

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

WRIT PETITION No.18442 OF 2004

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ORDER:

This Writ Petition is filed under Article 226 of the Constitution of India seeking a Writ of Certiorari, calling for the records relating to the award dated 26.03.2004, made in I.D.No.146 of 2002 on the file of the Labour Court-I, A.P., Hyderabad, published on 18.06.2004, setting aside the order of removal dated 12.08.2002 and directing reinstatement of the first respondent into service with continuity of service and 50% back wages though without attendant benefits; and quash the same as being illegal and without jurisdiction.

2. The facts leading to filing of the present writ petition are briefly as follows:

The first respondent was appointed as a Conductor in petitioner-Corporation on temporary basis on 25.07.1980 and his services were regularized on 31.07.1987. On 14.02.2002 the first respondent was on duty as conductor of bus No.7519 on route No.85J from Charminar to Jalpally. When the bus reached at Stage No.4 (Barkas), the checking officials of petitioner-Corporation stopped the bus, conducted the check and found that the first respondent committed cash and ticket irregularities. Being not satisfied with the explanation submitted by the first respondent, the petitioner issued a charge sheet dated 11.03.2002 to him with the following charges:

“1. “For having failed to complete the ticket issues even after crossing fare state, which constitutes mis-conduct in terms of Regulation No.28(xxxii) of APSRTC Employees’ (Conduct) Regulations, 1963”.

2. “For having failed to collect the fare and issue tickets to a batch of four chargeable children aged 11 yrs. all of them have boarded at Engine Bowli bound for Erragutta Ex.stages 2/3 to 4/5, hence obtained TPTS Nos.572/703253 to 256 of deno. Rs:2-50 ps. each-04”, which constitutes mis-conduct in terms of Regulation No.28(vi) (a) of APSRTC Employees

(Conduct) Regulations, 1963.

3. “For having failed to collect the fare and issue tickets to five more passengers who boarded the bus at Rly.Bridge bound for Erragutta, ex-stages 3 to 4/5, hence made you to collect the requisite fare from passengers and obtained TPT Nos.542/102034 to 102037 of den. Rs.3/- each 05”, which constitutes misconduct in terms of Regulations 28(vi) (a) of APSRTC E.(Conduct) Reg.1963.
4. “For having collected the fare of Rs.2-50 from a passenger, who found traveling without ticket having boarded the bus at Rly.Bridge bound for Erragutta ex-stages 03 to 4/5, hence made you to collect the difference of fare of 50 paise from passenger and obtained TPT No.542/102038 of deno. Rs:3/- each-01 (i.e. already collected Rs.2-50 and not issued ticket, as the actual ticket fare is Rs.3/-), which constitutes misconduct in terms of Regulation No.28(xxxi) of APSRTC Employees’ (Conduct) Regulations, 1963.””

The first respondent submitted his explanation to the charge sheet issued by the petitioner – Corporation. The petitioner being not satisfied with the explanation submitted by the first respondent initiated disciplinary proceedings by appointing an enquiry officer. After completion of the enquiry, the enquiry officer submitted a report holding that charge Nos.1 to 4 were proved. Thereafter, on 16.07.2002 the petitioner issued a notice to the first respondent calling for his explanation to show cause as to why he should not be removed from service. The first respondent submitted his explanation on 26.07.2002. Being not satisfied with the explanation submitted by the first respondent, the petitioner passed the final order of removal on 12.08.2002. Feeling aggrieved by the order dated 12.08.2002 of the petitioner, the first respondent raised an industrial dispute by filing a petition under Section 2A(2) of the Industrial Disputes Act, 1947, which was numbered as I.D.No.146 of 2002 on the file of the Labour Court-I, A.P., Hyderabad. During the course of enquiry, on behalf of the first respondent (employee), Exs.W.1 to W.5 were marked and on behalf of the petitioner (Corporation), Exs.M.1 to M.19 were marked. Basing on

the oral and documentary evidence, the Labour Court passed the Award on 26.03.2004 directing the petitioner to reinstate the first respondent-employee into service with continuity of service and 50% of back wages but without attendant benefits. Feeling aggrieved by the award of the Labour Court, the petitioner – Corporation filed the present writ petition.

3. The contention of the learned Standing Counsel for the petitioner is three fold: (1) the findings recorded by the Labour Court are perverse; (2) the finding of the Labour Court that charge Nos.1 to 3 were not proved is not supported by any material much less legally admissible material; and (3) the Labour Court having arrived at a conclusion that charge No.4 was proved, ought not to have reinstated the first respondent into service with 50% of back wages.

4. No representation on behalf of the first respondent in spite of several adjournments.

5. In order to appreciate the contentions of the learned Standing Counsel for the petitioner, this Court places reliance on the ratio laid down in 1) ***Syed Yakoob vs. K.S. Radhakrishnan***^[1], wherein 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*^[2] *Nagandra Nath Bora v. Commissioner of Hills Division and Appeals Assam*^[3] and *Kaushalya Devi v. Bachittar Singh*^[4].)”

2) ***Swaran Singh vs. State of Punjab***^[5] wherein 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.”

3) ***Union of India vs. P Gunasekaran***^[6] wherein 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 reappraisal of the evidence. The High Court can only see whether:”

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 enquiry officer or the Labour Court/Tribunal, if they are perverse, or, if there is any error apparent on the face of the record.

6. The Labour Court set aside the findings of the enquiry officer so far as charge Nos.1 to 3 are concerned. The first respondent in his explanation Ex.M.7 submitted that at the time of checking, most of the passengers were having correct tickets except the passengers, who boarded the bus at suburban stop. Even as per the statements of the passengers, the first respondent issued tickets to them. If the statement of the passengers is taken into consideration, the first respondent has not committed any irregularity while issuing tickets. As per charge Nos.1 to 3, the first respondent has not issued tickets to nine passengers. If really the first respondent has not issued tickets to nine passengers, what prevented the checking officials to record their statements? For the reasons best known, the checking officials have not recorded the statements of the passengers. The enquiry officer has not assigned reasons much less cogent and valid reasons to arrive at a conclusion that charge Nos.1 to 3 were proved. The findings recorded by the enquiry officer are not sustainable either on facts or on law. This aspect was considered by the Labour Court in right perspective. As per charge No.4, the first respondent has collected an amount of Rs.2-50 ps. from one of the passengers though the fare is Rs.3/-. It is not the case of the Corporation that the first respondent has collected an amount of Rs.2-50 ps. from the passenger

without issuing the ticket. Admittedly, the first respondent has taken a specific stand in his statement Ex.M.13, before the enquiry officer, that the charge memo was issued to him at stage No.8 at 2:00 PM, after all the passengers alighted from the bus. This aspect was not disputed by the Corporation. The finding of the enquiry officer on charge No.4 is based on assumptions and presumptions. The Labour Court made an observation that if charge No.4 is presumed to have been proved, the imposition of punishment of removal from service is shockingly disproportionate. Even assuming that the petitioner failed to collect an amount of Rs.0-50 ps. from the passenger, whether that itself is sufficient to remove the petitioner from service.

7. It is needless to say that if the punishment imposed is shockingly disproportionate to the proved misconduct, then the Labour Court is entitled to modify the punishment in view of Section 11A of the Industrial Disputes Act. At the time of checking, the first respondent was working as conductor in a city bus in Hyderabad City. A perusal of the record reveals that at the time of checking, 60 passengers were travelling in the city bus. One has to visualize the precarious condition of the Conductors working in city buses, more particularly, in Hyderabad City. Another aspect to be considered by this Court is that the checking officials have not examined the passengers. This Court is very much conscious that non-recording of the statements of the passengers by itself would not be a valid ground to set aside the enquiry officer's report. At the same time the Court shall not lose sight of the other attending circumstances in order to arrive at a just and reasonable conclusion. As observed earlier, the findings recorded by the enquiry officer on charge Nos.1 to 3 are not sustainable. The Labour Court has assigned cogent and valid reasons while setting aside the findings of the enquiry officer on charge Nos.1 to 3 is concerned. The Labour Court made an observation that the punishment imposed shall commensurate with gravity of proved misconduct. In the instant case, the first respondent worked as a

Conductor in the petitioner Corporation for a period of 22 years. The Labour Court by taking into consideration the length of service of the first respondent, modified the punishment imposed against the first respondent. This Court shall not lightly interfere with the findings recorded by the Labour Court unless there is an error of law apparent on the face of the record.

8. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am of the considered view that there are no grounds much less valid grounds to interfere with the award of the Labour Court.

9. Accordingly, the Writ Petition is dismissed. No costs.

10. Consequently, Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

T.SUNIL CHOWDARY, J

Date: 16.06.2016
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[\[1\]](#) AIR 1964 SC 477

[\[2\]](#) (1955) 1 SCR 1104

[\[3\]](#) (1958) SCR 1240

[\[4\]](#) AIR 1960 SC 1168

[\[5\]](#) (1976) 2 SCC 868

[\[6\]](#) (2015) 2 SCC 610