

HONOURABLE SRI JUSTICE S.RAVI KUMAR

WRIT PETITION No.13033 OF 2003

Dated 26-2-2016

Between:

B.Bayanna.

..Petitioner.

And:

The Industrial Tribunal-cum-Labour Court,
Anantapur, represented by its Presiding Officer and
another.

..Respondents.

HONOURABLE SRI JUSTICE S.RAVI KUMAR

WRIT PETITION No.13033 OF 2003

ORDER:

This writ petition is filed seeking direction more particularly one in nature of Writ of Certiorari declaring action of first respondent in not granting any relief to the petitioner as illegal, arbitrary and unjust and consequently quash award in I.D.No.319 of 2000 dated 22-2-2003 and to direct reinstatement with continuity of service with attendant benefits.

Petitioner herein was appointed as conductor in second Respondent Corporation in the year 1995. While petitioner was working as conductor, on bus bearing No.AP 10 Z 2058 on route Dharmavaram to Anantapur on 31-7-1999, a check was exercised by the Checking Officials at about 7.45 P.M., at stage No.10 and petitioner was found with cash and ticket irregularities. Petitioner was issued a charge memo dated 13-8-1999 for the cash and ticket irregularities for which he submitted an explanation on 21-8-1999. Second respondent appointed Enquiry Officer to conduct enquiry into the charges and the Enquiry Officer conducted enquiry and found him

guilty of the charges. On considering the Enquiry Officer's report, second respondent issued a show cause notice to petitioner suggesting removal and petitioner gave his explanation and finally proceedings were issued on 9-11-1999 terminating petitioner from service. Petitioner preferred appeal challenging termination order and the same was rejected on 23-2-2000, subsequently, he filed review petitions which were also rejected and thereafter he raised dispute before Industrial Tribunal in I.D.No.319 of 2000 and the Labour Court, Anantapur i.e., first respondent herein passed award on 22-2-2003 confirming termination order.

Questioning the orders of the Labour Court, present writ petition is filed.

Advocate for writ petitioner submitted that Enquiry Officer appointed by second respondent has not followed principles of natural justice therefore, Enquiry Report is not legal. He further submitted that when the appellate authority and the reviewing authority rejected the appeal and the review without assigning any reason, when such actions are questioned before the Labour Court, the Labour Court without considering the objections of the petitioner simply accepted the version of department and passed award and the same is arbitrary, illegal and liable to be quashed.

On the other hand, advocate for Corporation submitted that after following due procedure only, Enquiry Officer submitted his report and as the charges of misconduct are proved, appellate authority and reviewing authority and Labour Court have rightly not interfered with the termination order.

Now the point that would arise for my consideration in this writ petition is whether the order of the award dated 22-2-2003 is legal, correct and proper?

POINT:

As seen from the material, a charge memo was issued to the petitioner in respect of cash and ticket irregularities, for which the petitioner has submitted his explanation, thereafter enquiry was ordered and enquiry officer conducted detailed enquiry. Now the grievance of writ petitioner is that Enquiry Officer has not followed the principles of natural justice. But as seen from the record, the writ petitioner was examined as witness during the enquiry and the claimant himself gave statement before Enquiry Officer and only on consideration of such material, Enquiry Officer found the charges leveled against petitioner are duly proved.

Petitioner except contending that Enquiry Officer has not followed the principles of natural justice, has failed to quote any specific instances whether there was violation of principles of natural justice. When the claimant was given a reasonable opportunity during the enquiry proceedings, the contention of the writ petitioner in respect of principles of natural justice is not at all tenable.

The next contention of the writ petitioner is that both appellate authority and reviewing authority rejected appeal and review petition without assigning any reasons. As seen from the record that allegation is also not correct and both the appellate authority and reviewing authority only on a consideration of material passed orders dismissing both appeal and review.

Now the present writ is filed questioning the orders of the Labour Court on the ground that Labour Court has not properly evaluated material on record. This objection is also not tenable. Labour court has examined each and every aspect including Enquiry file and reassessed evidence that was recorded by the Enquiry Officer and came to the conclusion that charges leveled against the writ petitioner are duly proved and the findings of the Enquiry Officer are based on convincing evidence.

Therefore, I do not find any illegality or arbitrariness in the award passed by the labour court.

Advocate for petitioner contended that the removal from the service is disproportionate to the charge leveled against writ petitioner and that aspect was not considered by the Labour Court and on that ground, award of the Labour court is liable to be set aside. But here the petitioner was found re-issuing tickets. He reissued tickets to 17 passengers of Rs.11/- denomination in different batches and that was duly proved through material evidence and when such a serious misconduct is established with convincing evidence concerning with misappropriation of corporation money, contention of counsel for writ petitioner that the punishment is disproportionate to the charges leveled cannot be accepted.

Learned counsel placed reliance on the decision of this court in *K.DAVID WILSON v. SECRETARY TO GOVERNMENT, LAW DEPARTMENT (LEGISLATIVE AFFAIRS AND JUSTICE), HYDERABAD AND ANOTHER* ^[1] for the proposition that when the Enquiry was without following the principles of natural justice, such report cannot be foundation for passing orders of removal. But in the case on hand regular departmental enquiry was conducted action was not taken on preliminary report as was done in Wilson's case.

He also relied on a decision of this court in *P.F.KHAN E.406046 v. DEPOT MANAGER, A.P.S.R.T.C.* ^[2] for the proposition that Labour Court has not made any effort to record evidence, such award cannot be sustained.

In *V.RAMANA v. APSRTC AND OTHERS* ^[3], on the basis of police report, any punishment of removal was ordered and that was found to be not legal as it is violative of principles of natural justice.

But here, in our case, regular departmental enquiry was conducted and every opportunity was given to the writ petitioner and in fact, he participated in the enquiry both by cross-examining the departmental witnesses and giving statements by himself, therefore, that decision would no way helpful to the writ petitioner.

In *P.F.KHAN E.406046 v. DEPOT MANAGER, A.P.S.R.T.C.* (2nd cited) the labour court has not discussed oral evidence and only made casual reference to some of the documents and in those circumstances, this court held that such approach is not correct.

But here, Labour court has discussed entire evidence placed before the Enquiry Officer and reassessed it and came to the conclusion that charges are duly proved, therefore, that decision is no way helpful to the writ petitioner.

Honourable Supreme Court in *U.P.STATE ROAD TRANSPORT CORPORATION, DEHRADUN v. SURESH PAL* ([\[4\]](#)) held that “Normally, the courts do not substitute the punishment unless they are shockingly disproportionate and if the punishment is interfered or substituted lightly in exercise of their extraordinary jurisdiction, then it will amount to abuse of the process of court.”

In *DIVISIONAL CONTROLLER, N.E.K.R.T.C. v. H.AMARESH* ([\[5\]](#)) Honourable Supreme Court observed that “When an employee is found guilty of pilferage or of misappropriating the Corporation’s funds, there is nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of dismissal. In such cases, there is no place for generosity or misplaced sympathy on the part of the judicial forums and interfering therefore with the quantum of punishment.

In that case, Labour Court ordered reinstatement of

the employee and a single judge also confirmed the reinstatement with back wages but the Division Bench while confirming the order of reinstatement has set aside order of granting back wages and the Honourable Supreme Court by allowing appeal has set aside the orders passed by the Labour Court, single judge and Division Bench by recording that those findings are perverse.

Here in this case, writ petitioner is involved in cash and ticket irregularities and therefore, there is nothing wrong for the corporation to lose faith in the petitioner because of his act of re-issuing tickets and causing financial loss to the corporation.

In view of the above referred Honourable Supreme Court decision, I am of the view that Labour Court rightly dismissed the claim of the writ petitioner and there is no illegality or arbitrariness in the findings of the Labour Court and that the writ is devoid of merits.

Therefore, this writ petition is dismissed. No costs.

As a sequel to the disposal of this writ petition, Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE S.RAVI
KUMAR

Dated 26-2-2016.
Dvs.

HONOURABLE SRI JUSTICE S.RAVI KUMAR

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Dvs

[\[1\]](#) 2001 (5) ALT 65 (D.B.)
[\[2\]](#) 2008 (3) ALT 234
[\[3\]](#) 2001(5) ALD 427 (FB)
[\[4\]](#) (2006) 8 SCC 108
[\[5\]](#) (2006) 6 SCC 187