

HONOURABLE SRI JUSTICE S.RAVI KUMAR

WRIT PETITION No.7396 OF 2003

Dated 27-1-2016

Between:

N.Dharma Reddy.

..Petitioner.

And:

The Industrial Tribunal-cum-Labour Court, Anantapur
represented by its Presiding Officer and another.

..Respondents.

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HONOURABLE SRI JUSTICE S.RAVI KUMAR

WRIT PETITION No.7396 OF 2003

ORDER:

This writ is filed to quash award dated 13-12-2002 in I.D.No.No.269 of 2000 on the file of Industrial Tribunal-cum-Labour Court, Ananthapur.

Petitioner herein was conductor in A.P.S.R.T.C. Kurnool-II Bus Depot. On 5-12-1999 petitioner while discharging his duties as conductor on bus bearing No.3083 on route from Nandyal to Kurnool, check took place at stage No.2 around 17.45 hours and checking officials noticed certain irregularities. The checking officials noticed that five passengers who boarded the bus at Venkanna Bavi to go to 'B' Camp, paid a sum of Rs.15/- at the rate of Rs.3/- per each passenger and the petitioner issued used tickets which were already sold and accounted in SR.No.A.5/2789054 dated 5-12-1999. Thereafter, a charge memo was issued to the petitioner and as the explanation offered by the petitioner was not satisfactory, Enquiry was ordered and enquiry Officer submitted his report on 5-5-2000 holding that the charges are proved. Thereafter, basing on the report of Enquiry Officer, punishment of removal from service, is ordered. Petitioner filed an appeal, thereafter, review against the said order and both the appellate authority and reviewing authority dismissed the claim of petitioner and confirmed the removal order. Then the petitioner raised dispute before

Labour Court and Labour court, on a consideration of material on record, held that the charges leveled against the petitioner are duly proved and upheld the punishment by observing that the petitioner is not entitled to any relief under Section 11-A of the Industrial Disputes Act. Now challenging the same, present writ petition is filed.

According to petitioner, Labour Court failed to see that the passengers stated before the enquiry Officer that they boarded the bus at Carbide factory and one of their relative who was in a drunken condition raised quarrel with service conductor, in the meantime, check took place. According to petitioner, Labour Court failed in granting any relief to the petitioner and that the award passed by the Labour Court is illegal, arbitrary, unjust and against the principles of natural justice.

Heard both sides.

Advocate for petitioner submitted that the petitioner rendered unblemished service to the respondent-corporation from 1985 and both the Enquiry Officer and Labour Court failed in considering the unblemished service of petitioner over a period of 14 years. He further submitted that the Enquiry Officer has not followed the principles of natural justice in conducting enquiry and even the authorities without considering the explanation of the petitioner appointed Enquiry Officer. He further submitted that Labour court failed to notice that the enquiry was conducted without following the procedure and principles of natural justice and mechanically confirmed the findings of the Enquiry Officer. He further submitted that punishment of removal is disproportionate to the charges levelled and for these reasons, the award of Labour Court dated 13-12-2002 is liable to be quashed and the respondent has to be directed to reinstate the petitioner.

On the other hand, advocate for Respondent Corporation submitted that this court cannot interfere with the conclusions of Enquiry Officer and the findings of the Labour Court by reappreciating evidence and it can only interfere if the enquiry was not in accordance with the procedure

established by law and contrary to principles of natural justice.

He further submitted that petitioner was given opportunity by the Enquiry Officer and he followed procedure established and that there is no illegality in conducting enquiry. He further submitted that even the petitioner has cross-examined the witnesses of department and participated in the enquiry and he has not raised any objection with regard to the procedure followed by the Enquiry Officer during enquiry proceedings, therefore, the contentions raised are not at all tenable and that the labour Court has rightly refused to interfere with the findings of the Enquiry Officer and that the writ is liable to be dismissed.

As already referred above, petitioner is served with a charge memo dated 18-12-1999, according to which, he collected Rs.15/- from five passengers but issued tickets already sold and accounted. At the time of check, Checking Inspector recorded statement of passengers. During enquiry, the Traffic Inspector Sri S.V.Ramana was examined as a witness besides Sri K.Shekar Reddy who scribed the statements of passengers and Smt.Rangamma one of the passenger were examined. Writ petitioner is also examined himself as a witness. Considering the statements of these persons, the Enquiry Officer found that charges are duly proved and the disciplinary authority on the basis of Enquiry Officer's report imposed punishment of removal holding that the charges are of serious in nature. This Enquiry Officer report is upheld by the appellate authority and reviewing authority on departmental side, and by the Labour Court on judicial side.

The main grievance of the writ petitioner is that due procedure is not followed by the Enquiry Officer and that aspect was not at all considered by the departmental authorities (appellate authority and reviewing authority) and the Labour Court.

Learned counsel for the writ petitioner mainly focused that the disciplinary authority cannot make use of material collected during preliminary enquiry in order to give a finding

because the delinquent will have no opportunity to meet such material.

To support his argument, he mainly relied on the judgment of this court in *K.DAVID WILSON v. SECRETARY TO GOVERNMENT, LAW DEPARTMENT (LEGISLATIVE AFFAIRS AND JUSTICE), HYDERABAD AND ANOTHER*

(^[1]) wherein it is held as follows:

“A departmental enquiry conducted for the purpose of disciplinary action against the public servant is not an empty formality. It is a serious proceeding intended to give the delinquent a chance to meet the charges and prove his innocence. The right of the delinquent officer to cross-examine witnesses who give evidence against him is a valuable right and in order to effectively exercise this right, it is necessary that the examination-in-chief of the witnesses should be recorded in the presence of the party against whom the deposition is made. An enquiry wherein examination in chief has been recorded in the absence of the person charged though he is allowed to cross-examine the witness, cannot be said to have been held in accordance with the rules of natural justice.”

In that decision, there was a preliminary enquiry report and the Enquiry Officer mainly relied on the material collected during preliminary enquiry without giving any opportunity to the delinquent therein to meet that material. Under those circumstances, this court held that preliminary report was only to decide and assess whether it would be necessary to take disciplinary action against the delinquent and it does not fall any foundation for passing order of removal against delinquent.

In this case, the Enquiry Officer examined witnesses both on behalf of department and on behalf of delinquent and on the basis of such material only, report was given holding that charges are proved.

As seen from the record, delinquent has cross-examined the departmental witnesses and he himself deposed as a witness rebutting the contention of the departmental witnesses, the Enquiry Officer by weighing

evidence of both parties held that charges are duly proved, therefore, the above referred decision is no way applicable to the facts of this case and the contention of the writ petitioner cannot be sustained.

As rightly pointed out by advocate for respondent, this court in exercise of powers under Section 226 and 227 of Constitution of India cannot reappreciate evidence nor interfere with the conclusion of enquiry proceedings unless those findings are wholly arbitrary and based on no evidence.

Honourable Supreme Court in *UNION OF INDIA AND OTHERS v. P.GUNASEKARAN* (^[2]) held as follows:

“High Court in exercise of its powers under Article 226 and 227 cannot venture into reappreciation of evidence or interfere with conclusions in enquiry proceedings if the same are conducted in accordance with law, or go into reliability/adequacy of evidence, or interfere if there is some legal evidence on which findings are based, or correct error of fact however grave it may be, or go into proportionality of punishment unless it shocks conscience of court. It can only consider whether enquiry held by competent authority was in accordance with the procedure established by law and principles of natural justice, whether irrelevant or extraneous considerations and / or exclusion of admissible or material evidence or admission of inadmissible evidence have influenced decision rendering its vulnerable.”

It further held “It can interfere where finding is wholly arbitrary and capricious based on no evidence which no reasonable man could ever arrive at. In disciplinary proceedings, High Court is not and cannot act as second court of first appeal.”

As seen from the material, Enquiry Officer has given every opportunity to the delinquent i.e, petitioner herein and

followed the procedure contemplated under rules and he has not acted in any arbitrary manner.

On a consideration of the entire material on record, I am of the considered view that the Enquiry Officer has not violated the principles of natural justice and there is no arbitrariness in holding that the charges are duly proved against the writ petitioner and the Labour court rightly accepted the findings of the Enquiry Officer and that there are no grounds to interfere with the award of the Labour court.

For these reasons, this Writ Petition is dismissed as devoid of merits. No costs.

As a sequel to the disposal of this writ petition, Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE S.RAVI
KUMAR

Dated 27-1-2016.

Dvs.

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Dvs

[\[1\]](#) 2001(5) ALT 65 (D.B.)

[\[2\]](#) (2015) 2 SCC 610