

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO**

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WRIT APPEAL NO.498 OF 2016

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J U D G M E N T
(*per Hon'ble Sri Justice Sanjay Kumar*)

By order dated 28.04.2016, a learned Judge dismissed W.P.No.5708 of 2003. The unsuccessful petitioners are in appeal.

Appellants/writ petitioners 2 to 5 are the legal representatives of the deceased 1st writ petitioner who was a Conductor in the service of the Andhra Pradesh State Road Transport Corporation (APSRTC). He was removed from service on 03.11.1999 after a full-fledged enquiry into the charges leveled against him. Upon confirmation of the same in appeal and review, he filed I.D.No.74 of 2000 under Section 2-A(2) of the Industrial Disputes Act, 1947 before the Industrial Tribunal-cum-Labour Court, Visakhapatnam. By Award dated 22.06.2002, the Labour Court dismissed the I.D. Aggrieved, he filed the subject writ petition. He expired during its pendency and his legal representatives came on record.

Challenge to the NIL Award was on the ground that the charges leveled against the deceased 1st writ petitioner-Conductor were not established but the Labour Court failed to appreciate the evidence properly. The learned Judge was however unimpressed and dismissed the writ petition.

Sri S.M.Subhan, learned counsel for the appellants-writ petitioners 2 to 5, would contend that the Labour Court and the learned Judge had both failed to consider the factual aspects of the matter and routinely confirmed the findings recorded against the deceased 1st writ petitioner-Conductor on the charges leveled against him. He would further contend that the Circular instructions dated 24.09.1991 and 08.02.2008 of the APSRTC were not followed.

The charges leveled against the deceased 1st writ petitioner under the Charge Memo dated 26.07.1999 read as under:

'1. Even though you have collected the requisite fare of Rs.2.50 each (total Rs.5/-) at the boarding point itself, you have failed to issue tickets to a batch of two passengers who boarded your bus at Velange and bound for Narasapurapupeta ex-stages 6 to 7 while you were conducting the vehicle No.1467 on the route Kakinada to Ravulapalem

on 26-7-99, which constitutes misconduct in terms of regulation no.28 (vi.a) and (x) of APSRTC Employees (Conduct) Reg. 1963.

2. For having failed to observe the rule "Issue and start" while you were conducting the above vehicle on 26-7-1999 which constitutes misconduct in terms of Reg.No.28(xxxii) of APSRTC Employees (Conduct) Reg. 1963.

3. For having failed to close the SR No.53/61237 even though your bus reached stage No.7 i.e. Narasapurapupeta while you were conducting the above vehicle on 26-7-1999, which constitutes misconduct in terms of regulation No.28(xxv) of APSRTC Employees' (Conduct) Reg. 1963.'

It is not in dispute that the bus was not crowded at the point of time the two passengers boarded it at Stage No.6, i.e., Velangi. These two passengers were bound for Stage No.7, i.e., Narasapurapupeta. These two passengers stated during the spot enquiry that they had paid Rs.5/- to the deceased 1st writ petitioner-Conductor but he failed to issue them tickets. Significantly, the deceased 1st writ petitioner-Conductor, when asked to give his spot explanation, stated that he would give a detailed explanation later on. He did not even contradict the statements made by the two passengers.

Before the Labour Court, the deceased 1st writ petitioner-Conductor did not question the validity of the domestic enquiry held against him. The APSRTC accordingly marked in evidence Exs.M1 to M23, being the enquiry record. The failure of the Conductor in giving his spot explanation weighed with the Labour Court, which also took into account the fact that the bus had almost reached Stage No.7 when the check took place, but he had not even closed the S.R. against the said stage. Another significant factor that weighed with the Labour Court was that the deceased 1st writ petitioner-Conductor had issued two tickets to Ramachandrapuram and one ticket to Mandapeta from Velangi, but failed to issue the two tickets to Narasapurapupeta, which was at a shorter distance. Given these facts, the Labour Court held against him and dismissed the I.D.

Before the learned Judge, it was contended that the deceased 1st writ petitioner-Conductor had no intention to deceive the APSRTC and ought to have been saddled with a lesser punishment, such as withholding of increments. Reference was made by the APSRTC to the past record of the deceased 1st writ petitioner-Conductor. It appears that this service record was also marked before the Labour Court (Ex.M.23). However, the charges framed

did not advert to his past misdemeanors, if any, and therefore such past misconduct could not have been taken into account for the purpose of determining his culpability on the charges framed against him or the punishment to be imposed in relation thereto. But even otherwise, the learned Judge was of the opinion that the Labour Court had rightly dismissed the I.D., as the removal from service could not be said to be disproportionate or excessive to the charges held proved against the deceased 1st writ petitioner-Conductor.

Sri S.M.Subhan, learned counsel, would point out that the APSRTC is not consistent in its approach in disciplinary matters pertaining to its employees and that the harsh stance adopted by it against the deceased 1st writ petitioner-Conductor was unwarranted, given the totality of the facts and circumstances of the case. Learned counsel would point out that in the case of one M.V.Rao, Driver, who had collected Rs.100/- for allowing a 40 kg. parcel as unaccompanied luggage and who was initially removed from service, the appellate authority permitted his reinstatement in service by imposing the lesser punishment of withholding his annual increments for two years with cumulative effect. Similarly, in the case of one S.A.N.Rasool, Driver, who allegedly committed cash and ticket irregularities and was removed from service, the reviewing authority permitted his reinstatement in service with the lesser punishment of deferment of annual increments by a period of two years with cumulative effect. Learned counsel would further point out that the case of one P.V.Kumar, a Conductor in the APSRTC, was dealt with differently by the Industrial Tribunal-cum-Labour Court, Godavarikhani, in I.D.No.3 of 2009, though that was also a case of cash and ticket irregularities but the Labour Court ultimately held that the punishment of removal from service was excessive and ordered his reinstatement.

Though Sri S.M.Subhan, learned counsel, would contend that no allegation of misappropriation was leveled against the deceased 1st writ petitioner-Conductor in the present case, the stand of the APSRTC before the Labour Court clearly manifests that it imputed dishonesty to him and specifically contended that had the check not taken place before Stage No.7, i.e., Narasapurapupeta, the 1st writ petitioner-Conductor would have swallowed the money collected from the two passengers. Further, this Court is of the opinion that the charge need not specifically use the word

‘misappropriation’ if the sum and substance of the charge amounts to such an imputation.

In the present case, the first charge clearly demonstrates that the deceased 1st writ petitioner-Conductor was alleged to have collected the passenger fare of Rs.5/- at the boarding point but failed to issue tickets to the two passengers. The import of the charge is therefore clear. Though the Circular instructions dated 24.09.1991 and 08.02.2008 have been pressed into service by Sri S.M.Subhan, learned counsel, in the context of the aforestated two passengers not being examined during the domestic enquiry, the irrefutable fact is that the deceased 1st writ petitioner-Conductor did not even contradict their statements during the spot enquiry and deliberately withheld his own explanation at that time. This clearly demonstrated that he had nothing to say as against the passengers’ statements during the spot enquiry. Further, the Circular instructions aforestated do not require that such passengers must always be examined during the course of the enquiry. This is obviously because it may not always be possible for the APSRTC to secure the presence of the passengers concerned for the purpose of its enquiry. Significantly, in ***MD.RASHEED V/s. MANAGING DIRECTOR, APSRTC***^[1], a Division Bench of this Court, following the dictum of the Supreme Court, held that it was not essential to examine the passengers in domestic enquiries but the APSRTC was required to take recourse to such a procedure when the alleged cash and ticket irregularity was disputed by the Conductor at the outset. Presently, the admitted fact is that the deceased 1st writ petitioner-Conductor did not dispute the statements made by the two passengers during the spot enquiry. It is therefore too late in the day for it to be contended that the said two passengers should have been examined during the enquiry.

The decision in ***DEPOT MANAGER, A.P.S.R.T.C. V/s. M.NARASIAH***^[2], relied upon by Sri S.M.Subhan, learned counsel, is of no avail as the said decision was based on the finding that the charges levelled against the Conductor therein were not proved.

Though Sri S.M.Subhan, learned counsel, would place reliance on case law in the context of the proportionality of the punishment imposed and the disparate approach of the APSRTC authorities in different cases, this Court must necessarily keep in mind the mandate of the Supreme Court in cases of

this nature. Reference in this regard may be made to the observation of the Supreme Court in **REGIONAL MANAGER, U.P.S.R.T.C., ETAWAH V/s. HOTI**

LAL^[3]. Paras 9 and 10 thereof read as under:

‘9. The decision in *U.P. SRTC case*¹ was really in a different factual background making it distinguishable from the facts of the present case, and has no application. In *Karnataka SRTC v. B.S. Hullikatti*¹⁸ it was held that it is misplaced sympathy by courts in awarding lesser punishments where on checking it is found that the bus conductors have either not issued tickets to a large number of passengers, though they should have, or have issued tickets of a lower denomination knowing fully well the correct fare to be charged. It is the responsibility of the bus conductors to collect the correct fare from the passengers and deposit the same with the Corporation. They act in a fiduciary capacity and it would be a case of gross misconduct if knowingly they do not collect any fare or the correct amount of fare. It was finally held that the order of dismissal should not have been set aside. The view was reiterated by a three-Judge Bench in *Regional Manager, RSRTC v. Ghanshyam Sharma*¹⁹ where it was additionally observed that the proved acts amount either to a case of dishonesty or of gross negligence, and bus conductors who by their actions or inactions cause financial loss to the corporations are not fit to be retained in service.

10. It needs to be emphasized that the court or tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment was not commensurate with the proved charges. As has been highlighted in several cases to which reference has been made above, the scope for interference is very limited and restricted to exceptional cases in the indicated circumstances. Unfortunately, in the present case as the quoted extracts of the High Court’s order would go to show, no reasons whatsoever have been indicated as to why the punishment was considered ☐ disproportionate. Reasons are live links between the mind of the decision taken to the controversy in question and the decision or conclusion arrived at. Failure to give reasons amounts to denial of justice. [See *Alexander Machinery (Dudley) Ltd. v. Crabtree*²⁰.] A mere statement that it is disproportionate would not suffice. A party appearing before a court, as to what it is that the court is addressing its mind. It is not only the amount involved but the mental set-up, the type of duty performed and similar relevant circumstances which go into the decision-making process while considering whether the punishment is proportionate or disproportionate. If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable. Judged in that background, conclusions of the Division Bench of the High Court do not

appear to be proper. We set aside the same and restore order of the learned Single Judge upholding the order of dismissal.’

The aforestated principle was reiterated in **UTTAR PRADESH STATE ROAD TRANSPORT CORPORATION V/s. NANHE LAL KUSHWAHA**^[4].

This being the settled legal position, when the deceased 1st writ petitioner-Conductor admittedly stood in a fiduciary relationship with the employer, the APSRTC, and his failure to issue tickets to the two passengers after collecting the fare from them invariably caused loss to the APSRTC, the *ratio* of **HOTI LAL**¹ would apply on all fours and there is no scope for bringing in the doctrine of proportionality to scale down the punishment imposed upon him. As has been pointed out time and again in several decisions, it is not the quantum of the amount involved in such cases but the failure to live up to the expectation of the employer resulting in loss of trust which has to be borne in mind.

It is no doubt true that the whimsical approach of the APSRTC authorities in disciplinary matters leaves a lot to be desired but the arbitrary lenience shown to some employees does not vest an errant employee with a right to seek similar indulgence.

No doubt, the 1st writ petitioner-Conductor is no more and his legal representatives are before this Court with the hope that they can at least secure his terminal benefits, but this Court finds not even a shadow of illegality tainting his removal from service whereby relief can be granted to them.

The writ appeal therefore fails and is accordingly dismissed.

Pending miscellaneous petitions shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

DR. B.SIVA SANKARA RAO, J

15th JULY, 2016
PGS

^[1] 2015 (1) ALT 172 (DB)

[\[2\]](#) 2013 (6) ALT 740 (DB)

[\[3\]](#) (2003) 3 SCC 605

[\[4\]](#) (2009) 8 SCC 772