

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

Writ Petition No.5539 OF 2005

ORDER:

1 This Writ Petition is filed under Article 226 of the Constitution of India, seeking a writ of certiorari calling for the records from the first respondent and quash the Award passed in I.D.No.94 of 2003, dated 16.09.2004, which was published on 23.12.2004, holding the same as illegal, unjust, contrary to law and perverse and consequently grant the relief of reinstatement into service with continuity of service, back wages and with all other attendant benefits to the petitioner.

2 The facts giving rise to the filing of the present Writ Petition are that the petitioner was appointed as Conductor in the respondent Corporation on 23.03.1991. On 27.04.1998, while the petitioner was conducting the bus bearing No.3217 on the route Vavilala to Godavarikhani, at Stage No.25, the checking officials exercised the check and issued a charge memo alleging that the petitioner had committed cash and ticket irregularities and called for his explanation. On 25.5.1998, the second respondent got issued a charge sheet while keeping the petitioner under suspension. Thereafter, the second respondent initiated regular departmental enquiry and after completion of enquiry, on 25.11.1998 the second respondent got issued a show cause notice to the petitioner calling his explanation why his services cannot be removed basing on the findings of the enquiry officer. Aggrieved by the same, the petitioner filed Writ Petition No.36213 of 1998 on the file

of this Court. The said Writ Petition was allowed directing the second respondent herein to conduct a detailed enquiry after affording reasonable opportunity to the petitioner and the further directed the petitioner to participate in the enquiry without seeking for any adjournment.

3 After completion of the enquiry, the second respondent issued a show cause notice to the petitioner to explain why he cannot be removed from service vide proceedings dated 28.3.2000 for which the petitioner submitted his detailed explanation dated 26.4.2000. Not being satisfied with same, the second respondent removed the petitioner from the service. Aggrieved by the same, the petitioner preferred an appeal to the Deputy Chief Traffic Manager, but the said appeal was dismissed on 21.02.2001. The review preferred by the petitioner to the Regional Manager was also rejected on 30.03.2002. Having no other alternative, the petitioner filed I.D.No.94 of 2003 on the file of the Industrial Tribunal-cum-Labour Court, Godavarikhani challenging the order of removal dated 26.4.2000. The Industrial Tribunal (for short 'the Tribunal') dismissed the said I.D.No.94 of 2003, vide order dated 16.09.2004. Hence the present Writ Petition.

4 Heard the learned counsel for the petitioner and the learned standing counsel for the second respondent.

5 The learned standing counsel for the second respondent submitted that it is not a fit case to interfere with the findings recorded by the Tribunal in view of the

scope of Article 226 of the Constitution of India and placed reliance on the ratio laid down in ***Divisional Controller, KSRTC (NWKRTC) vs. A.T.Mane***^[1] wherein the Hon'ble apex Court held at para No.8 as follows:

8. This Court in the case of *State of Haryana v. Rattan Singh* {(1977) 2 SCC 491} which is also a case arising out of non-issuance of ticket by a conductor held thus: (SCC pp. 491-92)

"In a domestic enquiry all the strict and sophisticated rules of the Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible, though departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Evidence Act. The essence of judicial approach is objectivity, exclusion of extraneous materials or considerations, and observance of rules of natural justice. Fair play is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment, vitiate the conclusion reached, such a finding, even of a domestic tribunal, cannot be held to be good. The simple point in all these cases is, was there some evidence or was there no evidence — not in the sense of the technical rules governing court proceedings but in a fair common-sense way as men of understanding and worldly wisdom will accept. Sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny by court, while absence of any evidence in support of the finding is an error of law apparent on the record and the court can interfere with the finding.

Union of India and others Vs. P. Gunasekaran^[2]

wherein the Hon'ble apex Court held at para Nos.14 and 16 as under:

14. In one of the earliest decisions in *State of A.P. v. S. Sree Rama Rao* {AIR 1963 SC 1723}, many of the above principles have been discussed and it has been concluded thus: (AIR pp. 1726-27, para 7)

"7. ... The High Court is not constituted in a proceeding under Article 226 of the Constitution as a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the

function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution."

16. These principles have been succinctly summed up by the living legend and centenarian V.R. Krishna Iyer, J. in *State of Haryana v. Rattan Singh* {(1977) 2 SCC 491. To quote the unparalleled and inimitable expressions: (SCC p. 493, para 4)

"4. ... in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor textbooks, although we have been taken through case law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fair play is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good."

6 As per the principle enunciated in the cases cited supra, this Court can interfere with the findings recorded by the enquiry officer or the Labour Court/Tribunal, if they are perverse, or, if there is any error apparent on the face of the record.

7 Let me consider the rival contentions of the parties in the light of the above legal principle.

8 The first and foremost contention of the learned counsel for the petitioner is that the enquiry is *non-est* in the eye of law as the enquiry officer conducted the enquiry in English despite the request of the petitioner to conduct the same in Telugu. Per *contra*, the learned standing counsel for the second respondent submitted that the petitioner did not request the enquiry officer at any point of time to conduct the enquiry proceedings in Telugu. To substantiate the arguments, the learned counsel for the petitioner has drawn my attention to 1)

K. Srinivasulu vs. APSRTC, Hyderabad and Others^[3]

wherein this Court held at para No.5 as under:

5. In my considered opinion, the respondents ought to have considered the request of the petitioner, as no prejudice would have been caused to the respondent, if the enquiry is held in Telugu language. After all the principals of natural justice require enquiry to be fair and reasonable. May be the petitioner may not be that much proficient to understand the proceedings, if the enquiry is conducted in English. It is brought to my notice by the learned Counsel for the petitioner that only TTI, along was examined on behalf of the respondent-Corporation, as a witness. The petitioner is stated to have put some questions in Telugu which were translated into English by the Officer concerned. But some of the questions that were put by the petitioner in Telugu have not gone on record is the version of the petitioner.

2) ***G.S.R.Prasad, Machilipatnam, Krishna District vs. The Depot Manager, A.P.S.R.T.C., Avanigadda, Krishna District***^[4]

wherein this Court held at para No.4 as under:

Writ Petitioner in the instant case has questioned the second show cause notice which carries the communication of the proposed punishment on the ground that a tentative decision to punish has been taken before his comments upon the enquiry report have been obtained. The second show cause notice has been issued on 16-10-1996. The

respondent - Corporation has resorted to the same infirm procedure in respect of which the Supreme Court in the case of *Managing Director, ECIL v Karunakar* {AIR 1994 SC 1073} has expressed regret and this Court has made it clear that without obtaining the comment of the delinquent employee, no decision should be taken to punish. Respondent - Corporation, it seems, is obstinately sticking to its procedure in spite of the law of the land having been made quite clear by the Supreme Court in the case of *Karunakar* (supra) and reiterated in the case of *State Bank of Patiala vs. S.K. Sharma* {(1996) 3 SCC 364}. It is difficult in such a situation not to accept the case of the petitioner that he has been prejudiced in his defence because a decision to punish him had already been taken before his comments were obtained upon the enquiry report.

9 As per the principle enunciated in the cases cited supra, the enquiry has to be conducted in vernacular language if the delinquent requests so.

10 A perusal of the record reveals that the petitioner did not submit his explanation to the charge sheet dated 25.5.1998. The record also reveals that the petitioner did not participate in the enquiry even though he was in receipt of the communication. Therefore, the enquiry officer conducted the enquiry in the absence of the petitioner and submitted his report to the disciplinary authority. Thereafter, the second respondent got issued a show cause notice dated 25.11.1998 to the petitioner calling for his explanation as to why he should not be removed from service. The petitioner challenged the said order by way of filing Writ Petition No.36213 of 1998 on the file of this Court. The said Writ Petition was allowed with the following directions:

“For the aforesaid reasons and in the totality of the facts and circumstances, I consider it appropriate to direct the respondents - Corporation to permit the petitioner herein to participate in the enquiry from the stage when it was posted for further enquiry on 21.10.1998. The petitioner shall not be permitted to cross - examine the witness if any examined by the Enquiry Officer on 21.10.1998. The petitioner shall now appear before the Enquiry Officer on 28.02.2000. Learned counsel for the petitioner undertakes and submits that the petitioner shall be

present before the Enquiry Officer on 28.02.2000. The petitioner, however, shall not be entitled to ask for reopening of the proceedings anterior to 21.10.1998 i.e., the petitioner is not entitled to submit any further explanation whatsoever, as the respondents cannot be blamed for the absence of the petitioner prior to 21.10.1998. It is needless to direct that the Enquiry Officer shall have to submit a fresh report in the matter to the disciplinary authority after completing the enquiry in terms of aforementioned directions. The enquiry shall not be adjourned by the Enquiry officer on 28.02.2000 for whatsoever reasons. The petitioner shall not ask for any adjournment nor shall it be granted by the Enquiry Officer.

11 From the above, it is clear that as per the directions of this Court in the above Writ Petition, the enquiry has to be conducted from the stage where it was stopped. The fact remains that the petitioner did not appear before the enquiry officer till 28.02.2000.

12 The learned counsel for the petitioner has drawn my attention to M-56, M-57 and M-59, which were marked during the course of the proceedings. A perusal of M-56 reveals that the petitioner requested the enquiry officer to furnish copies of the proceedings in Telugu forthwith. He also requested to permit him to take the assistance of the Secretary of the employees union by name M.M. Ali during the course of enquiry. A perusal of M-59 reveals that the petitioner himself participated in the enquiry but has not requested the enquiry officer to conduct the enquiry in Telugu. The petitioner has taken the assistance of the Secretary of the employees union at the time of enquiry. No doubt, the petitioner has taken a plea before the Labour Court that in spite of his request, the enquiry was not conducted in Telugu. If really the intention of the petitioner is to cooperate with the management, what prevented him to submit his explanation to the charge sheet dated 25.5.1998? But for

the reasons best known to him, the petitioner did not attend the enquiry as per the original schedule. As observed earlier, the petitioner requested the enquiry officer to furnish the copies in Telugu only. The petitioner did not request the enquiry officer or the disciplinary authority to conduct the enquiry in Telugu only. Even in the earlier Writ Petition also, the petitioner has not taken a plea that he requested the enquiry officer to conduct the enquiry in Telugu nor did he request this Court to give a direction to the enquiry officer to conduct the enquiry in Telugu only. Had it been the intention of the petitioner to participate in the enquiry, definitely, he would have requested the enquiry officer or this Court with regard to conducting of enquiry in Telugu only. As seen from the record, it is pertinent to note that it is only after issuance of final show cause notice, the petitioner came forward with a plea that the enquiry was not conducted in Telugu as requested by him. It is also pertinent to note that the petitioner has given his reply to the show cause notice in English. Therefore, the principle enunciated in the cases cited supra has no application to the facts of the case on hand. Viewed from any angle, I am unable to accede to the contention of the learned counsel for the petitioner that the enquiry was not conducted in Telugu in spite of the request made by the petitioner.

13 The second contention of the learned counsel for the petitioner is that the impugned order was passed without giving an opportunity to the petitioner to submit his objections to the findings recorded by the

enquiry officer. ***Per*** contra, the learned standing counsel for the second respondent submitted that the impugned order was passed after giving an opportunity to the petitioner to submit his explanation.

14 At this juncture this Court places reliance on ***Managing Director, ECIL, Hyderabad vs. B. Karunakar***^[51] wherein the Hon'ble apex Court held that when the Inquiry Officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the Inquiry Officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the Inquiry officer's report before the disciplinary authority takes its decision on the charges is a denial of a reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice.

15 As per the principle enunciated in the above case, passing of the final order without calling for objections of delinquent employee on the report of the enquiry officer would amount to principles of natural justice.

16 The petitioner has taken the same plea in Para No.8 of his petition filed under Section 2 (A) 2 of the Industrial Disputes Act, 1947. In order to appreciate the contention of the petitioner, it is not out of place to extract hereunder Para No.2.05 of the counter filed by the second respondent.

“With regard to the contentions raised by the petitioner at para No.8, it is respectfully submitted that the respondent issued show cause notice of removal enclosing the copies of enquiry proceedings and the enquiry findings report. The petitioner acknowledged the receipt of the show cause notice and submitted his explanation. The respondent carefully went through the explanation submitted by the petitioner to the show cause notice and came to the final conclusion that the petitioner’s case does not deserve any sympathetic consideration and accordingly, the petitioner was removed from service.”

17 The petitioner has not filed any rejoinder so far as the above aspect is concerned. If the recitals of the counter of the second respondent are taken into consideration, it had supplied the copy of the enquiry report to the petitioner calling for his objections to the enquiry report. A perusal of Ex.M.64 clearly indicates that on 28.03.2000 the second respondent got issued a show cause notice as to why the petitioner should not be removed from service and directed him to submit his explanation on the enquiry report. In the reference column, it is clearly mentioned that the report of the enquiry officer dated 09.03.2000 was supplied to the petitioner on 19.04.2000. The petitioner submitted his explanation on 12.04.2000 to the show cause notice of removal dated 28.03.2000. If really the second respondent had not supplied the enquiry report along with show cause notice, the petitioner might have taken the same stand in his explanation. In Ex.M.65 explanation it is not mentioned that the petitioner has not received the enquiry report.

18 The material placed before the Court clinchingly establishes that the second respondent has supplied the copy of the enquiry report to the petitioner calling for his explanation. Having regard to the facts and

circumstances of the case I am unable to accede to the contention of the learned counsel for the petitioner that the second respondent had violated the principles of natural justice by not supplying the copy of the enquiry report to the petitioner along with the show cause notice of removal. The material available on record negates the contention of the petitioner.

19 The other contention of the learned counsel for the petitioner is that the Labour Court failed to exercise its jurisdiction under Section 11 (A) of the I.D. Act judiciously. To substantiate the argument, the learned counsel for the petitioner has drawn my attention to the ratio laid down in ***J. Venkata Subbaiah vs. The Labour Court, Anantapur***^[61] wherein this Court held at para No.3 as follows:

“It is true, the Presiding Officer of the Labour Court has stated in the award that the punishment is justified ‘in view of the gravity of misconduct.’ This passing reference, in my view, does not conform to the statutory mandate embodied in Section 11-A of the Industrial Disputes Act. The Industrial Court in view of the provisions of Section 11-A of the Industrial Disputes Act, has to consider the question of punishment specifically. A Division Bench of this Court in *C.M. Ramulu vs. Labour Court* {1984 (2) APLJ 98 while advertng to a similar situation, held

“The Tribunal is under a duty to consider whether the punishment imposed is proportionate to the charges levelled or not.”

The aspect of the punishment being proportionate to the gravity of the charge has not received due consideration at the hands of the Labour Court, in my considered view, the passing reference that the punishment is justified does not amount to consideration of the question of applicability of the principle of proportionality.”

P e r contra, the contention of the learned standing counsel for the second respondent is that the punishment imposed against the petitioner is not

shockingly disproportionate to the proved misconduct.

20 The second respondent framed as many as 19 charges against the petitioner. The gist of 17 charges is that the petitioner, having collected the fare amount from the passengers, failed to issue tickets without proper punching or with an intention to reissue the tickets. The act of the petitioner would amount to misconduct as contemplated under Reg.28 (xxvii) of APSRTC Employees (Conduct) Reg.1963. The gist of the charge Nos.18 and 19 is that the petitioner pulled the S.R from the hands of the checking officials and torn it into pieces and also refused to attest the statements of the passengers. The enquiry officer meticulously considered the material placed before him and arrived at a conclusion that the petitioner committed cash and ticket irregularities. The findings recorded by the enquiry officer were fully endorsed by the Labour Court after meticulously scrutinising the material placed before it. A perusal of Ex.M.4, which is the statement of witnesses, reveals that the checking officials recorded the statement of 12 passengers. Admittedly, these statements do not bear the signature of the petitioner. A perusal of Ex.M.1 (S.R) clearly reveals that the pieces of the S.R. were pasted on a white paper. Even to the naked eye, it is clearly visible that Ex.M.1 was torn out into pieces. The material placed before the Court clinchingly establishes that the petitioner committed cash and ticket irregularities, which act of the petitioner amounts to misconduct as contemplated under Reg.28 (xxvii) of APSRTC Employees (Conduct) Reg.1963.

21 The Labour Court made an observation that it is not a fit case to modify the punishment imposed against the petitioner because of his adamant and abnormal behaviour. A conductor of APSRTC is not supposed to tear the S.R. Tearing of the S.R by the petitioner itself supports the version of the second respondent that the petitioner had committed cash and ticket irregularities. A perusal of the record reveals that in view of the attitude of the petitioner the checking officials have taken the bus to the police station. The petitioner, as observed earlier, did not cooperate with the management for smooth conducting of enquiry. The petitioner appeared before the enquiry officer on 28.02.2000 in view of the specific direction of this Court in Writ Petition No.36213 of 1998.

22 In **Karnataka State Road Transport Corporation v. B.S. Hullikatti**^[7] the Hon'ble apex Court held at para No.6 as follows:

6. It is misplaced sympathy by the Labour Courts in such cases when on checking it is found that the Bus Conductors have either not issued tickets to a large number of passengers, though they should have, or have issued tickets of a lower denomination knowing fully well the correct fare to be charged. It is the responsibility of the Bus Conductors to collect the correct fare from the passengers and deposit the same with the Company. They act in a fiduciary capacity and it would be a case of gross misconduct if knowingly they do not collect any fare or the correct amount of fare.

The same principle is reiterated in **Regional Manager, R.S.R.T.C. v. Ghanshyam Sharma**^[8]. In **Divisional Controller N.E.K.R.T.C. v. H. Amaresh**^[9]; and **U.P.S.R.T.C. v. Vinod Kumar**^[10].

23 As per the principle enunciated in the cases cited supra, the punishment should always be proportionate to the gravity of misconduct. However, in case of corruption or misappropriation, the only punishment is dismissal.

24 As per the principle laid down in ***Syed Yakoob vs. K.S. Radhakrishnan***^[11], ***Swaran Singh vs. State of Punjab***^[12] and ***Union of India vs. P Gunasekaran***^[13], this Court, while exercising jurisdiction under Article 226 or 227 of the Constitution of India, can interfere with the findings recorded by the enquiry officer or the Labour Court/Tribunal, if they are perverse, or, if there is any error apparent on the face of the record.

25 In the instant case, the findings recorded by the Labour Court are supported by material, more so, legally admissible material. There is no infirmity or illegality in the orders passed by the Labour Court warranting interference of this Court while exercising jurisdiction under Article 226 of the Constitution of India. Having regard to the principle enunciated in the cases cited supra, I am unable to accede to the contention of the learned counsel for the petitioner that the Labour Court has not exercised its discretionary power judiciously.

26 For the foregoing discussion, I see no merits in this writ petition and accordingly the same is liable to be dismissed.

27 In the result, the writ petition is dismissed. No order as to costs. As a sequel, miscellaneous petitions if any pending in this writ petition shall stand dismissed.

T. SUNIL CHOWDARY, J.

Date:24-06-2016
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- [\[1\]](#) (2005) 3 SCC 254
[\[2\]](#) (2015) 2 SCC 610
[\[3\]](#) 2000 (1) ALD 177
[\[4\]](#) 1997 (2) An.W.R 377 (D.B)
[\[5\]](#) AIR 1994 S.C 1074 (1) = (1993) 4 SCC 727
[\[6\]](#) 1991 (1) An.W.R. 610
[\[7\]](#) AIR 2001 SC 930
[\[8\]](#) (2002) 10 SCC 330
[\[9\]](#) AIR 2006 SC 2730
[\[10\]](#) (2008) 1 SCC 115
[\[11\]](#) AIR 1964 SC 477
[\[12\]](#) (1976) 2 SCC 868
[\[13\]](#) (2015) 2 SCC 610