

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

WRIT PETITION No.11444 OF 2004

ORDER:

This writ petition is filed under Article 226 of the Constitution of India, to issue writ of mandamus declaring the action of the first respondent in dismissing the I.D.No.64 of 1998 dated 01.10.1999 as illegal, arbitrary and set aside the same and consequently direct the respondents to reinstate the petitioner into service with all attendant benefits, back wages, service etc.

2. The facts leading to filing of the present writ petition are as follows: The petitioner was appointed as conductor in Andhra Pradesh State Road Transport Corporation, on daily wage basis. On 24.6.1987, he was removed from service on the ground that he committed cash and ticket irregularities. Questioning the order of his removal from service, the petitioner preferred appeal before the Divisional Manager, Secunderabad and the same was dismissed on 26.9.1987. The petitioner filed review petition before the Regional Manager, Hyderabad City Region and the same was allowed on 03.2.1998 directing reinstatement of the petitioner into service as a daily wage employee afresh. The petitioner was again removed from service on 21.7.1988 on the same ground of cash and ticket irregularities. The appeal preferred by the petitioner was dismissed on 29.10.1988. The review filed by the petitioner was also dismissed on 10.1.1989. Feeling aggrieved by the same, the petitioner filed I.D. No.105 of 1995 on the file of the Industrial Tribunal–cum–Labour Court, Hyderabad (hereinafter referred to as, the Tribunal) under Section 2A(2) of the Industrial Disputes Act. The Tribunal passed the Award on 26.11.1996 directing the second respondent to reinstate the petitioner into service as a fresh conductor without any back wages.

3. While so, on 25.2.1997, the concerned officials checked the bus, wherein the petitioner was on duty as conductor, and found that the

petitioner, having collected correct fare, issued tickets of lesser denomination to six passengers. The checking squad recorded the statement of the one of the passengers on the spot. On 28.2.1997 the second respondent issued show cause notice framing three charges against the petitioner. The petitioner submitted the reply. The second respondent, not satisfied with the explanation offered by the petitioner, initiated disciplinary proceedings appointing Enquiry Officer. The Enquiry Officer, after completion of the enquiry, submitted detailed report dated 07.5.1997 to the second respondent holding that the charges levelled against the petitioner are proved. The second respondent issued show cause notice of removal from service to the petitioner on 02.6.1997 along with copy of the enquiry report. The petitioner submitted explanation on 05.6.1997 to the second respondent. The second respondent, being not satisfied with the explanation submitted by the petitioner, passed the orders on 10.6.1997 removing the petitioner from the service. The appeal preferred by the petitioner against the order of removal was dismissed by the Divisional Manager, Secunderabad vide proceedings dated 03.10.1997. The petitioner filed the review petition before the Regional Manager, Hyderabad City Region and the same was also dismissed on 20.3.1998. Feeling aggrieved by the order of removal from service, the petitioner raised I.D. No.64 of 1998. The Tribunal, after reappraising the material available on record, arrived at a conclusion that charge No.3 framed against the petitioner was proved.

4. Basing on the allegations against the petitioner, the second respondent framed the following three charges against the petitioner:

- (1) For having failed to complete the ticket issues within a Fare stage, while conducting Bus No.1194 of route No.10Y on 25.02.1997, which constitutes misconduct in terms of Reg.28(xxxii) of APSRTC Employees (Conduct) Regulations, 1963;
- (2) For having failed to collect the fare and issue ticket to a passenger, found travelling without ticket, who boarded the Bus at Patny and bound for Secunderabad Station (ex-stages

3/2 to 1), while you were conducting Bus No.1194 of route No.10Y, on 25.02.1997, which constitutes misconduct in terms of Regulation 28(vi)(a) of APSRTC Employees (Conduct) Regulations, 1963;

(3) For having collected an amount of Rs.15/- from a batch of six passengers, who boarded at Ameerpet and bound for Secunderabad Station (ex-stages 6/5 to 1) @ Rs.2.50 ps., each, and issued Rs.2/- denomination tickets, you have collected requisite fare and issued lower denomination tickets, i.e., Rs.3/- swallowed by you, which leads loss of revenue to the Corporation, while you were conducting Bus No.1194 of Route NO.10Y on 25.02.1997, which constitutes misconduct in terms of Regulation 28(xxv) and (x) of APSRTC Employees (Conduct) Regulations, 1963.

4. A perusal of the above charges clearly reveals that charge Nos.1 and 2 are relating to violation of Standing Instructions issued by the second respondent. As per the findings of the Enquiry Officer, charge Nos.1, 2 and 3 were proved. The Tribunal set aside the findings of the Enquiry Officer so far as charge Nos.1 and 2 are concerned. The findings of the Tribunal on charge Nos.1 and 2 became final in view of non-filing of appeal by the second respondent. The Tribunal confirmed the finding of the Enquiry Officer on charge No.3 and dismissed I.D. No.64 of 1998. Hence the writ petition is filed challenging the finding on charge No.3 and the punishment of removal of petitioner from service.

5. The contention of the learned counsel for the petitioner is three fold:

(1) the Tribunal failed to consider that at the time of checking there were 86 passengers in the bus; in such circumstances, there is every possibility of occurring minor lapses on the part of the conductor of the bus;

(2) the finding recorded by the Tribunal on charge No.3 is perverse as the same is not based on material, which is legally admissible; and

(3) the punishment imposed against the petitioner is shockingly disproportionate to the proved misconduct; therefore, it is a fit case to set aside the punishment.

Per contra, learned Standing counsel for the second respondent

submitted that the petitioner committed similar type of irregularities and punished twice on earlier occasions; therefore, it is not a fit case to take a lenient view. He further submitted that there is no error apparent on the face of the record, which warrants interference of this court.

6. The predominant contention of learned counsel for the petitioner is that the finding recorded by the Enquiry Officer as well as the Tribunal, on charge No.3, is not sustainable in law for non-examination of the passengers. To substantiate the argument, he has drawn my attention to the following decisions:

In **M.A.Majeed v Depot Manager, APSRTC**^[1], this court at paragraph No.13 held as follows:

13. At least there should be a satisfaction of the disciplinary authority in terms of preponderance of a probability indicating the misconduct on the part of the delinquent. Leaving aside the statement of the Checking Officials, the solitary statement that has weighed against the petitioner is that of the passenger. With the checking officials and the petitioner-conductor sticking to their stands, the statement of the passenger assumes importance. Needless to say that it is the statement obtained from the passenger at the spot of inspection, and it is in the nature of preliminary material. It is axiomatic that such evidence cannot be relied on unless the maker of the statement is subjected to cross-examination or any other independent evidence being available in corroboration thereof. In some cases, the very statements of the delinquent made at various stages are irreconcilable. In some other cases, the records, such as SR (statistical report) maintained by the conductor may betray the falsity of the stand taken by the conductor. Under those circumstances, illustrative as they are without being exhaustive, it may not be prudent to insist on examining the passenger, who gave the statement, since his availability is hard to come by.

In **A.V.Swamy v APSRTS, Musheerabad, Hyderabad**^[2], this court at paragraph No.13 held as follows:

13. ... Though the learned counsel for the petitioner has laid much emphasis on the fact that passengers who gave the statements were not examined during the course of domestic inquiry, there cannot be any universal principle established that in each and every departmental inquiry, the passengers from whom the spot statements were obtained

should be examined. It is, however, entirely a different thing if the findings during the course of disciplinary enquiry are entirely based on those statements of the passengers without there being any other material to bring home the misconduct of the delinquent workman. In other words, the spot statements made by the passengers, in the absence of their examination in the domestic inquiry, could at best be used as corroborative evidence, but not sole evidence to establish the guilt of the delinquent workman. In this instance, the checking officials i.e., TTIs, have deposed that the petitioner collected the fare from the passenger but did not issue the ticket. With equal vigour, the petitioner in his defence denied it. It is not the case of the Corporation that the petitioner has admitted his lapses during spot check and later retracted it. Neither can we find any tell tale signs of the misconduct of the workman left on the record, which are patent without even the aid of passenger statements. Though the allegation on the part of the petitioner that he was forced by the checking officials to close the S.R. was rightly disbelieved by the authorities without any further material on record, the contention of the petitioner that the passenger himself did not take the ticket but only stated when the checking was effected that he paid the fare for which no ticket was given, however, could not be brushed aside."

7. As per the principle enunciated in the cases cited supra, mere attestation of the statement by the conductor itself is not a sufficient ground to believe the statement of the passenger without any supporting material available on record. Let me consider the facts of the case on hand in the light of the above legal principle. It is the case of the second respondent that the petitioner, having collected correct fare of Rs.2.50 ps each from six passengers, issued tickets of Rs.2/- ps denomination. The contention of the petitioner is that there were 86 passengers in the bus at the time of checking; therefore, there is every possibility of occurring minor lapses. It is the duty of the conductor to take more care while issuing the tickets. I have carefully perused the enquiry report and other material available on record in order to ascertain how many passengers were travelling in the bus at the relevant point of time. In the statement given by the petitioner during the course of enquiry, it is not pleaded that at the time of checking, 86 passengers were travelling in the bus. As per the statement of the petitioner, the passengers, who were issued lesser denomination

tickets, boarded the bus at Police Lines whereas the passengers gave statement that they boarded the bus at Ameerpet. It is to be noted that in the statement given to the Checking Squad, the petitioner gave statement that the six passengers boarded the bus at Patny. It is not in dispute that the statement of the passengers was recorded in the presence of the petitioner, who in turn attested the same.

8. In the explanation submitted by the petitioner, there is no mention that the checking officials threatened or forced him to attest the statement of the passengers. It is not the case of the petitioner that the checking officials have not correctly recorded the statement of passengers. Further, it is not elicited from TTI-M.W.1 that the statement recorded by him is not reflecting the true facts. As rightly observed by the Enquiry Officer, no suggestion was put to the checking official. As per the statement of TTI, the passengers, who were issued the tickets of lesser denomination, boarded the bus at Ameerpet. In the cross-examination of TTI, nothing is elicited to shake his testimony so far as recording of the statement of passengers by him. No suggestion was put to TTI that even though the passengers stated that they have boarded the bus at Police Lines, he intentionally recorded the statement as if they boarded the bus at Ameerpet. The finding of the Enquiry Officer that the petitioner failed to issue correct denomination tickets to six passengers is supported by evidence much less legally admissible evidence.

8. I have carefully perused the award passed by the Tribunal. In paragraph No.16, the Tribunal made an observation that, "*Petitioner did not controvert the statement of the said checking officials either by suggestion or otherwise but the petitioner has stated in his statement before the enquiry officer that the passenger's statement was not given by the actual passengers of batch of 6 and that the passengers statement was totally wrong and that it is created.*" The said observation clearly indicates that the Tribunal meticulously considered

the oral and documentary evidence available on record. As rightly observed by the Tribunal, the petitioner has not disputed the correctness of the check-sheet (Ex.M4). The Enquiry Officer has assigned reasons much less cogent and valid reasons to his findings on charge No.3. The Tribunal, after reappraising the material available on record, came to an independent conclusion that the petitioner, having received the correct fare from six passengers, issued lesser denomination tickets thereby committed cash and ticket irregularities. The act of the petitioner falls within the ambit of misconduct as contemplated under Regulation 28(xxv) and (x) of APSRTC Employees (Conduct) Regulations, 1963. Therefore, the decisions on which the petitioner has placed reliance are no way helpful to him to substantiate his stand. I am fully agreeing with the findings recorded by the Enquiry Officer as well as the Tribunal on charge No.3. In such circumstances, it is to be considered whether this court can interfere with the findings arrived at by the Tribunal or not.

In **Syed Yakoob v K.S. Radhakrishnan**^[3], the Hon'ble apex Court held at para No.7 as follows:

“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 is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, 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 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 Ahmad Ishaque*^[4] *Nagandra Nath Bora v Commissioner of Hills Division* and *Appeals Assam*^[5] and *Kaushalya Devi v Bachittar Singh*^[6].)”

In *Swaran Singh v State of Punjab*^[7], the Hon'ble apex Court held at para No.13 as follows:

13. In regard to a finding of fact recorded by an inferior tribunal, a writ of certiorari can be issued only if in recording such a finding, the tribunal has acted on evidence which is legally inadmissible, or has refused to admit admissible evidence, or if the finding is not supported by any evidence at all, because in such cases the error amounts to an error of law. The writ jurisdiction extends only to cases where orders are passed by inferior courts or tribunals in excess of their jurisdiction or as a result of their refusal to exercise jurisdiction vested in them or they act illegally or improperly in the exercise of their jurisdiction causing grave miscarriage of justice.

In *Union of India v P Gunasekaran*^[8], the Hon'ble apex Court held at para No.12 as follows:

12. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the

Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

9. As per the principle enunciated in the cases cited supra, this Court, while exercising jurisdiction under Article 226 or 227 of the Constitution of India, can interfere with the findings recorded by the Court or Tribunal, if they are perverse, or, if there is any error apparent on the face of the record.

10. As observed earlier, the Tribunal, after considering the oral and documentary evidence available on record, came to an independent conclusion that charge No.3 against the petitioner has been proved and accordingly confirmed the finding of the Enquiry Officer on charge No.3. Having regard to the facts and circumstances of the case, I am of the considered view that there are grounds to interfere with the findings recorded by the Tribunal.

11. The next question that arises for consideration is whether the punishment imposed against the petitioner is shockingly disproportionate to the proved misconduct in order to interfere with the same. The learned counsel for the petitioner took strong objection for the observation made by the Tribunal in paragraph No.17 of the award. In paragraph No.17, the Tribunal observed that, *"He (learned Law Officer) has argued further that the petitioner was removed from service on two earlier occasions. On 24.6.1987 and 21.7.1988 for having involved in serious cash and ticket irregularities and that he was reinstated into service on 20.2.1988 by considering his appeal and on 05.12.1996 by implementing the Award passed in I.D. No.105 of 1995. He argued further that therefore the petitioner does not deserve any consideration or relief and canvassed for dismissing this petition with costs"*. This is only submission of the learned counsel for the department in the I.D. Except recording the submission of the counsel for the department, the Tribunal did not give any weight to the previous conduct of the petitioner.

12. This court is very much conscious that while imposing the punishment, the past conduct of the delinquent employee shall not be taken into consideration. It appears that the Tribunal has considered this aspect in order to ascertain the mitigating circumstances. The fact remains that the petitioner has been working as a conductor on daily wage basis from 17.12.1986. The petitioner cannot blame anybody except himself for non-regularisation of his services.

13. The next contention of learned counsel for the petitioner is that the punishment imposed against the petitioner is shockingly disproportionate to the proved misconduct and hence, it is liable to be set aside. Refuting the said contention, learned standing counsel for second respondent has placed reliance on the following decisions:

In **Karnataka SRTC v B.S. Hullikatti**^[9], the Apex Court at Paragraph Nos.5, 6 and 7 held as follows:

5. On the facts as found by the Labour Court and the High Court, it is evident that there was short-changing of the fare by the respondent from as many as 35 passengers. We are informed that the respondent had been in service as a Conductor for nearly 22 years. It is difficult to believe that he did not know what was the correct fare which was to be charged. Furthermore, the appellant had during the disciplinary proceedings taken into account the fact that the respondent had been found guilty on as many as 36 times on different dates. Be that as it may, the principle of *res ipsa loquitur*, namely, the facts speak for themselves, is clearly applicable in the instant case. Charging 50 paise per ticket more from as many as 35 passengers could only be to get financial benefit, by the Conductor. This act was either dishonest or was so grossly negligent that the respondent was not fit to be retained as a Conductor because such action or inaction of his is bound to result in financial loss to the appellant Corporation.

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.

In **A.P. SRTC v Raghuda Siva Sankar Prasad**^[10], the Apex

Court at Paragraph Nos.22 and 23 held as follows:

22. It is also not open to the tribunal and courts to substitute their subjective opinion in place of the one arrived at the domestic tribunal. In the instant case, the opinion arrived at by the Corporation was rightly accepted by the Tribunal but not by the Court. We, therefore, hold that the order of reinstatement passed by the Single Judge and the Division Bench of the High Court is contrary to the law on the basis of a catena of decisions of this Court. In such cases, there is no place for generosity or sympathy on the part of the judicial forums for interfering with the quantum of punishment of removal which cannot be justified. Similarly, the High Court can modify the punishment in exercise of its jurisdiction under Article 226 of the Constitution only when it finds that the punishment imposed is shockingly disproportionate to the charges proved.

23. Interfering therefore with the quantum of punishment of the respondent herein, is not called for. In our opinion, the respondent has no legal right to continue in the Corporation. As held by this Court, in a catena of judgments that the loss of confidence occupies the primary factor and not the amount of money and that sympathy and generosity cannot be a factor which is permissible in law in such matters. When the employee is found guilty of theft, there is nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of removal. In such cases, there is no place of generosity or place of sympathy on the part of the judicial forums and interfering with the quantum of the punishment.

This court is placing reliance on a Full Bench decision of this court in **V.Ramana v APSRTC**^[11]. In paragraph No.19 (Manupatra), it was held as under:

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.

As per the principle enunciated in the cases 9 to 11 cited supra, in cases of misappropriation or embezzlement '*punishment of removal from service*' cannot be termed as shockingly disproportionate.

14. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases 9 to 11 cited supra, I am of the considered view that it is not a fit case to interfere with the award passed by the Tribunal confirming the punishment imposed against the petitioner. The punishment imposed against the petitioner is in proportion to the proved misconduct of cash and ticket irregularities committed by him on 25.2.1997. There are no grounds much less cogent and valid grounds to interfere with the award passed by the Tribunal. The writ petition is devoid of merits.

15. Accordingly, the writ petition is dismissed. Miscellaneous petitions, if any pending in this writ petition, shall stand closed.

T. SUNIL CHOWDARY, J

August 3rd, 2016
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- [\[1\]](#) 2014 (3) ALT 685
 - [\[2\]](#) 2014 (6) ALD 661
 - [\[3\]](#) AIR 1964 SC 477
 - [\[4\]](#) (1955) 1 SCR 1104
 - [\[5\]](#) (1958) SCR 1240
 - [\[6\]](#) AIR 1960 SC 1168
 - [\[7\]](#) (1976) 2 SCC 868
 - [\[8\]](#) (2015) 2 SCC 610
 - [\[9\]](#) (2001) 2 SCC 574
 - [\[10\]](#) (2007) 1 SCC 222
 - [\[11\]](#) 2001 (5) ALT 180 (FB)