

HON'BLE SMT JUSTICE ANIS
WRIT PETITION No.21888 OF 2003

ORDER :

This writ petition is filed by the petitioner, under Article 226 of the Constitution of India, to issue writ of *Certiorari* to quash the award dated 23.04.2003 passed in I.D.No.71 of 2000 on the file of the Labour Court-II, Hyderabad as illegal, arbitrary and contrary to the established principles of law.

2. It is the case of the petitioner that he was appointed as conductor on 26.04.1985 on daily wage basis. Thereafter, his services were regularized with effect from 01.07.1987 and he was attached to the second respondent depot. On 20.10.1998, while he was on duty on the RTC bus bearing No.2607, which was running from Kamareddy to Nanded, a surprise check was conducted by the checking officials on the said bus at Stage No.33 at 05:45 p.m. At the time of check, the petitioner did not produce any waybill along with the S.R and he was in possession of Rs.10/- denomination block ready for use but instead of issuing Rs.10/- denomination tickets he issued tickets in combination. Petitioner gave a spot explanation stating that since the computer in the depot was not reorganized he was not given the waybill by the concerned ADC and he further explained that though he was in possession of Rs.10/- block tickets, since the same was not opened in the S.R. he had not used the said block. After receiving the report from checking officials, the depot manager directed a detailed enquiry in verifying all the S.Rs and waybills maintained by the petitioner for a period of one month prior to the date of the above check. Accordingly, a Chief Inspector was appointed to conduct a preliminary enquiry, who after verifying all the statistical returns and waybills maintained by the petitioner during his duty as conductor on various routes, submitted a report that the petitioner committed misconduct and misappropriated some amounts

by misleading the concerned depot clerks when he was on duty on various routes from 06.10.1998 to 21.10.1998. Basing on the report of the Chief Inspector, the second respondent issued a charge sheet dated 16.11.1998 containing 13 charges and at the same time, the petitioner was kept under suspension. After receiving the charge sheet, the petitioner submitted his explanation dated 01.12.1998. Not satisfied with the explanation given by the petitioner, the second respondent directed a regular domestic enquiry against the petitioner by appointing the Chief Inspector, Enquiries, Nizamabad. Accordingly, the Enquiry Officer held enquiry, examined several witnesses and submitted his report. After completing the enquiry, he submitted the report on 19.04.1999 to the second respondent. Basing on the report, the second respondent issued a notice calling upon the petitioner to submit his comments/objections on the report of enquiry and accordingly, the petitioner submitted the same on 19.05.1999. After perusing the objections and comments, the second respondent issued a show cause notice of removal dated 29.05.1999 to the petitioner for removing him from service. For the said notice also, the petitioner gave his explanation. Not being satisfied with the said explanation, the second respondent passed the impugned order dated 24.06.1999 removing the petitioner from service. Petitioner contended that he never committed misconduct in his duties and gave explanation that because of his oversight, he paid more amounts to the passengers while issuing the tickets and he made short remittances as explained in charge Nos.1 to 6 and he never misappropriated any cash. The petitioner contended that the first respondent while passing the orders, not granted continuity of service, backwages and attendant benefits and the said order is illegal, arbitrary and unjust. Further, the petitioner remitted the amount and there is no proof of any misappropriation committed by him. Further, the petitioner issued tickets to all the passengers. But,

however, he also paid some more amount to the passengers, as such there was a shortage of Rs.70/- and the said amount was also remitted. It is also contended by the petitioner that at the time of enquiry, the second respondent have not produced any documentary evidence to prove the charges and finally prayed the Court to quash the proceedings in I.D.No.71 of 2000 dated 23.04.2003 on the file of the first respondent and direct the second respondent to reinstate him into service.

3. The brief averments made in the counter filed by the second respondent are as follows:

The respondent contended that the petitioner was initially engaged to as a conductor on daily wage basis on 26.04.1985. On 26.04.1988, he was appointed as temporary conductor under Reg.17 on regular pay scales with effect from 01.07.1987. On 06.01.1989, he was appointed as Junior Purchase Clerk under Reg.17 and he reported for duty on 30.01.1989. On 03.05.1989, the order was modified and he was appointed as Assistant Store Keeper under Reg.5 of the Service Regulations. By an order dated 24.06.1989, he was reverted from the post of Junior Purchase Clerk to his former post of conductor at his own request and he reported at Bodhan depot as conductor on 28.06.1989. He was confirmed as conductor on 03.04.1995. The second respondent denied that petitioner was discharging his duties to the utmost satisfaction of his superiors and having clean record. The second respondent stated that having committed various cash and ticket irregularities on several occasions, he was censured seven times, his increments were deferred thrice, he was fined thrice and removed once on 19.06.1991 prior to committing the present misconduct. The order of removal was confirmed by the Appellate Authority on 24.10.1991. But, pursuant to the award made in I.D.No.151 of 1993, he was reinstated

into service on 09.05.1997. The respondent stated that on 24.06.1999, by the orders, the petitioner was removed from service for having committed serious cash and ticket irregularities and after conducting due enquiry, 13 charges were levelled against him and after giving reasonable opportunity to defend himself and following the principles of justice, the said order has been passed. The second respondent stated that the petitioner filed an application in I.D.No.71 of 2000 before the Labour Court-II, Hyderabad, questioning the validity of the order of his removal from service. The second respondent filed his counter and seriously opposed the application. Thereafter, the petitioner filed a memo stating he is not disputing the validity of the domestic enquiry conducted against him. The second respondent also stated that during the course of enquiry before the Tribunal, entire file relating to domestic enquiry was marked as Ex.M1. Thereafter, CW.1 and Exs.M2 to M15 were marked and none cross-examined the said witness. After considering the entire material on record the Labour Court-II, Hyderabad, rightly held that the charges 1 to 9 & 12 were proved and wrongly held that charges 10, 11 & 13 were not proved. According to the second respondent, the petitioner committed misappropriation of the revenue of the Corporation to a tune of Rs.705/- within a period from 06.10.1998 to 21.10.1998. Further, the Labour Court erroneously passed the orders directing his fresh appointment as conductor without continuity of service, backwages and attendant benefits. Accordingly, he was reinstated as fresh conductor with fresh service and without backwages and attendant benefits on 16.06.2003 and he reported duty on 19.06.2003. As such, the petitioner is estopped from questioning the validity of the impugned award to the extent it went against him. The respondent also contended that petitioner has not disputed the validity of the domestic enquiry and further, the petitioner also not questioned the validity of the impugned award

unless either it is perverse or not based on evidence and finally stated that petitioner committed temporary misappropriation of Rs.705/-, as such the disciplinary action was taken and finally prayed the Court to dismiss the writ petition with costs.

4. Considering the contentions of the petitioner as well as the second respondent, the point that arise for consideration is:

Whether the fact finding recorded by the Authorities under Section 2-A(2) of the Industrial Disputes Act, 1947 by the Chairman, Labour Court-II, Hyderabad in I.D.No.71 of 2000 dated 23.04.2003 can be interfered exercising jurisdiction under Article 226 of the Constitution of India and that whether the Orders passed by the Authorities are in violation of any statutory rule or provision. If so, the Orders are liable to be quashed?

5. The learned counsel for the petitioner argued that the petitioner was appointed as regular conductor attached to the second respondent depot and on the date of surprise check i.e., 20.10.1998, he was on duty on the RTC bus bearing No.2607, which was running from Kamareddy to Nanded. Then, a surprise check was conducted by the checking officials on the said bus at Stage No.33 at 05:45 p.m. At the time of check, the petitioner was in possession of Rs.10/- denomination block ready for use, but he did not use the same. According to him, the computer in the depot was not reorganized and he was not given the waybill by the concerned ADC and further, whatever amount alleged to be misappropriated were already paid by the petitioner in time. As such, there is no temporary misappropriation. Therefore, the petitioner is entitled for continuity of service, backwages and attendant benefits. It is also argued that the second respondent Corporation has not challenged the order passed by the Labour Court-II, Hyderabad regarding the relief granted for reinstatement of the petitioner into service as a fresh conductor and relied upon the case law reported in **Mohd. Nizamuddin v. General Manager and Appellate Authority, Bank of India, Zonal Office**^[1],

wherein it is held as follows:

“14. Coming to the first charge of availing cash loan of Rs. 80,000/- and not purchasing the car, which is held to have been proved, is concerned, it has to be seen that the petitioner paid back the entire amount and interest tantamounting to Rs. 95,120/- in the year 1995 itself. Thereafter, at no point of time, any complaint is made against the petitioner with reference to his car loan and only after he had consistently pursued his application for pension on voluntary retirement, at the very belated stage, the said disciplinary proceedings are initiated with reference to the above said charge. Seriousness of the said charge has to be viewed from the factum of repaying the entire loan amount much prior to the initiation of the disciplinary proceedings and the petitioner had explained the reasons as to why the transaction to purchase the car was not fructified and the circumstances, which led to paying back of the loan amount with interest. In that view of the matter, I am of the opinion that the charge is not such a serious one, and, in any event, it will not attract the extreme punishment of dismissal from service.”

and also relied on an unreported judgment in Writ Appeal Nos.405 & 409 of 2013 between ***M.V.Seshachari v. The Chairman & Managing Director, Madras Fertilizers Limited, Manali, Chennai – 600 068 and three others***, wherein this court relied upon the judgment of ***Mahindra and Mahindra Ltd., v. N.B. Narawade*** [(2005) 3 SCC 134] and extracted the following passage from the judgment of ***UPSRTC v.***

Subhash Chandra Sharma^[2]:

“6. Whether it is open to the Industrial Tribunal or the Labour Court or the High Court to interfere with the quantum of punishment is, no longer, res integra, as the question has been answered by this Court several times in its various decisions. In B.C. Chaturvedi v. Union of India [(1995) 6 SCC 749] a three-Judge Bench of this Court has held that Section 11-A of the Industrial Disputes Act, 1947 confers power on the Industrial Tribunal/Labour Court to apply its mind on the question of proportion of punishment or penalty. that this power is also available to the High Court under Article 226 of the Constitution, though it was qualified with a limitation that while seized with this question as a writ court, interference is permissible only when the punishment/penalty is shockingly disproportionate. (emphasis supplied)”

and finally prayed the Court that the petitioner is at the verge of retirement and he deposited the amounts to the Corporation immediately, as such there is no temporary misappropriation and prayed the Court to grant relief of continuity of service, so that he will get the retirement benefits atleast.

6. On the other hand, the learned counsel for the second respondent argued that on the date of surprise check, the petitioner issued the tickets in combination without issuing the Rs.10/- denomination tickets. Further, after a detailed enquiry was conducted after verifying the S.Rs of the petitioner, some other entries of misappropriation were found. A report was given to the second respondent Corporation. Basing on the report, a domestic enquiry was conducted and charges against the petitioner were proved, as such he was removed from service. The Tribunal without considering the evidence on record, reinstated the petitioner as fresh conductor but without continuity of service, backwages and without paying attendant charges. The learned counsel also argued that though the petitioner committed temporary misappropriation of Rs.705/-, the said temporary misappropriation is sufficient to take the decision of removal by the second respondent Corporation. It is also argued that this Court has no jurisdiction to entertain the present writ petition as the jurisdiction under writ of *Certiorari* is a supervisory one and the Court is not entitled to act as the Court of appeal. An error of law apparent on the face of the record could however be corrected by a writ of *Certiorari* but not an error of fact. In this case, the petitioner was given a fresh appointment by considering the evidence on record by the Tribunal and basing on the award passed by the Tribunal, he was reinstated. Therefore, the petitioner is not entitled for continuity of service, backwages and attendant charges. It is also argued that previously also the petitioner was removed from service on 19.06.1991. Again, he was reinstated. Further, he was censured seven times, increments were deferred thrice and was also fined thrice. In view of the conduct of the petitioner, the Tribunal rightly passed the award of reinstatement of the petitioner as a fresh conductor, as such the petitioner now cannot agitate that he is

entitled for continuity of service, backwages and other benefits, which were not granted by the Tribunal. It was also argued that the punishment imposed by the Tribunal is not shockingly disproportionate to the charges proved. Further, he relied upon the judgment reported in **A.P.S.R.T.C v. Raghuda Siva Sankar Prasad**^[3], wherein it is held at paras 21 & 22 as follows:

“21. In our view, the theft committed by the respondent amounts to misconduct and, therefore, we have no hesitation to set aside the orders passed by the learned Single Judge and also of the Division Bench and restore the order of removal of the respondent from service. When the Labour Court has proved the charges, no interference by the learned Single Judge or by the Division Bench of the High Court was called for. In the instant case, the jurisdiction vested with the Labour Court has been exercised judiciously and fairly. In our opinion, the conclusion arrived at by the High Court in ordering reinstatement; continuity of service was shockingly disproportionate to the nature of charges already proved which is in the nature of theft.

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. “

It is also argued that interfering with the quantum of punishment is not called for by this Court and also relied upon the case law reported in

Divisional Controller, N.E.K.R.T.C. v. H. Amaresh^[4], wherein it is held at para 24 as follows:

“24. In the instant case, even though charge No. 4 has been proved beyond any doubt, the Labour Court taking a lenient and sympathetic view, passed certain directions which were modified by the learned Single Judge and of the Division Bench. While entertaining this special leave petition, this Court has only ordered notice to the respondent. The order of the High Court and of the Division Bench has not been stayed even though the Division Bench observed that having regard to the gravity of the charges proved against the respondent, it would be in the interest of justice to modify the order passed by the learned Single Judge to the extent he has directed the appellant- Corporation to pay 25% back

wages. The Division Bench deleted the direction in regard to the payment of back wages but retained the order in regard to the reinstatement. The said order is ex- facie illegal and contrary to the principles laid down by the various decisions of this Court which have been referred to in paragraphs supra and also on the proved facts and circumstances of the case. Having accepted all the facts that the charges of short remittance was proved and yet the learned single Judge and the learned Judges of the Division Bench proceeded to pass an order ordering reinstatement which clearly goes against the mandate of the various judgments of this Court."

and finally prayed the Court to dismiss the writ petition.

7. **P O I N T:** A perusal of the record shows that there is no dispute that initially, the petitioner was appointed as conductor on 26.04.1985 and his services were regularized on 01.07.1987. On 20.10.1998, a surprise check was conducted at stage No.33, when the petitioner was on duty on the RTC bus bearing No.2607, which was running from Kamareddy to Nanded. At the time of surprise check, the petitioner failed to produce the waybill along with S.R. Further, the petitioner also instead of issuing Rs.10/- denomination tickets, issued tickets in combination. Basing on the report given by the checking officials, the depot manager conducted a detailed enquiry through Chief Inspector, Kamareddy depot, who gave a report against the petitioner about his misconduct and misappropriation of some amounts by misleading the concerned depot clerks while he was on duty. Basing on the enquiry report, the respondent issued a charge sheet on 16.11.1998. Thereafter, the explanation was called for, regular domestic enquiry was conducted and the charges against the petitioner were not proved and after verifying the objections and comments, the petitioner was issued with show cause notice of removal and petitioner gave explanation to the said notice. After considering the same, he was removed from service on 24.06.1999. Aggrieved by the order of removal, petitioner filed I.D.No.71 of 2000, in which he filed a memo stating that he is not disputing the validity of

the domestic enquiry conducted against him. Therefore, considering the said memo, the Labour Court upheld the validity of the domestic enquiry.

8. The contention of the second respondent is that the petitioner is habituated in misappropriating the amount of second respondent Corporation and previously, he was removed from service and he filed I.D.No.151 of 1993 and he was reinstated by the Tribunal by taking lenient view. The petitioner instead of stopping the said activities, again on the date of surprise check, failed to produce the waybill issued along with the S.R and further, not accounted for Rs.705/- and thus, he committed temporary misappropriation. The respondent also contended that previously, the petitioner was awarded with several punishments and he has habituated in committing such mistakes. Further, a perusal of the record shows that the petitioner resorted temporary misappropriation of the amounts realised on sale of bus tickets in between the period of 16.10.1998 to 21.10.1998, as such, the charges against him were proved. Further, the petitioner at no point of time informed the authorities that he mistakenly gave more amounts to the passengers while issuing tickets and he never requested the Corporation to deduct the amounts from the monthly salary. Thus, the petitioner was habituated in committing such mistakes. Therefore, considering the evidence on record, the Tribunal also took lenient view and reinstated the petitioner into service as a fresh conductor without any backwages, continuity of service and attendant benefits.

9. The contention of the petitioner is that if the continuity of service is given to the petitioner, he will be benefited to draw the pensionary benefits. This contention of the petitioner cannot be accepted because the petitioner was on earlier occasions also awarded several punishments and he did not mend his activities. The

error of law apparent on the face of record could however be corrected by writ of *Certiorari*, but not an error of fact. In the present case, the petitioner himself filed a memo not disputing the validity of the domestic enquiry conducted by the Corporation against him. Further, he was removed from service in the year 1991. A lenient view was taken by the Tribunal in I.D.No.151 of 1993 and he was reinstated into service. Again, the petitioner filed the present I.D.No.71 of 2000 and the Labour Court-II, Hyderabad, also took the lenient view and reinstated him into service. Therefore, interference by this Court is permissible only when the punishment or penalty is shockingly disproportionate, but in view of the facts of the present case, this Court cannot interfere as the punishment is not shockingly disproportionate.

10. The ***Mohd. Nizamuddin's*** case law (first cited supra) relied upon by the learned counsel for petitioner has no application to the facts of this case because in the said case, this Court held that the delinquent official paid back the entire amount with interest in the year 1995 itself. Thereafter, at no point of time, any complaint was made against him and he also gave reasons, as to why, the transaction to purchase the car was not fructified and this Court held that charge is not such a serious one.

11. In the present case, the petitioner is in the habit of committing mistakes after mistakes. Once, he was removed from service and reinstated into service as per the orders of the Industrial Tribunal cum., Labour Court in the year 1997 and again thereafter also, he committed temporary misappropriation of the amount due to the Corporation. As such, he was removed from service after conducting domestic enquiry. Petitioner not disputed the validity of the domestic enquiry and after considering the evidence on record the Tribunal took lenient view and reinstated the petitioner into service as a fresh

conductor without backwages, continuity of service and attendant charges. Therefore, the above case law relied upon by the petitioner has no application to the facts of the present case and petitioner has not made out any case to interfere with the award passed by the Tribunal and has not made out any case for quashing the award dated 23.04.2003 passed in I.D.No.71 of 2000 on the file of the Labour Court-II, Hyderabad.

12. In the result, the writ petition is dismissed. No costs. Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

ANIS, J

Date: .04.2016
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[\[1\]](#) LAWS (APH)-2003-5-7

[\[2\]](#) (2000) 3 SCC 324

[\[3\]](#) (2007) 1 SCC 222

[\[4\]](#) (2006) 6 SCC 187