduct. Such a comparison is looked into which considering the question of nature of punishment. These are in my opinion are the mitigating factors which warrant the necessity of recording a finding that the punishment in this case was not proportionate to the proved misconduct. For the

purpose of deciding the proportionality of punishment in exercise of its powers U/Sec.11-A of the ID Act. Having considered on the facts circumstances and probabilities of the case and basis on which the punishment of removal imposed on the petitioner. It would be appropriate if modify the punishment into lesser one.

Hence, in my view the petitioner ex-conductor will be given a fresh opportunity to improve his excellence in the performance of his duties. To that effect modify the order of removal to some minor punishments, it would be sufficient and test upon to set aside the punishment of removal as the punishment is not proportionate. In my considered opinion this court while exercising its jurisdiction vested in it U/Sec. 11-A of ID Act, the question relating to proportionality and in exercise of the same, I modify the punishment order by setting aside the order of removal passed by the respondent.”

6. Even in case of proof of irregularity, discretionary power is conferred on the Tribunal. The Tribunal gave its reasons for modifying the punishment imposed against the 1st respondent and the reasons assigned by the Tribunal cannot be held to be perverse. The Tribunal also observed that performance of the 1st respondent should be observed for a period of two years and when the matter is taken up today, learned counsel for the petitioner fairly submitted that the 1st respondent did not indulge in any irregularity after reinstatement.

7. Learned counsel for the petitioner relied on a decision reported in **U.P.STATE ROAD TRANSPORT CORPORATION V SURESH CHAND SHARMA** ^[1]. In this decision, the Supreme Court held that the punishment should always be proportionate to the gravity of the misconduct. However, in a case of corruption/misappropriate, the only punishment is dismissal. In order to modify the punishment, the Tribunal exercised its power of discretion and the exercise of said power cannot be held to be arbitrary. In the light of the reasons given by the Tribunal, the writ petition is liable to be dismissed.

8. Accordingly, the writ petition is dismissed. No order as to costs. Miscellaneous petitions, if any pending in this writ petition shall stand closed.

A.RAMALINGESWARA RAO, J

DATED: 16-03-2016

Hsd

[\[1\]](#) (2010) 6 SCC 555