

**The Hon'ble Sri Justice S.V.Bhatt**

**Writ Petition No.26638 of 2003**

**Order:**

Heard Mr.G.Ravi Mohan for petitioner and  
Ms.Rubaina S.Khatoun for second respondent.

The petitioner prays for a Certiorari to call for the records leading up to and inclusive of award, dated 07.08.2003, in I.D.No.47 of 2001 on the file of first respondent and quash the award in so far as it denied continuity of service, attendant benefits and backwages to petitioner.

The allegations in brief are as follows:

The petitioner was working as conductor in the second respondent- Depot. On 03-03-1999, he was conducting the Bus from Yadagirigutta to Secunderabad. The Checking Officers have checked the bus and found a few irregularities in the issue of tickets *etc.* On 17-03-1999, the second respondent issued chargesheet. The chargesheet deals with the following three points:

“1. For having collected Rs.9/1 each from 3 passengers at the boarding place itself and not

issued tickets to them who boarded the bus at Uppal and bound for Picket (JBS) ex-stages 4 to 2, hence obtained 'TPTs' for the said amount No.TPT.NO.450/218903 to 953 of Rs.3/- each -3 which constitutes misconduct under Reg. 28 (vi) (a) (xxxii) of APSRTC Employee's (conduct) Regulations, 1963.

2. For having collected Rs.72.50 Ps. from a batch of 4 full and one half land issued ticket No. 258/669889 Rs.10,00 denm., 236/1214615, 616, 618, 625 of Rs.6/- denm., But you have issued less Rs.16/- hence obtained 'TPT' NO.061/401969 of Rs.10,\.00 denm., & 236/214632 of Rs.6/- denm., which constitutes misconduct under Reg. 28 (vvv) of APSRTC Employees (Conduct) Reg.1963.

3. For having failed to close the SR of all denominations up to the point of check i.e., 3/2 which constitutes misconduct under Reg.28 (xxxii) of APSRTC Employees (Conduct) Reg. 1963.”

The petitioner submitted explanation. The second respondent, not being satisfied with the explanation, ordered departmental enquiry and basing on the enquiry report, through proceedings, dated 20-11-1999, the service of petitioner was terminated. The petitioner filed ID.No.47 of 2001 before the first respondent. The first respondent has framed the following point for consideration:

“Whether the orders of removal passed against the petitioner are justified ? If not, to what relief the petitioner is entitled to ?”

On the charge of misconduct, the finding of second respondent is that the Enquiry Officer has rightly held that the charges levelled against the petitioner are proved and is justified in his findings. Thereafter, the first respondent, in exercise of its jurisdiction under Section 11-A of Industrial Disputes Act 1947, considered the punishment imposed and whether the same is disproportionate and shocks the conscience of the Court. The first respondent, in exercise of its jurisdiction and taking note of circumstances proved *etc.*, directed that the petitioner be given appointment afresh, but he is not entitled to backwages or attendant benefits. Hence, the Writ Petition for the reliefs of continuity of service, attendant benefits and backwages.

The second respondent, through its Law Officer, filed counter-affidavit, has broadly reiterated the findings recorded by the first respondent and opposes further exercise of discretion by this Court under Article 226 of Constitution of India to modify the punishment.

Mr.G.Ravi Mohan, learned Counsel for the petitioner, contends that the denial of continuity of service, backwages *etc.*, is completely untenable and in the peculiar facts and circumstances of the case, liable to be set aside, for, according to him, the finding recorded by the Enquiry Officer and to some extent by the first respondent show that the petitioner cannot be completely held responsible for not issuing the tickets *etc.* He places reliance upon **Ishwar Chandra Jayaswal vs Union of India**<sup>1</sup> and **AV.Subbaiah vs. Depot Manager, APSRTC, Bus Depot, Kadapa, Kadapa District and others**<sup>2</sup>. He prays for modifying the punishment as reinstatement without backwages, attendant benefits *etc.*

On the other hand, Counsel for second respondent contends that this Court, for the purpose of modifying the punishment cannot re-appreciate the evidence, record its findings and such procedure is impermissible in judicial review under Articles 226 and 227 of the Constitution of India. The award of 1<sup>st</sup> respondent is accepted as based on totality of circumstances, then the only issue of

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<sup>1</sup> SCALE 2014 (1) 155

<sup>2</sup> 2017 (1) ALD 284

disproportionate punishment does not fall under Article 226 of Constitution of India. As regards gravity of charge and the financial loss suffered by respondent- Corporation, according to her, even the fresh appointment issued to petitioner ought to have been challenged by Corporation. However, as no challenge is made, it does not mean that the prayer for further reconsidering the punishment is made out by petitioner. The Counsel relies upon the finding of fact recorded by the Tribunal on the legality of enquiry conducted by the second respondent, consideration of documentary evidence placed on record and the finding of guilt against the petitioner. According to respondent, no case for interference with the quantum of punishment is made out in the case on hand. She relies upon **Union of India and others Vs. P.Gunasekaran<sup>3</sup>** and **Divisional Controller, N.E.K.R.T.C. vs. H.Amaresh<sup>4</sup>**.

I have heard the learned Counsel for the parties and noted their submissions.

Now the point for consideration is, whether the punishment as modified by the first respondent warrants

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<sup>3</sup> (2015) 2 SCC 610

<sup>4</sup> (2006) 6 SCC 187

further interference by this Court under Article 226 of the Constitution of India or whether the punishment of reinstatement without backwages and attendant benefits would be proportionate to the guilt proved against petitioner.

The scope of judicial review on quantum of punishment is considered by the Apex Court in the following 2 decisions:

- (1) **Managing Director, North East Karnataka Road Transport Corporation Vs. K.Murthi**<sup>5</sup>
- (2) **Union of India vs. P.Gunasekaran**<sup>6</sup>

It is no doubt true that this Court under Article 226 of the Constitution of India, in a given case, after examining the totality of circumstances, if satisfied that the imposition of punishment is harsh and shuns conscience of the Court, can modify the punishment imposed either by the Corporation or the first respondent. It all depends upon the charges, the findings recorded in the departmental enquiry *etc.*

In the case on hand, though an attempt has been made by placing reliance upon statistical return marked as Ex.M1 and spot explanation marked as Ex.M5 that the petitioner is

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<sup>5</sup> (2006) 12 SCC 570

<sup>6</sup> (2015) 2 SCC 610

not responsible for the misconduct of non-issue of tickets in spite of collecting the fare from the passengers, *prima facie*, it is to be noted that these two circumstances relied upon by the petitioner cannot be either read or re-appreciated in isolation. The documentary evidence placed by the management establishes the guilt and also the gravity of misconduct committed by the petitioner. The Tribunal, to the extent the case warrants, has exercised its discretion under Section 11-A of the Act. This Court, after perusing the entire material and keeping in view the settled position of law, is not persuaded to accept the prayer of petitioner for modifying the punishment of reinstatement without backwages, attendant benefits *etc.*

Writ Petition fails and, accordingly, dismissed. No order as to costs.

As a sequel, Miscellaneous Petitions, pending if any, stand disposed of as infructuous.

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(S.V.Bhatt, J)

Dt: 7<sup>th</sup> April, 2017  
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