THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

W.P.No. 25428 OF 2014

ORDER:

The Depot Manager, A.P.S.R.T.C., Nellore Depot, and the Regional Manager, A.P.S.R.T.C., Nellore, filed this Writ Petition to quash the award dated 19-04-2012 passed in I.D.No. 44 of 2007 on the file of the Industrial Tribunal – cum – Labour Court, Guntur (for short, 'the Tribunal'), alleging that the 1st respondent was appointed as a conductor in the 1st petitioner depot. While the 1st respondent was conducting bus No. 8657 on 27-03-2004 from Sriharikota to Tirumala, a check was conducted by checking staff of the corporation and found that the 1st respondent collected an amount of Rs.22/- from a passenger towards bus fare but failed to issue ticket to him who boarded the bus at Vinayaka Temple *i.e.* at stage No. 10. The 1st respondent failed to issue ticket of denomination of Rs.4/- bearing No. 479/88705 to any passenger in the bus but accounted the same in S.R. against stage No. 12 while keeping blank the relevant column in S.R. for Rs.18/- denomination without closing.

The checking officials noted down the irregularities in brief in check sheet. Thereafter, they served a charge memo on the 1st respondent. Basing on the particulars of report and after receipt of explanation, they initiated departmental enquiry for the following charges:

(a) For having collected an amount of Rs.22/- from a passenger towards fare and failed to issue ticket to him who boarded the bus at Vinayaka Temple and bound for Mokalime Ex. Stages 10/11 to 10/11 on the route Sriharikota to Tirumala on 27-03-2004 which constitutes a serious misconduct under Regulation 28 (vi)(a) of the Andhra Pradesh State Road Transport Corporation Employees (Conduct) Regulations, 1963 (for short, '1963 Regulations').

(b) For having closed Rs.4/- denomination as 479/88705 in S.R. as having issued at stage No. 10 but not found the same with any passenger and also Rs.18/- denomination column in the S.R. was kept blank without closing while performing duty on the route Sriharikota to Tirumala on 27-03-2004 which constitutes a serious misconduct under Regulation 28 (xxxii) of 1963 Regulations.

In the departmental inquiry, the 1st respondent was found guilty for the charges and was awarded punishment of removal from service considering the seriousness of misconduct.

Aggrieved by the punishment of removal, the 1st respondent preferred an appeal but the same was dismissed confirming the order of the 1st petitioner for removal of the 1st respondent. Later, the 1st respondent filed a review petition and the same was allowed in part directing to reinstate the 1st respondent into service while ordering stoppage of two annual increments with cumulative effect treating the period of absence as 'not on duty' for the purpose of leave and wage. Accordingly, the 1st respondent was re-instated into service and posted at Rapur Depot.

Being aggrieved by the order in the review petition, the 1st respondent filed I.D.No. 44 of 2007 before the 2nd respondent. The 2nd respondent, upon hearing argument of both counsel, passed an award modifying the punishment from stoppage of two increments with cumulative effect to stoppage of two increments without cumulative effect while finding that the 1st respondent is guilty of misconduct. Thereby, modification of punishment is wholly disproportionate to the gravity of misconduct and such finding was recorded without any basis. Therefore, the petitioners prayed to set aside the same restoring the order passed by the 2nd petitioner.

The respondents did not file any counter.

During hearing, learned counsel for the petitioners would contend that, when the 1st respondent was found guilty for the misconduct of ticket and cash irregularity, quantum of amount involved is not the criterion to impose penalty and loss of confidence of corporation on the 1st respondent alone is relevant. Time and again, the Apex Court in catena of decisions held that when an employee misappropriated any amount, the appropriate punishment is removal from service. Therefore, on the strength of the principle laid down in various judgments of the Apex Court, the punishment imposed against the 1st respondent cannot be said to be disproportionate to the gravity or seriousness of the misconduct but, without recording any reason, the 2nd respondent modified the major punishment into minor punishment. Thereby, the award is liable to be set aside and, therefore, prayed to set aside the same.

Undisputedly, the 1st respondent was found guilty for the grave misconduct as defined under Regulations 28 (vi)(a) and 28 (xxxii) of 1963 Regulations. The penalty imposed against the 1st respondent initially by the 1st petitioner was removal and the same was confirmed by the 2nd petitioner converting the penalty of removal into stoppage of two increments with cumulative effect but the 2nd respondent, while finding the 1st respondent guilty for the misconduct, modified the major penalty into minor penalty. At the end of para No. 11 of the award, the 2nd respondent made the following observations:

> *"As a matter of fact on careful scrutiny of the material available on record discloses that the misconduct has established considering the status in which the workman is placed I am of the view that the punishment imposed is grave in nature. Thus I hold that the punishment imposed against the workman is disproportionate and the punishment is modified as annual increment for a period of 2 years without cumulative effect. Accordingly the petition is allowed."*

On perusal of the award, except consideration of the 1st respondent's contention, no other reason was assigned by the 2nd respondent to modify the penalty. Even as seen from the award, learned counsel for the petitioners herein before the Tribunal placed reliance on ***K.S.R.T.C. Vs. Hullikatte***[1]; ***Janatha Bazar Wholesale Stores Vs. Secretary, Nowkarara Sangh***[2]; ***U.P.S.R.T.C. Vs. Mohanlal Gupta***[3]; ***U.P.S.R.T.C. Vs. Hotilal***[4]; ***Bahadur Gar Municipality Vs. Krishna Behari***[5]; and ***U.P.S.R.T.C. Vs. Suresh Pal***[6] but the 2nd respondent even did not advert to the law laid down by the Apex Court in the judgments referred above. Therefore, passing such an order without considering the law laid down by the Apex Court, though cited before the 2nd respondent and noted the same in para No. 7 of the award, is an illegality and such non-consideration of the law cited before the 2nd respondent is nothing but a judicial dishonesty. It is clear from the relevant portion extracted in the earlier para from the award that the 2nd respondent-Tribunal extended undeserved sympathy to the 1st respondent in modifying the punishment as stated above. If the 2nd respondent considered the law declared by the Apex Court, the order would be otherwise.

I n ***Divisional Controller, N.E.K.R.T.C. Vs. H.Amaresh***[7], the Supreme Court relied on ***Divisional Controller, K.S.R.T.C. (N.W.K.R.T.C.) Vs. A.T.Mane***[8] to hold that

> *"One should bear in mind the fact that it is not the amount of money misappropriate that becomes a primary factor for awarding punishment; on the contrary, it is the loss of confidence which is the primary factor to be taken into consideration. When a person is found guilty of misappropriating the corporation's funds, there is nothing wrong in the corporation losing confidence or faith in such a person and awarding a punishment of dismissal."*

I n ***Niranjan Hemchandra Sashittal and another Vs. State of Maharashtra***[9], the Apex Court held that

> *"In the present day scenario, corruption has been treated to have the potentiality of corroding the marrows of the economy. There are cases*

where the amount is small and in certain cases, it is extremely high. The gravity of the offence in such a case is not to be adjudged on the bedrock of the quantum of bribe. An attitude to abuse the official position to extend favour in lieu of benefit is a crime against the collective and an anathema to the basic tenet of democracy, for it erodes the faith of the people in the system. It creates an incurable concavity in the Rule of Law."

A similar view was expressed by the Apex Court in ***Rajasthan State TPT Corporation and another Vs. Bajrang Lal*** [10] following the judgment in ***Municipal Committee, Bahadurgarh Vs. Krishnan Behari*** [11] and finally concluded that in cases involving corruption, there cannot be any other punishment than dismissal. Any sympathy shown in such cases is totally uncalled for and opposed to public interest. The amount misappropriated may be small or large; it is the act of misappropriation that is relevant. The Apex Court in catena of decisions referred above consistently echoed that in case of misappropriation of funds of corporation or public funds, quantum of amount involved is not relevant and punishment to be imposed against such person is dismissal only. In the present case, the 2nd respondent modified the penalty from major to minor only on considering the condition of the 1st respondent which is nothing but extending undeserved sympathy to the person who misappropriated funds of the petitioners and, therefore, the view taken by the 2nd respondent is totally contrary to the principles laid down by the Apex Court referred above. In such case, this Court can interfere with the punishment imposed by the 2nd respondent by exercising power under Article 226 of the Constitution of India.

At this stage, it is relevant to discuss about scope of judicial review under Article 226 of the Constitution of India in service matters. Undisputedly, scope of judicial review under Article 226 of the Constitution of India is limited. Unless the Court finds that punishment or penalty imposed by authorities under regulations is shockingly disproportionate to the conscience of the Court or it is totally disproportionate to the gravity of misconduct, the Court cannot interfere. Here, the 2nd respondent recorded a reason for modification of major penalty into minor *i.e.* condition of the employee. The condition of the 1st respondent-employee is insignificant in imposing penalty in view of the law declared by the Apex Court referred above.

In ***Union of India (UOI) Vs. P.Gunasekaran***[12], the Apex Court held that

"The High Court, in exercise of its powers Under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:

a. the enquiry is held by a competent authority;

b. the enquiry is held according to the procedure prescribed in that behalf;

c. there is violation of the principles of natural justice in conducting the proceedings;

d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;

e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;

h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

i. the finding of fact is based on no evidence.

Under Article 226/227 of the Constitution of India, the High Court shall not:

(i) re-appreciate the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based;

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience.

I n ***Chairman-cum-Managing Director, Coal India Limited and another Vs. Mukul Kumar Choudhuri and others***[13], the Apex Court, deciding powers of judicial review by High Court, held that

> *"It is not open to the High Court to examine the findings recorded by the Inquiry Officer as a Court of appeal and reach its own conclusions. Power of judicial review is not directed against the decision but is confined to the decision making process."*

Thus, from the view expressed by the Apex Court in various judgments, scope of interference by the High Court under Article 226 of the Constitution of India is limited. However, it permits interference when the Court finds that penalty imposed against delinquent is shockingly disproportionate. In the present case, the 1st respondent was found guilty throughout including the 2nd respondent but modified the punishment extending undeserved sympathy. Therefore, modification of punishment is totally disproportionate to the seriousness and gravity of misconduct. If the principle laid down by the Apex Court in the decisions referred *supra* is applied, punishment imposed by the 1st petitioner is to be upheld but the same was modified in review petition which remained unchallenged by the petitioners herein. Hence, the penalty imposed by the 2nd respondent is set aside while confirming the penalty of stoppage of two increments with cumulative effect imposed by the 2nd petitioner in review since I find that the penalty imposed against the 1st respondent by the 2nd respondent is, totally disproportionate to the seriousness and gravity of misconduct, based on no material or based on irrelevant consideration of financial condition of the 1st respondent.

Accordingly, the Writ Petition is allowed setting aside the penalty imposed by the 2nd respondent while restoring the penalty imposed by the 2nd petitioner in review petition. Pending miscellaneous petitions, if any, in this Writ Petition shall stand closed in consequence. No order as to costs.

M.SATYANARAYANA MURTHY, J.

Date: 03rd June, 2016.

JSK

[1] 2001-1-LLJ 725 SC

[2] 2000-11-LLJ-1395 SC

[3] 2001 SCC (L&S) 109

[4] 2003 (LABIC) 757 SC

[5] 1996 (2) SCC 714

[6] 2006-111-LLJ-967 SC

[7] (2006) 6 SCC 187

[8] (2005) 3 SCC 254

[9] 2013 (4) SCC 642

[10] 2014 (4) SCC 693

[11] AIR 1996 SC 1249

[12] 2015 (2) SCC 610

[13] 2009 (15) SCC 620