

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

WRIT PETITION No.4606 of 2003

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Date:19.01.2016

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Between:

Rangaiah

... Petitioner.

AND

The Industrial Tribunal-cum- Labour
Court-II, Hyderabad rep.by its
Presiding Officer and another.

...Respondents.

The Court made the following :

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

WRIT PETITION No.4606 of 2003

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ORDER:

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This writ petition is filed to issue writ, order or direction more particularly one in the nature of Writ of Certiorari by calling for the records in I.D.No.54/2000, dated 28-11-2000, on the file of Industrial Tribunal-II, Hyderabad and set aside the order to the extent of not granting any relief to the petitioner and quash the award dated 28-11-2000.

2. Petitioner herein was appointed as Conductor in the second respondent-Corporation in 1975. While petitioner was performing his duties on 18-8-1991, a check was conducted by the checking officials on Route No.3K at Tourist Hotel, Kachiguda, Stage No.6/5 and the

petitioner was found with certain cash and ticket irregularities. The following charges were framed against the petitioner for those irregularities:-

- “a) For having failed to complete the ticket issues within one fare stage.*
- b) For having failed to collect the fare and issue tickets to a batch of two passengers found travelling without tickets who boarded the bus at Andhra Yuvathi Mandali and bound for Afzalgunj – ex. stages 6 to 3.*
- c) For having failed to collect fare and issue tickets to three individual passengers found travelling without tickets who boarded the bus at Andhra Yuvathi Mandali and bound for Koti - ex.statges 6 to 4.*
- d) For having issued two tickets bearing No.010/262490 to 491 of Rs.2.50 P.S denomination to two passengers in a batch who boarded his bus at Kamalanagar and bound for Koti-ex.stages 6 to 4.*
- e) On a scrutiny of tickets in tray No.248 permanently allotted to him, it was found that he was in the habit of selling tickets unserially without accounting in the SR and he had sold tickets of various denominations unserially without accounting in the SR and he had sold tickets of various denominations unserially without accounting in the SR up to 18.8.91 by mis-appropriating an amount of Rs.91.50 P.S.”*

3. Petitioner gave explanation to the above said charges and not satisfied with the explanation, second respondent appointed an Enquiry Officer to conduct enquiry into the alleged charges. On the basis of enquiry report, show cause notice was issued suggesting removal from service and thereafter, proceedings dated 08-05-1992 were issued removing the petitioner from service. Petitioner preferred appeal to the Divisional Manager, APSRTC and the same was rejected on

14-10-1992, thereafter petitioner preferred review to the Regional Manager and that was also rejected through proceedings dated 28-

04-1994. Petitioner raised Industrial Dispute under Section 2 A (2) of the Industrial Disputes Act before Industrial Tribunal-II, Hyderabad and the Industrial Tribunal upheld the action of the disciplinary authority and passed award. Now challenging the said award, present writ petition is filed.

4. Heard arguments.

5. Advocate for petitioner submitted that the labour Court failed to see that there was heavy rush of 67 passengers in the bus at the time of check and it was not possible for the petitioner to issue tickets to all the passengers in the bus and the explanation offered by the petitioner was quite convincing and the same was not at all considered. He further submitted that gravity of misconduct alleged is only minor in nature and thereby punishment of removal awarded to the petitioner is disproportionate to the charge. He further submitted that the enquiry report submitted by Enquiry Officer is an *ex-parte* report and the Industrial Tribunal, without any evidence, confirmed the *ex-parte* report, which is against principles of natural justice. To support his arguments, he placed reliance on a judgment of Hon'ble Supreme Court in **Roop Singh Negi vs. Punjab National Bank and others**^[1] and a decision of this Court reported in **N.R.S. Narayana v s . Additional Industrial Tribunal-cum-Additional Labour Court**^[2].

6. On the other hand, learned Standing Counsel for the second respondent submitted that the labour Court conducted enquiry and recorded evidence of both parties and basing on such evidence only, confirmed the findings of the enquiry officer and that the labour Court has not committed any error. He further submitted that the decisions relied on by Advocate for petitioner have no application, since the labour Court recorded evidence and basing on such evidence only

held that the punishment is proportionate to the charge proved and therefore, there are no grounds to interfere.

7. Now the point that would arise for my consideration in this writ petition is whether the petitioner is entitled for the relief claimed?

8. **Point:-** Petitioner was found with certain cash and ticket irregularities when the checking officials intercepted the bus at Tourist Hotel, Kachiguda and noticed that petitioner failed to complete ticket issue within one fare stage, failed to collect fare and issue tickets to a batch of two passengers, who boarded the bus at Andhra Yuvathi Mandali and bound for Afzalgunj; failed to collect fare and issue tickets to three passengers, who also boarded the bus at Andhra Yuvathi Mandali and bound for Koti; issued tickets of Rs.2-50 P.S., denomination to two passengers, without accounting in the S.R., which are found to be un-serial and that he was in the habit of selling tickets unserially without accounting in the S.R., thereby misappropriated an amount of Rs.91.50 P.S. The above said allegations are denied by the petitioner and he offered explanation for all the charges.

An Enquiry Officer was appointed and as seen from the record, he submitted enquiry report on 20-11-1991 and the same is an *ex-parte* enquiry report.

9. Now the main grievance of the petitioner is that the Industrial Tribunal accepted such *ex-parte* enquiry report and that the same is not permissible. Learned Advocate for petitioner placed reliance on the decision of this Court in **N.R.S. Narayana vs. Additional Industrial Tribunal-cum-Additional Labour Court²**, wherein finding recorded by labour Court, which is not based on any evidence was held as perverse. I have perused the above referred decision. In that case, no person connected with the checking was examined and in spite of that finding was recorded by the labour Court, which was held

as perverse. But here in our case, as seen from the record, the Presiding Officer examined the petitioner as a witness and also examined the checking official as M.W.1 on respondent side. Only on appreciation of evidence of these witnesses with reference to the documents-Exs.M1 to M12, the Presiding Officer held that there are no merits in the claim of the petitioner and accordingly, rejected his claim, therefore, as rightly pointed out by the respondent, that decision has no application.

10. The other decision relied on by the petitioner wherein the Supreme Court found fault with the manner in which the departmental enquiry officer relied on documentary evidence produced on behalf of department. In that case, it appears there was a confession of the employee before the police and that confession was relied on straight away without examining any witness connected with that confession. Further, in that case, F.I.R was also relied on by the enquiry officer straight away without examining any witness, under those circumstances, the Hon'ble Supreme Court held that order of the disciplinary authority and order of the appellate authority are not at all supported by any evidence, but here in our case, the document before the labour Court are duly proved through witnesses and the labour Court has not solely relied on the departmental enquiry report and it has independently recorded its findings basing on evidence which findings are supporting with the findings of the enquiry officer, therefore, this decision is also not applicable to the facts of this case.

11. The learned Presiding Officer scrutinized evidence of M.W.1 with reference to documents-Exs.M1 to M8 and found that the misconduct alleged against the petitioner is duly proved. As seen from the award, several points were raised challenging the punishment given to the petitioner and all those points are duly answered with reference to evidence on record and various

judgments of Supreme Court and this Court. The award of the Industrial Tribunal is a well reasoned order and there is no arbitrariness or violation of principles of natural justice; therefore there are no grounds to interfere.

12. For these reasons, I am of the view that the objection of the petitioner with regard to the award passed by the first respondent herein is not at all tenable and that there are no grounds to interfere with the award of the first respondent, therefore, the writ petition is dismissed. No costs.

13. As a sequel, miscellaneous petitions, if any, pending in this writ petition, shall stand dismissed.

JUSTICE S. RAVI KUMAR

Date:19.01.2015

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[\[1\]](#) (2009) 2 Supreme Court Cases 570

[\[2\]](#) LAWS(APH)-2010-9-53