

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

W.P.No. 5243 OF 2001

ORDER:

This Writ Petition is filed under Article 226 of the Constitution of India questioning part of the order dated 03-06-2000 passed in I.D.No. 89 of 1996 by the Presiding Officer, Labour Court, Guntur-the 1st respondent, which was published in the gazette *vide* G.O.Rt.No. 1545 dated 11-08-2000, in not granting wages and past service while re-instating the petitioner into service as unjust and illegal and, consequently, direct the 2nd respondent to treat the removal period as on duty and to pay wages along with all benefits.

The petitioner, while working as conductor, APSRTC Kavali Depot, re-issued a ticket worth Rs.2/- denomination to one passenger, who boarded the bus, which was already sold and accounted in trip sheet of stage No. 7 at 7.30 hours from Kavali to Someswarapuram on 17-08-1993. A charge was framed for re-issuance of the ticket. On admission of the irregularity, the enquiry was concluded against the petitioner finding him guilty and imposed penalty of removal.

Aggrieved by the order, the petitioner filed I.D.No. 89 of 1996 questioning the penalty imposed by the 3rd respondent. After considering entire material, the 1st respondent directed the 3rd respondent to re-instate the petitioner but without back wages and continuity of service.

In pursuance of the award passed by the 1st respondent, the petitioner was re-instated into service.

Aggrieved by part of the award, the present Writ Petition is filed raising several contentions. One of the contentions of learned counsel for the petitioner is that the 1st respondent did not consider the case of the petitioner keeping in view Section 11-A of the Industrial Disputes Act, 1947 (for short, 'the Act of 1947'), as the disciplinary authority acted in violation of principles of natural justice. In the absence of any evidence finding him guilty for the

alleged misconduct of re-issue of ticket worth Rs.2/- is illegal, the quantum of punishment imposed against the petitioner is disproportionate to the gravity of misconduct and, therefore, prayed to set aside the same.

During the course of hearing, learned counsel for the petitioner contended that re-issue of ticket worth Rs.2/- is not a grave misconduct, it is only a mistake which can be condoned, the penalty imposed against the petitioner is disproportionate to the gravity of misconduct attributed to the petitioner and, therefore, the same is liable to be set aside.

Per contra, learned counsel for the respondents contended that the power of the High Court in judicial review under Article 226 of the Constitution of India is limited. Unless the Court comes to the conclusion that the punishment imposed by the disciplinary authority and confirmed by the 1st respondent is shockingly disproportionate to the conscience of the judge, the same cannot be interfered with and, in support of his contention, placed reliance on ***Shri Bhagwan Lal Arya Vs. Commissioner of Police, Delhi, and others***^[1]; ***Divisional Controller, KSRTC (NWKRTC), Vs. A.T.Mane***^[2]; and ***Divisional Controller, N.E.K.R.T.C. Vs. H.Amaresh***^[3].

In view of rival contentions, the point that arises for consideration is as follows:

"Whether the penalty imposed by the disciplinary authority and confirmed by the 1st respondent to the extent of denying continuity of service and back wages is disproportionate to the gravity of misconduct, if so, whether it is liable to be set aside?"

Undisputedly, the petitioner re-issued a ticket worth Rs.2/- and it was not even denied anywhere in the affidavit, of course the petitioner raised several contentions regarding proof of misconduct before the disciplinary authority and also before the 1st respondent while challenging the punishment imposed against the petitioner by the disciplinary authority. The 1st respondent, after appreciation of evidence, concluded that the penalty

imposed by the disciplinary authority is harsh. Hence, the 1st respondent ordered re-instatement while declining back wages and continuity of service.

In the present Writ Petition, the petitioner questioned the order of the 1st respondent in not granting back wages and continuity of service. In fact, while exercising power of judicial review under Article 226 of the Constitution of India, Court cannot interfere with penalty imposed by disciplinary authority and confirmed by tribunal unless it is found disproportionate to the gravity of misconduct. In ***Divisional Controller, KSRTC (NWKRTC)*** (2nd *supra*), the Apex Court placed reliance on ***State of Haryana Vs. Rattan Singh***^[4] to hold that when a domestic tribunal based on evidence comes to a particular conclusion, normally it is not open to the Appellate Tribunals and Courts to substitute their subjective opinion in the place of the one arrived at by the domestic tribunal. In ***Divisional Controller, N.E.K.R.T.C.*** (3rd *supra*), the Supreme Court relied on ***Divisional Controller, KSRTC (NWKRTC)*** (2nd *supra*) to hold that

"One should bear in mind the fact that it is not the amount of money misappropriate that becomes a primary factor for awarding punishment; on the contrary, it is the loss of confidence which is the primary factor to be taken into consideration. In our opinion, when a person is found guilty of misappropriating the corporation's funds, there is nothing wrong in the corporation losing confidence or faith in such a person and awarding a punishment of dismissal."

In ***B.C.Chaturvedi Vs. Union of India and others***^[5], the Supreme is of the view that

"A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are vested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate

authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

Applying the principle laid down in the above judgment, Court cannot interfere with punishment imposed against petitioner, more particularly when it is not shockingly disproportionate to the conscience of the Court. In the present case, the petitioner, who was working as conductor, has to issue tickets and collect amount from passengers but respondent Nos. 2 and 3 lost confidence over the petitioner on account of re-issue of ticket worth Rs.2/-. In such case, continuation of the petitioner in service itself is against the interest of respondent Nos. 2 and 3. However, the 1st respondent modified the penalty reinstating the petitioner into service while did not interfere with the penalty of back wages and continuity of service. In such case, the penalty imposed against the petitioner cannot be said to be shockingly disproportionate to the gravity of misconduct attributed to the petitioner and, consequently, the penalty imposed against the petitioner cannot be interfered with by following the principle laid down in **B.C.Chaturvedi** (5th *supra*).

In view of the law declared by the Apex Court, while exercising power of judicial review under Article 226 of the Constitution of India, this Court cannot interfere with the quantum of penalty since it is not shockingly disproportionate to the gravity of misconduct. Therefore, I hold that the punishment imposed against the petitioner is not shockingly disproportionate to the gravity of misconduct and it does not call for interference of this Court while exercising power of judicial review under Article 226 of the Constitution of India. Accordingly, the point is answered.

In the result, the Writ Petition is dismissed. Pending miscellaneous petitions, if any, in this Writ Petition shall stand dismissed in consequence. No order as to costs.

M.SATYANARAYANA

MURTHY, J.

Date: 20th January, 2016.

JSK

[\[1\]](#) AIR 2004 SC 2131

[\[2\]](#) (2005) 3 SCC 254

[\[3\]](#) (2006) 6 SCC 187

[\[4\]](#) (1977) 2 SCC 491

[\[5\]](#) (1995) 6 SCC 749