

THE HON'BLE SRI JUSTICE A.V. SESA SAI

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WRIT PETITION No.12491 OF 2010
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ORDER:

This Writ Petition filed under Article 226 of the Constitution of India challenges the award dated 18.11.2009 passed by the Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad, dismissing I.D.No.97/2009, thereby confirming the office order bearing No.02/95(1)/2009-PKT, dated 02.05.2009.

2. Followed by a check conducted by the officers of the respondent-Road Transport Corporation, petitioner, who was working as a Driver, was served with a charge-sheet bearing No.02/95(1)/2009-PKT, dated 30.01.2009, framing two charges. In response to the said charge sheet and the charges contained therein, petitioner herein submitted an explanation dated 04.02.2009. Subsequently, a regular enquiry was conducted and the enquiry officer submitted a report on 15.03.2009. Thereupon the Disciplinary Authority issued an Office Order bearing No.02/95(1)/2009-PKT, dated 02.05.2009, deleting the name of the petitioner from the approved/select list. Questioning the said order, petitioner herein raised I.D.No.97/2009 before the Industrial Tribunal. The Industrial Tribunal, by way of an award dated 18.11.2009, dismissed the said I.D. Calling in question the validity and legal sustainability of the said award passed by the Tribunal, confirming the Office Order, the present writ petition came to be filed.

3. Heard Sri Mohd. Ghousuddin, learned counsel, appearing for the petitioner and Sri N.Vasudeva Reddy, learned standing counsel for the respondent-Road Transport Corporation, apart from perusing the material available on record.

4. It is contended by the learned counsel for petitioner that the impugned award is erroneous, contrary to law and opposed to the very spirit and object of the provisions of the Industrial Disputes Act; that the Disciplinary Authority did not properly consider the issue in the light of

the provisions of Section 11-A of the Industrial Disputes Act; that no action against the co-driver, who collected the amount, was taken; that the statement made by the passenger at the time of check to the effect that the co-driver received the amount, was not at all considered either by the Disciplinary Authority or by the Tribunal; that the impugned action is contrary to Regulation No.9 of the A.P. State Road Transport Corporation Employees (Classification, Control and Appeal) Regulations, 1967.

5. Per contrary, totally supporting the Office Order as confirmed by the Tribunal, it is vehemently contended by the learned Standing Counsel for the Road Transport Corporation that there is no illegality nor there exists any procedural infirmity nor perversity in the impugned order, as such, the present writ petition is not maintainable and the petitioner herein is not entitled to any relief from this Court under Article 226 of the Constitution of India; that since the Tribunal elaborately and thoroughly considered the entire material on record, the interference of this Court under Article 226 of the Constitution of India is impermissible; that since the Disciplinary Authority and the Tribunal recorded categorical findings of facts, the same are not amenable for any judicial review under Article 226 of the Constitution of India.

6. To bolster his submissions and contentions, learned Standing Counsel for the respondent-Road Transport Corporation, placed reliance on the following judgments:

1. In **A.P.S.R.T.C. Vs. Raghuda Siva Sankar Prasad**^[1], the Hon'ble Apex Court at Paragraph Nos.17, 18 and 19, held as follows:

"17. Likewise, the learned Judges of the Division Bench also failed to appreciate that once the Labour Court in its award held removal from service by taking into consideration the entire facts and circumstances of the case, it does not deserve interference and that the High Court in its

extraordinary jurisdiction under Article 226 of the Constitution could not have interfered with the said orders of the removal.

18. The enquiry reports also clearly reveal that the departmental enquiry was conducted after giving fair and reasonable opportunity to the delinquent official, after following the procedure and as per the regulations.

19. The learned Single Judge considered the past conduct of the delinquent employee as one of the ground in taking a lenient view. In our view, past conduct of workman is not relevant in departmental proceedings. Likewise, the learned Single Judge has erred in holding that the workman did not involve in any misconduct of theft during his past services and on that ground, granted reinstatement with continuity of service.”

2. In **Karnataka State Road Transport Corporation Vs.**

B.S.Hullikatti^[2], the Hon'ble Apex Court at Paragraph Nos.6 and 7, held 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.

7. In our opinion, the order of dismissal should not have been set aside, but we are informed that in the meantime the respondent has already superannuated. We, therefore, on the special facts of this case, do not set aside the order of reinstatement, but direct that the respondent would not be entitled to any back wages at all but

he would be entitled to the retiral benefits.”

3. In **U.P.State Road Transport Corporation Vs. Suresh**

Chand Sharma^[3], the Hon'ble Apex Court at Paragraph No.22, held as follows:

“22. In Municipal Committee, Bahadurgarh Vs. Krishnan Bihari & Ors., AIR 1996 SC 1249, this Court held as under:—

“In a case of such nature - indeed, in cases involving corruption - there cannot be any other punishment than dismissal. Any sympathy shown in such cases is totally uncalled for and opposed to public interest. The amount misappropriated may be small or large; it is the act of misappropriation that is relevant.”

Similar view has been reiterated by this Court in Ruston & Hornsby (I) Ltd. Vs. T.B. Kadam, AIR 1975 SC 2025; U.P. State Road Transport Corporation Vs. Basudeo Chaudhary & Anr., (1997) 11 SCC 370; Janatha Bazar (South Kanara Central Cooperative Wholesale Stores Ltd.) & Ors. Vs. Secretary, Sahakari Nukarara Sangha & Ors., (2000) 7 SCC 517; Karnataka State Road Transport Corporation Vs. B.S. Hullikatti, AIR 2001 SC 930; and Regional Manager, Rajasthan S.R.T.C. Vs. Ghanshyam Sharma, (2002) 10 SCC 330.”

4. In **Syed Yakoob Vs. K.S.Radhakrishnan and others**^[4],

the Hon'ble Apex Court at Paragraph No.7, held as follows:

“7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdictions. A

writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised (vide *Hari Vishnu Kamath v. Syed Ahmed Ishaque*

([1955] 1 S.C.R. 1104), *Nagendra Nath Bora v. The Commissioner of Hills Division and Appeals, Assam* ([1958] S.C.R. 1240), and *Kaushalya Devi v. Bachittar Singh* (A.I.R. 1960 S.C. 1168).

7. In the above backdrop, now the issue that arises for consideration of this Court is:

“Whether, in the facts and circumstances of the case, the award of the Tribunal, confirming the Office Order passed by the Disciplinary Authority, is sustainable and tenable or the same requires any interference of this Court under Article 226 of the Constitution of India?”

8. The Disciplinary Authority issued a charge-sheet on 30.01.2009, framing the following charges:

Charge No.1: “For having failed to follow the rule of “Issue and Start” on 01.01.09, while performing service with Bus No.2719 on route Mysore-Picket, which constitutes serious misconduct vide Item Nos.viii (a) & (b), xvi & xxxi of A.P.S.R.T.C. Circular No.PD-03/2005, Dt.25.01.2005.”

Charge No.2: “For having failed to issue ticket to a passenger who boarded your bus at Mysore and bound for Bangalore i.e., State No.13 to 10 though you have collected Rs.130/- from the passenger at boarding point itself, when performed service with Bus No.2719 on 01.01.2009 on route Mysore-Picket at 17.55hrs., which constitutes serious misconduct vide Item Nos.viii(a) & (b), xvi & xxxi of A.P.S.R.T.C. Circular No.PD-03/2005, Dt.25.01.2005.”

9. In response to the said charge-sheet and the charges contained therein, petitioner herein submitted an explanation on 04.02.2009. In the said explanation, the petitioner herein stated that he did not drive the vehicle on 01.01.2009 and the passengers in the bus stated that the other driver issued the tickets and collected the amount from passengers and he did not issue the ticket and in the said explanation, the petitioner herein also stated that he was made scapegoat for no fault of him and he had no malafide intention to defraud the legitimate

revenue of the Corporation. Thereafter, the Disciplinary Authority appointed an Enquiry Officer to conduct the enquiry who submitted a report on 15.03.2009 and basing on the said enquiry report, the Disciplinary Authority passed an Office Order dated 02.05.2009, deleting the name of the petitioner from the approved/select list.

10. A perusal of the above said Office Order clearly shows that one Sri K.Shiva Kumar, E.412326, Superintendent (T) of HES/Rayadurg squad stated that the passenger, who was found ticketless and travelled in the bus, told him that he paid Rs.130/- to the second driver and the driver, who was driving the vehicle, asked him to get inside the bus and ticket would be issued. The reality remains that the said co-driver was never examined either before the Enquiry Officer or the Tribunal, nor the Corporation had taken any action against the said co-driver. Though the primary responsibility lies on the petitioner, this attending circumstances was totally ignored by both the Disciplinary Authority and the Tribunal. In fact, while awarding major punishments, it is incumbent on the part of the authorities to examine the attending circumstances also, having regard to the language employed under Regulation 9(3)(a) of the A.P. State Road Transport Corporation Employees (Classification, Control and Appeal) Regulations, which states thus:

“acts, or omissions for which the employee is liable to be dismissed or removed from service, but in respect of which such a penalty is considered excessive in view of the attendant circumstances.”

both the Disciplinary Authority as well as the Tribunal lost sight of the above said Regulation.

11. Coming to the decisions cited by the learned Standing Counsel for respondent-Road Transport Corporation, there is no dispute with regard to the principles laid down in the above said judgments. In view of non-consideration of the relevant regulations while dealing with the issue, this Court is of the opinion that the principles laid down

in the above said judgments would not render any assistance to the respondent-Road Transport Corporation.

12. According to the respondent-Road Transport Corporation, it is the duty of the driver to issue ticket, collect fare and start the vehicle and as the petitioner did not adhere to the same, petitioner is liable for the punishment. It is to be noted that at the same time, the co-driver should not have operated the machine and ought not to have collected the amount. There is absolutely no dispute with regard to the fact that for doing the said unauthorized act, no action was initiated against the co-driver. This in the considered opinion of this Court is highly discriminatory and for which no reasonable and plausible explanation is forthcoming from the respondent Corporation. Tested on the touch stone of Article 14 of the Constitution of India, the impugned action of resorting to deletion of name of the petitioner from the approved/select list is unwarranted and shockingly disproportionate in the facts and circumstances of the case. The stand taken in the counter that the petitioner misappropriated the amount is not tenable, since it is never the case of the Road Transport Corporation, during the course of the Enquiry, that the petitioner himself collected the amount. Tribunal, ought have considered the issue in the light of Regulation No.9 of the A.P. State Road Transport Corporation Employees (Classification, Control and Appeal) Regulations and the proportionality probability of punishment also as per Section 11-A of the Industrial Disputes Act. Therefore, having regard to the factual situation, this Court is of the considered opinion that the ends of justice would be met if this Court directs lesser punishment.

13. For the aforesaid reasons, writ petition is allowed, setting aside the award dated 18.11.2009 passed by the Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad, dismissing I.D.No.97/2009, thereby confirming the Office Order bearing No.02/95(1)/2009-PKT, dated 02.05.2009. But, however, the petitioner herein is entitled for reinstatement as a fresh candidate only without

any backwages and other monetary benefits.

14. Miscellaneous petitions pending consideration, if any, in the Writ Petition shall stand closed in consequence. No order as to costs.

A.V.SESHA SAI, J

11.02.2016
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[\[1\]](#) (2007) 1 SCC 222

[\[2\]](#) (2001) 2 SCC 574

[\[3\]](#) (2010) 6 SCC 555

[\[4\]](#) AIR 1964 SC 477