

HON'BLE SMT JUSTICE ANIS

WRIT PETITION No.5708 OF 2003

ORDER :

This writ petition is filed by the first petitioner, under Article 226 of the Constitution of India, to issue writ of *Certiorari* to quash the award dated 22.06.2002 passed in I.D.No.74 of 2000 on the file of the Industrial Tribunal Cum., Labour Court, Visakhapatnam as illegal, arbitrary and contrary to the established principles of law and consequently, to direct the first respondent/Andhra Pradesh State Road Transport Corporation to reinstate the first petitioner into service with continuity of service, all attendant benefits and back wages.

2. It is the case of the first petitioner that he was appointed as conductor in the first respondent Corporation on 14.11.1978 and discharging duties to the satisfaction of his seniors. He while conducting the bus on 26.07.1999 on route Kakinada to Ravulapalem, the checking officials exercised a check and found that the first petitioner committed serious cash and ticket irregularities. First petitioner submitted his spot explanation and thereafter, he was placed under suspension and charge sheet was issued on 30.07.1999 framing three charges against him. After receiving the charge sheet, first petitioner gave an explanation and not satisfied with the explanation a domestic enquiry was conducted by the enquiry officer and submitted a report on 08.10.1999. After receiving the report, the first respondent issued show cause notice of removal on 23.10.1999. First petitioner submitted his explanation to the show cause notice. But, without considering the facts and without going into the merits of the case, the first respondent issued proceedings and removed the first petitioner from service. First petitioner preferred appeal and the same was dismissed on 06.03.2000. Further, he also preferred

review and the same was rejected on 11.04.2000 confirming the orders. Hence, the first petitioner filed I.D.No.74 of 2000 before the Industrial Tribunal Cum., Labour Court, Visakhapatnam. The Tribunal passed the award on 22.06.2002 and dismissed the petition filed by the first petitioner herein. Aggrieved by the award passed by the Tribunal, the first petitioner filed the present writ petition. As the first petitioner died, petitioners 2 to 5 were brought on record.

3. The learned counsel appearing for the petitioners argued that the Industrial Tribunal has not appreciated the evidence on record and also not considered the explanation given by the Workman. The Management also failed to prove that the first petitioner has not issued tickets. Thus, the charges levelled against the first petitioner are false and further contended that the first petitioner never involved in any offence and he has no intention to deceive the Corporation and prayed the Court to impose lesser punishment by imposing cut of increments as he has oldaged parents and family to maintain, and he does not have any other income except the job and finally prayed the Court to quash the award passed by the Industrial Tribunal cum., Labour Court, Visakhapatnam. He relied on the case laws reported in (1) ***Ishwar Chandra Jayaswal v. Union of India and others***^[1], wherein it is held at para 7 as follows:

7. We have already noted that it has not been established that the Appellant had, as a matter of habit or on a wide scale, made illegal demands from Railway servants desirous of obtaining a Fit Certificate. However, since two of the three charges have been proved, we are of the considered opinion that the imposition of compulsory retirement i.e. Penalty 6(vii) would have better and more appropriately met the ends of justice. While this would have instilled sufficient degree of fear in the mind of the employees, it would also not have set at naught several years of service which the Appellant had already given to the Respondent-Indian Railways. We think that deprivation of retiral benefits in addition to loss of service is entirely incommensurate with the charge of the Appellant having taken very small sums of money for the issuance of Fit Certificate to other Railway employees.

(2) **Md. Rasheed v. Managing Director, APSRTC and others**^[2],

wherein it is held at para 9 as follows:

9. In the service of more than two decades, the appellant did not face even one serious charge. The minor punishments of stoppage of increments are said to have been imposed. The service operated by him was of short distance and the passengers keep on boarding and alighting at short distances. This Court is of the view that the relief of reinstatement without backwages and attendant benefits can be granted.

(3) **Delhi Transport Corporation v. Jagdish Prashad**^[3] (W.P.

(C).No.6181 of 2013), wherein the Delhi High Court held at paras 17 & 21 as follows:

17. In the instant case, except for the statement of one of the member of the checking party there is no other evidence to connect the workman of the alleged misconduct of receiving more money from the passenger and issuing tickets of less denomination. In view of the aforesaid evidence available on record, it cannot be said that the findings of the learned Labour Court are in any manner perverse which calls for interference.

21. Following the ratio of this case, keeping in view the fact that the conduct of the workman was not unblemished and it is the case of the corporation that he had been indulging into issuing tickets of lesser denominations to the passengers, and was therefore, issued warnings thrice and his three increments were withheld with cumulative effect, in one inquiry, his services were terminated, however, he was reinstated. Thereafter, a sum of Rs.6,00,000/- approximately was paid to him towards back wages. Now w.e.f. 2006, he is no longer in the employment of the corporation, as such, ends of justice will be met if a lump sum compensation is awarded to him. Accordingly, award is modified by granting a lump-sum compensation of Rs. 5,00,000/- to the workman. The same be paid to him within a period of eight weeks.

(4) **W.P.No.9260 of 2009** of this Court between **M.R.Manikyam v. The A.P.S.R.T.C, Hyderabad and others**, wherein it is held at para 11 as follows:

The impugned award, dated 31.10.2008, in I.D.No.181 of 2005 on the file of the Labour Court-I, Hyderabad is hereby set aside and the respondent authorities are directed to reinstate the petitioner into service with continuity of service, which shall be taken into account only for the purpose of calculating the retirement benefits. It is made clear that the petitioner shall not be entitled for any backwages.

(5) **W.P.No.22479 of 2009** of this Court between **D. Srinivasa Rao v.**

The A.P.S.R.T.C, Hyderabad and others, wherein it is held at para 10 as follows:

It is not in dispute that the petitioner, who served the Corporation between 1998 and 2004, has come to adverse notice for the first time and based on the same he was removed from service. As noted above, the charge against the petitioner was that he has reissued four tickets the value of which was Rs.14/-. It is also not in dispute that the petitioner has not come to adverse notice earlier and that he has not suffered any penalty. The petitioner is also aged about 38 years as on today. Considering all these aspects, I feel that the Labour Court ought to have exercised its discretion under Section 11-A of the Act by imposing a lesser penalty. As it has failed to do so, I feel that it is a fit case for this Court to exercise the discretion under Section 11-A of the Act. Accordingly, the penalty of removal is set aside, and the respondents are directed to reinstate the petitioner into service without back wages and other monetary benefits, except the benefit of past service for re-fixation of pay by taking into account the notional increments between the period of his joining the service till his removal only.

(6) **W.P.No.12474 of 2010** of this Court between **S.V.Suryanarayana v. The A.P.S.R.T.C, Hyderabad and others**, wherein it is held at para 10 as follows:

10. There is absolutely no dispute with regard to the law laid down by the Hon'ble Apex Court with regard to the scope of the enquiry under Article 226 of the Constitution of India. At the same time, it needs to be noted that when the punishment is shockingly disproportionate and is inflicted without being preceded by proper enquiry, the interference of this court under Article 226 of the Constitution of India is certainly permissible to correct the same.

and (7) **W.P.No.24751 of 2002** of this Court between **Bokka Venkateswara Rao v. the Depot Manager, A.P.S.R.T.C and another**, wherein it is held at para 8 as follows:

8. Regarding the quantum of punishment, where charges 1 and 2 which are charges of misappropriation have not been made out and where charge No.3 that the petitioner closed the SR has been made out, I consider that to order reinstatement of the petitioner into service with continuity of service but without attendant benefits and without back wages, would meet the ends of justice.

4. On the other hand, the learned counsel for the first respondent Corporation vehemently opposed for allowing the writ petition on the

ground that the first petitioner is in habit of committing the same mistakes. Originally, the first petitioner joined as a cleaner in the year 1978. Subsequently, he was appointed as conductor with effect from 11.10.1985. He was removed from service in the year 1987 as he was involved in a serious misconduct. As per the orders of the High Court, he was reinstated into service with effect from 09.05.1996. Again, he was suspended on 30.07.1999 and he was removed from service on 03.11.1999 after due enquiry on the charges of cash and ticket irregularities. Therefore, the first petitioner is not an innocent person and the Corporation rightly passed the orders of removal of the first petitioner from service. The Tribunal also after considering the record of the first petitioner, held that he collected an amount of Rs.5/- and failed to issue tickets to two passengers till the passengers reached their destination, which clearly indicates the propensity to be incorrect and dishonest, which the workman failed to issue tickets is established and the removal of workman is justified and dismissed the petition filed by the petitioner, and prayed the Court that the punishments of removal cannot be disproportionate or excessive to the charges levelled against the first petitioner and finally prayed the Court to dismiss the writ petition. He further, relied upon the case laws reported in (1) **Divisional Controller, N.E.K.R.T.C v. H.Amaresh**^[4], wherein it is held at para 25 as follows:

25. *In our view, even short remittance amounts to mis-conduct and, therefore, applying the rulings of this Court, the impugned order ought not to have been passed by the Division Bench ordering reinstatement. We, therefore, have no hesitation to set aside the order passed by the learned Judges of the Division Bench and restore the order of dismissal of the respondent from service. It is stated that pursuant to the order of the Labour Court the respondent was reinstated in service. Since there was no stay granted by this Court the respondent had continued in service of the Corporation. In view of the law laid down by this Court and of the facts and circumstances of this case, the respondent, in our opinion, has no legal right to continue in service any further. We, therefore, direct the*

appellant- Corporation to immediately discharge the respondent from service. However, we make it clear that the salary paid to the respondent and other emoluments during this period shall not be recovered from the respondent. We also make it further clear that in view of the order of dismissal the respondent shall not be entitled to any further emoluments.

(2) **Karnataka bank Ltd., v. A.L.Mohan Rao**^[5], wherein it is held at para 6 as follows:

6. In our view, a gross misconduct of this nature does merit termination. We fail to see what other type of misconduct would merit termination. It is not for the courts to interfere in cases of gross misconduct of this nature with the decision of the disciplinary authority so long as the inquiry has been fair and proper and misconduct proved. In such matters, it is for the disciplinary authority to decide what is the fit punishment. In any case on such a misconduct, it could never have been said that termination of service is not the appropriate punishment."

(3) **V. Ramana v. APSRTC, Visakhapatnam Region and others**^[6], wherein it is held at para 19 as follows:

19. For the reasons aforementioned, we are of the opinion that the quantum of amount misappropriated or embezzled by a delinquent official may not be taken into consideration in deciding the adequacy or otherwise of the punishment and the punishment of removal from service for such embezzlement or misappropriation cannot be termed as shockingly disproportionate.

(4) **Union of India and others v. P. Gunasekaran**^[7], wherein it is held at para 20 as follows:

20. Equally, it was not open to the High Court, in exercise of its jurisdiction Under Article 226/227 of the Constitution of India, to go into the proportionality of punishment so long as the punishment does not shock the conscience of the court. In the instant case, the disciplinary authority has come to the conclusion that the Respondent lacked integrity. No doubt, there are no measurable standards as to what is integrity in service jurisprudence but certainly there are indicators for such assessment. Integrity according to Oxford dictionary is "moral uprightness; honesty". It takes in its sweep, probity, innocence, trustfulness, openness, sincerity, blamelessness, immaculacy, rectitude, uprightness, virtuousness, righteousness, goodness, cleanness, decency, honour, reputation, nobility, irreproachability, purity, respectability, genuineness, moral excellence etc. In short, it depicts sterling character with firm adherence to a code of moral values.

and (5) **North West Karnataka road Transport Corporation v.**

H.H.Pujar^[8], wherein it is held at para 5 as follows:

5. By order dated 21.10.2005, the learned Single Judge held that the order was correct so far as setting aside dismissal order is concerned, direction for reinstatement and continuity of service and consequential benefits. However, the direction relating to back wages was set aside. The writ appeal as noted above, was dismissed on the ground that the same was not maintainable.

5. Considering the contentions of the petitioner as well as the first respondent, the point that arise for consideration is:

Whether the fact finding recorded by the Authorities under Section 2-A(2) of the Industrial Disputes Act, 1947 by the Chairman, Industrial Tribunal Cum., Labour Court, Visakhapatnam in I.D.No.74 of 2000 dated 22.06.2002 can be interfered exercising jurisdiction under Article 226 of the Constitution of India and that whether the Orders passed by the Authorities are in violation of any statutory rule or provision. If so, the Orders are liable to be quashed?

6. **P O I N T:** A perusal of the record shows that first petitioner has worked as conductor in A.P.S.R.T.C, Ramachandrapuram Depot since 14.11.1978. On 26.07.1999, while he was conducting the vehicle No.1467 on the route Kakinada to Ravulapalem, a check took place by the officials and they found ticketless passengers, who boarded the bus at Valangee to go to Narasapurapu peta, and domestic enquiry was conducted by framing the charges and first petitioner was also suspended before giving explanation to the charge memo. After perusing the explanation given by the first petitioner, regular departmental enquiry was ordered and charges were proved. First petitioner was served with a show cause notice. Thereafter, he was removed from service. His appeal and revision were rejected. Aggrieved by the orders of the respondents, the petitioner filed petition under Section 2A(2) of the Industrial Disputes Act, 1947 for reinstatement into the service, backwages and continuity of service and it was dismissed. Hence, he filed this Writ Petition.

7. 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 v. K.S. Radhakrishnan and others***^[9].

8 Similarly, in ***Nagendra Nath Bora and another v. The Commissioner of Hills Division and Appeals, Assam and others***^[10], 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 seek that the Tribunal functions within limits of its authority. Therefore, interference by this Court either under Article 226 or under Article 227 not justified.

9. A perusal of the record also shows that originally, the first petitioner was joined as a cleaner in the respondent Corporation in the year 1978. With effect from 11.10.1985, he was appointed as Conductor. In the year 1987, he was removed from service as he was involved in serious misconduct. This Court ordered reinstatement into service with effect from 09.05.1996. First

petitioner has not stopped his irregularities and on 30.07.1999, he was suspended as he was involved in the case of cash and ticket irregularities. After due enquiry, he was removed from service on 03.11.1999 though the contention of the first petitioner is that he was discharging the duties to the satisfaction of his superiors and he never committed serious cash and ticket irregularities and further, the Management failed to prove the irregularities committed by him due to lack of evidence. Admittedly, once this Court already took a lenient view and reinstated the petitioner into service in the year 1996. But, thereafter, the petitioner again committed serious misconduct, as such, he was suspended on 30.07.1999 and after due enquiry, he was removed from service. Considering the evidence on record, the Tribunal rightly dismissed the petition as punishment of removal cannot be disproportionate or excessive. The petitioners have not made out any case to invoke the jurisdiction under Article 226 of the Constitution of India. Further, the petitioners failed to prove any violation of any statutory rule or provision to exercise under Article 226 of the Constitution of India to issue a writ of *Certiorari*. Therefore, by exercising the power of judicial review under Article 226 of the Constitution of India, this Court cannot interfere with the fact finding recorded by the Tribunal.

10. In the result, the writ petition is dismissed. No order as to costs. Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

ANIS, J

Date: 28.04.2016
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[\[1\]](#) (2014) 2 Supreme Court Cases 748

[\[2\]](#) 2015 (1) ALT 172 (D.B.)

- [\[3\]](#) 226 (2016) DLT200
- [\[4\]](#) (2006) 6 Supreme Court Cases 187
- [\[5\]](#) (1006) 1 Supreme Court Cases 63
- [\[6\]](#) 2001 (5) ALT 180 (F.B.)
- [\[7\]](#) (2015) 2 Supreme Court Cases 610
- [\[8\]](#) (2008) 12 Supreme Court Cases 698
- [\[9\]](#) AIR 1964 SC 477
- [\[10\]](#) AIR 1958 SC 398