

HON'BLE SRI JUSTICE S.V.BHATT

W.P.No.1301 OF 2009

ORDER:

Heard Mr.Gopal, holding for Mr.T.Durga Prasad, learned standing counsel for petitioners and Mr.Ghantasala Uday Bhaskar for 1st respondent.

The petitioners pray for writ of Certiorari to call for the records leading up to and inclusive of order in I.D.No.104 of 2004 dated 08.02.2008 on the file of Labour Court, Guntur, and quash the same, as illegal and arbitrary.

The 1st respondent filed application under Section 2(A)(2) of the Industrial Disputes Act challenging the order of removal dated 16.03.2003. In the year 2003, the 1st respondent was working as Conductor at Avanigadda Bus Depot/APSRTC. On 30.04.2003, the 1st respondent was conducting the bus bearing No. AP 11 Z 1748 on route Nagayalanka –Vijayawada. At stage No.8, at about 16:45 hours, the Enforcement Squad from headquarters conducted check of the vehicle and it was alleged that the 1st respondent collected requisite fare of Rs.91/- (one full and two half tickets) from a batch of three passengers and issued tickets bearing Nos.134/209389 of Rs.40/- denomination, 565/268975 and 976 of Rs.20/- denomination, 620/557664 of Rs.5/- denomination and 620/923907 and 938 of Rs.3/- denomination to the said passengers.

The 1st respondent was charged with the allegation that ticket numbers 565/268975 and 976 of Rs.20/- denomination were issued for Vijayawada in 1200 hours trip on the same day and from the entry in the trip sheet, it is clear that the 1st respondent re-issued E.02 tickets of Rs.20/- denomination to the said passengers at 15:00 hours *en route* Nagayalanka – Vijayawada trip.

The petitioners framed the following charge against the

1st respondent:

“For having reissued two tickets bearing No.565/268975 & 976 of Rs.20/- denm. to E.3 passengers (1 full and 2 half tickets) along with E.1 ticket of Rs.40/- denm. E.1 of Rs.5/- and E.2 of Rs.3/- denm. who boarded the bus at Nagayalanka and bound for Vijayawada ex-stages 1 to 11 which constitutes misconduct vide Reg.28 (xxiii) of APSRTC Employees (Conduct) Reg.1963”.

The petitioners conducted domestic enquiry and as already noted through proceedings dated 16.03.2003 removed the 1st respondent from service. The order of removal was confirmed by the Divisional Manager, Machilipatnam and Regional Manager, Krishna at Vijayawada.

The 1st respondent raised I.D.No.104 of 2004. The case of 1st respondent is that the charges that ticket Nos.975 and 976 were re-issued at 15:00 hours *en route* Nagayalanka-Vijayawada, is incorrect, illegal and the findings recorded by the Enquiry Officer and the Disciplinary Authority suffer from perversity. According to 1st respondent, the entry of ticket No.976 in trip sheet is a mistake and the same can be appreciated from the punch marks recorded on ticket bearing No.976. The 1st respondent relied upon the evidence of TTI and contended that from the admissions of TTI, it can be presumed that the charge of re-issue of tickets is not brought home by the petitioners-management and the punishment of removal from service shocks the conscience of any individual and prayed for setting aside the punishment of removal. The Labour Court, on 29.11.2007, held that the domestic enquiry conducted in this behalf is valid and binding on the parties.

The petitioners marked Exs.M-1 to M-26 and the following points for consideration were framed:

- “1. Whether the charge has been proved or not?
2. Whether the punishment of removal is proportionate or disproportionate?
3. to what relief?”

The Labour Court on point No.1 discussed and held as follows:

“Here a single charge has been framed against the
perverse.

The contention of the petitioners counsel is that it is only a mistake committed by the petitioner while closing the SR with ticket numbers 975 and 976 instead of closing it as 974.

On the other hand, the Law Officer contends that there is nothing to interfere with the findings of the enquiry officer as the petitioner reissued these two tickets.

No doubt the SR shows that he closed the SR with ticket number 976 instead of 974. The contention is there tickets were already issued at 12 hrs trip. Check took place in the evening at 4.45 p.m. The number 976 is found at 12 hours trip.

The explanation of the petitioner is that by mistake he noted down these ticket number. The explanation seems to be reasonable since he did not note down the number of issues in the issues column. If really he issued these tickets at 12 hrs trip he would have written the number of issues also.

The SR indicates that he noted down 974 initially after issuing 5 tickets. The prior number is 969. After selling 5 tickets he noted down 974. If really he sold these tickets at 12 hrs while writing 976 he would have mentioned this in the issue column also. But he did not note down the number of issues in the issues column.

It seems that by mistake instead of writing 974 he had noted down 976. In fact, he sold these tickets at Nagayalanka only when the passengers under the charge boarded the bus. But he already continued the issues with subsequent numbers as 977, since he

wrongly noted down the numbers. This fact was also very clear when the TTI who checked the bus gave evidence at the time of domestic enquiry. It is his specific evidence at the time of domestic enquiry that he did not find the ticket numbers 979 and 980 in the bus. These tickets were already with the tray. The punch marks also indicates that there is no irregular punching. If really these tickets were issued in the earlier trip. But the punch marks on the seized tickets indicate that they were issued at Nagayalanka only. The TTIs also admitted the same. The explanation is convincing and reasonable. It is to be held that the petitioner did not commit any mistake.

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In the above case also the petitioner gave explanation for not issuing tickets to two passengers though he collected money. The enquiry officer found him not guilty. But the disciplinary authority reversed the finding. While dealing with the matter the Supreme Court held that when the explanation given by the conductor is convincing the same has to be accepted and it is to be held that the workman is not guilty. Here also the facts and circumstances of the case clearly indicate that the petitioner, by mistake wrongly noted as 976 for Rs.20/- denm. ticket at 12 hrs trip. But in fact, those tickets were not sold, but they were sold to the passengers under charge No.2 only at the boarding place. Hence, it is not a case of reissue of tickets. The punch marks also supports the version of the conductor. By oversight it seems that the petitioner wrongly noted down ticket numbers. There is no intention on the part of the petitioner to defraud anybody either traveling public or the corporation. Hence, the findings of the enquiry officer that petitioner is guilty of charge is incorrect. The issue is therefore found in favour of the petitioner and against respondent.”

On point No.2, the Labour Court held that there is negligence or carelessness on the part of 1st respondent in including the correct numbers. On point No.3, the Labour Court had set aside the order of removal and directed re-instatement of 1st respondent with continuity

of service and all other attendant benefits, except back wages. Hence, the writ petition.

Learned counsel appearing for petitioners vehemently contended that the consideration of re-issue of tickets by the Labour Court suffers from non-application of mind and bristles with irregularities and illegalities. The contention of petitioners is that the entry in the trip sheet as '976' is an admission to show that the said ticket was issued at the previous stage and re-issued again at 15:00 hours *en route* Nagayalanka-Vijayawada. Learned standing counsel contends that reliance on the admission of TTI is erroneous and prays for allowing the writ petition.

Learned counsel appearing for the 1st respondent contends that the award of Labour Court is based independent consideration of Exs.M-1 to M-26 and the findings recorded by the Labour Court are based upon material and admissions of TTI who was examined on behalf of the petitioners. He has drawn the attention of the Court to the portion of cross-examination statement recorded in the evidence of TTI wherein it is clearly admitted that from SR it can be inferred that two tickets were re-issued whereas from punching of the tickets, there is no re-issue of tickets by the 1st respondent. Therefore, he contends that the officer who has conducted check admitted that there is no re-issue of tickets by the 1st respondent and he prayed for dismissal of the writ petition.

Now the point for consideration is – whether the award impugned in the writ petition suffers from illegality, warranting interference by this Court under Article 226 of the Constitution of India?

For continuity and convenience, I have taken note of the findings recorded by the Labour Court and the findings which resulted in setting aside the order of removal are already excerpted. By

keeping in mind the findings recorded by the Labour Court, I will consider the contentions of learned counsel for the petitioners.

The case of petitioners is that the 1st respondent has re-issued tickets bearing Nos.975 and 976. The basis either for the charge or the conclusion is that these tickets are entered in the SR of Nagayalanka-Vijayawada bus. The 1st respondent at the earliest point of time has explained that the entry of ticket No.976 is erroneous and it ought to be ticket No.974. According to

1st respondent, the re-issue now attributed is at a point three hours prior to the check and in between, so many stages have been crossed and the punching of these two tickets would go to show that there is no re-issue of tickets bearing Nos.975 and 976.

I have examined the statement of TTI who conducted the check and also the tickets for the limited purpose of ascertaining whether the admission is properly and correctly excerpted and appreciated, basing upon which the charge of re-issue was framed against the 1st respondent. Upon examination of these two documents, I am of the view that the checking inspector himself has admitted that from the punching of tickets it cannot be said as a case of re-issue. Secondly, on the admission and punching of tickets, as rightly noted by the Labour Court, the Enquiry Officer did not take note of legal effect while holding the 1st respondent guilty of these charges. For the above reasons, as I am in full agreement with the findings recorded by the Labour Court, I see no reason to interdict the award impugned in the writ petition and the modification of punishment by the Labour Court would further go to show that the Labour Court has exercised its discretion under Section 11-A of the Industrial Disputes Act and no exception can be taken.

For the above reasons, the writ petition is dismissed. There

shall be no order as to costs.

Consequently, pending miscellaneous petitions, if any, also stand disposed of.

S.V.BHATT, J

22nd February 2016
Stp/Lrkm