

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

WRIT PETITION No.26837 of 2007

ORDER:

This writ petition, under Article 226 of the Constitution of India, by the unsuccessful petitioner-workman-Conductor, is directed against the Award, dated 13.09.2006, passed in I.D.No.76 of 2004 on the file of Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad.

2. I have heard the submissions of *Sri V.Narasimha Goud*, learned counsel appearing for the writ petitioner, and of *Sri K.Madhava Reddy*, learned Standing Counsel for TSRTC, representing the 2nd respondent. I have perused the material record.

3. The facts, which are necessary to be stated as a prelude to this order, in brief, are as follows:

The petitioner joined the services of the Corporation as a Conductor, on 31.03.1980, on regular basis through due process of selection. While the petitioner was conducting the bus service, on 21.08.2000, from Koti to Enkerilal, a check was exercised by the checking officials at stage No.6, Uppal, at Uppal Depot, while the bus was in the last trip and the petitioner was issued a memo stating that the SR was not closed properly. The SR was confiscated by substituting with a duplicate SR. In view of the said misconduct, the Corporation issued a charge sheet to the petitioner, on 11.09.2000, after placing him under suspension from service. As his explanation was found not satisfactory, a domestic enquiry was ordered. The Enquiry Officer, after due enquiry, submitted a detailed report holding that the charges are proved. As his objections and comments in his explanation to the show-cause notice were found unsatisfactory and unconvincing, the petitioner was removed from service by an order, dated 24.01.2001, of the Disciplinary Authority. His

appeal and review petition were rejected by the Appellate and Reviewing Authorities. Therefore, the petitioner raised an industrial dispute by filing a claim petition. The same was resisted by the Corporation. On merits, the learned Chairman of the Tribunal dismissed the claim petition and passed a 'nil' award.

Aggrieved thereby, the petitioner filed this writ petition.

4. The case of the writ petitioner is this: The check was exercised by the checking officials at Stage No.6-Uppal while the bus was coming to Uppal Depot in the last trip. A memo was issued alleging non-closure of SR properly. The SR was confiscated and a duplicate SR was issued in its place. The petitioner gave a detailed explanation. No financial loss was caused to the Corporation. The explanation was not considered in proper perspective. Only a checking official was examined as a witness for the Management. He spoke nothing about misappropriation or appropriation of revenue of the Corporation. The petitioner also gave his statement in defence and explained his stand. His version remained un-rebutted. The petitioner lost his spectacles and therefore, he could not close the SR properly. The said mistake was construed as wrong closure of the SR. There are no ticketless passengers found in the bus. No passenger's statement was recorded. No top punched tickets were obtained in the bus. The cash was not checked to verify whether the cash was short or in excess. Though the charges were not proved, the Enquiry Officer erroneously held that the charges are proved. No documents were marked during the course of the enquiry. However, the Enquiry Officer considered the special report submitted by the TTIs. There was no reference to the same either in the charge sheet or during the course of enquiry. The said report was not prepared in the presence of the petitioner. Hence, the findings of the Enquiry Officer are not based on legal evidence. The Enquiry Officer and the

learned Chairman of the Tribunal failed to consider the facts correctly and the evidence in proper perspective and failed to accept the valid and plausible explanation offered by the petitioner. The past record of the petitioner was not considered as required under Section 11-A of the Industrial Disputes Act, 1947. The charges levelled are not proved. In any view of the matter, the punishment of removal from service is highly disproportionate to the charges proved and shocks one's conscious. The Award and Enquiry Officer's report are liable to be set aside and the petitioner is entitled to be reinstated into service with all consequential benefits.

5. Per contra, the learned Standing Counsel for the 2nd respondent Corporation while supporting the award of the Tribunal submitted as follows: "The petitioner-conductor brought the bus without passengers from Koti to Uppal in the last trip and failed to close the SR after issuance of tickets from Koti to Uppal and further closed Rs.8/- denomination tickets as 312 on Stage No.7 in the SR and again opened as 306 in Stage No.18 in the SR from Stage Nos.7 to 18 and has not closed the Rs.8/- denomination. He further failed to close the Rs.6/- and Rs.7/- denominations in the SR from Stage Nos.10 to 18. The above acts clearly constituted a serious misconduct. Accordingly, charges were formulated. In the domestic enquiry, one of the checking officials was examined to prove the charges. In the explanation, the petitioner-conductor stated that he lost his spectacles; and that due to poor lighting and visibility and overlapping of figures, he wrongly closed the SR. He also admitted that he detected the said fact on the next day when he examined the SR under proper light. However, he did not correct the previous SR, dated 20.08.2000, on the next day even after noticing the mistake. The explanation that he lost his spectacles is not true. It is a clear case of re-issue of tickets to enrich himself and defraud the Corporation. The Enquiry Officer correctly appreciated the facts and the evidence and recorded well-reasoned findings. The same were

confirmed by the appellate and reviewing authorities and the learned Chairman of the Tribunal. After considering all the aspects, the disciplinary authority inflicted the punishment of removal from service. When the charges levelled and proved relate to ticketing irregularities, pilferage and misappropriation of the funds of the Corporation, there is nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of removal from service. In matters of such nature, there is no place for misplaced sympathy and generosity. The amount of money misappropriated is irrelevant and on the contrary, the loss of confidence shall have primacy. The learned Chairman of the Tribunal having carefully examined the facts and the evidence upheld the findings of the Enquiry Officer as well as the punishment imposed by the Disciplinary Authority. As per settled legal position, this Court while exercising jurisdiction under Article 226/ 227 of the Constitution of India shall not normally venture into re-appreciation of evidence, more particularly, when the findings recorded are based on some legal evidence and there is no irregularity, illegality or impropriety. The Supreme Court time and again held that when once charges are proved, the punishment of removal from service imposed by the Disciplinary Authority shall not be interfered with. Hence, the writ petition is devoid of merit and is liable to be dismissed.

6. I have given earnest consideration to the facts and submissions.

7. It is necessary to first look at the charges. The charges formulated are verbatim are as follows:

CHARGES:

1. For having brought the service Bus No.AP 10U 4689 without passengers from Koti to Uppal in the last trip, which constitutes misconduct in terms of Reg.28(ix)(a) of APSRTC Employees (Conduct) Reg.1963.

2. For having failed to close the SR bearing No.A2/0585927 after issue of tickets from Koti to Uppal Ex/stage No.1 to 6, which constitutes mis-conduct in terms of Reg.28(x) of APSRTC Employees (Conduct) Reg. 1963.
3. For having closed the Rs.8/- denomination as 312 on stage No.7 in the SR No.A2/0585926 and again opening as 306 in stage No.18 in the SR bearing No.A2/0585927 from stage No.7 to 18, you have not closed the Rs.8/- denomination which constitutes misconduct in terms of Reg.28 (ix)(a) of APSRTC Employees (Conduct) Reg.1963.
4. For having failed to close the Rs.6/- and Rs.7/- denomination in the SR bearing No.A2/0585926 from stage No.10 to 18 which constitutes misconduct in terms of Reg.28(ix) (a) of APSRTC Employees (Conduct) Reg.1963."

7.1 The first charge relates to bringing the bus without passengers from Koti to Uppal in the last trip. The explanation of the petitioner is that two buses proceeded ahead of the subject bus and that the trip of his bus is the last trip at 11 hours and, therefore, there were no passengers en-route; and as such, avoiding the passengers and not allowing the passengers to board the bus did not arise. It is his further case that he stopped the bus en-route at every stage, but no passenger boarded the bus; and, therefore, the allegation that the petitioner is determined not to stop the bus and allow the passengers into the bus is false and that the findings upholding the said allegation are perverse. He also submits that there was no complaint from any passenger en-route-from Koti to Uppal to the effect that the petitioner failed to stop the bus at various stages despite passengers waiting to board the bus. Per contra, the case of the Corporation is that the checking officials rushed to the bus after it was halted at the Uppal bus-stand and that on entering the bus, they did not find even one passenger and hence, they took the SR and ticket tray from the conductor and closed all the ticket tray numbers as against Stage No.6-Uppal Bus stand and that at that time, they noticed that the Conductor did not close all the ticket

tray nos. in his SR, dated 21.08.2000, from stage 3 to 6 and, therefore, they made relevant cross marks where the Conductor has not closed. It is also the case of the Corporation that the Conductor has not closed the SR from stages 1 to 6 though even one single passenger travelled in the bus according to him and that on examination of the SRs of 20.08.2000 and 21.08.2000, and all tickets in the trays, it is revealed that the conductor intentionally and deliberately shown Rs.8/- denomination ticket no. as 306 instead of as 312 and that the Conductor has not shown Enkiryal Night-out scheduled timings in the SR, dated 20.8.2000, and that he has not also shown schedule timings of departure & arrival and the respective stages in the SR, dated 21.08.2000, and that he did not even mention his name and staff number along with his Driver's name, date and route in the SR and that the Conductor has committed serious irregularities in closing and opening of ticket nos. in his SR. The material record shows that the Conductor failed to show service bus scheduled arrivals and departures at Enkiryal, Womens' College, T.Gudam and Depot and that the TTI during the check cross marked against them and that the Conductor did not close all ticket tray nos. from stage no.3 to the point of check-Stage No.6, Uppal Bus stand, except Rs.6/-, Rs.7/-, Rs.8/-, Rs.9/- and Rs.10/- and hence, the same were cross-marked by the TTI and that the Conductor did not even show the number of passengers travelling in the bus from stages 1 to 6 and that the Conductor has marked dashes as against stages in the number of passengers column in the SR in the up-journey from stages 1 to 6 while incoming to the Depot and that he did not close his SR from stages 1 to 6 of Rs.7/- denomination-wise ticket nos. and that the Conductor brought the hired service bus deliberately and intentionally without passengers. It is undisputed that from Koti to Uppal, there are six stages and the distance is a considerably a long distance. The fact that the petitioner has drawn lines in advance in the column meant for the number of passengers was considered as a factor which

clearly indicated that he was determined even at Stage No.1 not to stop the bus anywhere and not to allow the passengers to board the bus and he filled up the columns in advance though the columns were meant for filling in the end from stage Nos. 1 to 8. The charge no.2 relates to non-closure of the SR. So also charge No.4. Charge No.3 relates to closing the Rs.8/- denomination as 312 at Stage No.1 in the SR and again opening as 306 in the SR at Stage No.18 from Stage Nos.7 to 18 and non-closure of Rs.8/- denomination and re-issue of the tickets of Rs.8/- denomination. The checking officials checked the bus at stage No.6 and the version of the Corporation is that at 11.45 PM, there will be heavy rush in the said route. Insofar as charge no.3, the SR dated 20.08.2000, Night out, revealed that the Conductor has closed Rs.8/- denomination ticket No. as against stage No.7 in up-journey as 312 while going to make night-out and that the Conductor has closed as against stage no.5 as 306 and that the same revealed that he has sold out six tickets of above denomination and showed the accountals against stage No.7 in his SR showing ticket no. as 312. The SR also revealed that he did not close this ticket no. from stage no.9 to 18 in his SR and that in the next SR dated, 21.08.2000, he deliberately has shown Rs.8/- denomination ticket no. as 306 as against stage no.18 without showing departure/ arrival. Therefore, the Enquiry Officer found that the Conductor has re-issued the above tickets as against Stage No.18 and has shown its accountals as against Stage No.16 and the ticket No. as 314 and thus, the Conductor has reissued the above tickets in the earlier trip of 21.08.2000 while proceeding towards Koti. Thus, the examination of the two SRs afforded sufficient proof of charge and therefore, even if the special report is kept out of consideration, still, there is legal evidence to substantiate the said charge. The Enquiry Officer as well as the learned Chairman of the Tribunal held that the explanation of the petitioner that he is a patient of hypertension and that he was feeling giddy at the relevant time and that he lost his spectacles and that

the wrong entries were made due to poor visibility is unacceptable. The facts borne out by the SR and his admission were also taken into consideration while appreciating the evidence. Under charge no.3, the evidence brought on record before the Enquiry Officer revealed that the petitioner showed higher denomination tickets in the previous SR, dated 20.08.2000, in the last trip as 306 at stage No.5 and issued six tickets and the same were shown in 'issues' and accounted for in the SR showing the ticket number as '312' as against stage No.7. The Conductor was required to make a night halt on 21.02.2000 and has to proceed to Women's college and has to open SR of Rs.8/- denomination at 312, but, he again opened the ticket No.306 instead of 312 and again sold six tickets. The said acts constituted deliberate re-issue of higher denomination tickets by the petitioner.

7.2 On the above analysis, this court, in the facts and circumstances of the case, does not find any grounds much less valid grounds calling for interference with the findings recorded by the learned Chairman of the Tribunal. Further, the law is fairly well settled that this Court shall not go into the adequacy or the reliability of the evidence and shall not interfere with the findings of the Tribunal, if there is some legal evidence, which supports the findings. When once conclusions arrived at by the Chairman of the Tribunal are found to be sustainable on facts and the evidence, this Court will not normally substitute its subjective opinion in the place of one arrived at by the Tribunal.

8. Before proceeding further, it is necessary to note that the petitioner relied upon the following decisions: (i) A.V.Swami v. Industrial Tribunal-cum-Labour Court¹; and (ii) APSRTC v. N V Subbaiah². The learned counsel for the petitioner having drawn the attention of this Court to the facts in the decision

¹ 1991 (II) LLJ 430

² 2016 (3) ALD 517

in Divisional Controller, KSRTC (NWKRTC) v. A.T.Mane³ contended that on facts peculiar to the instant case, the ratio in the said decision has no application to the facts of the case. Learned counsel for the respondents relied upon the following decisions: Divisional Controller, NEKRTC v. H.Amaresh⁴ and a decision of this Court in Md. Masiuddin (died) per LRs v. Depot Manager, APSRTC, Medak⁵.

8.1. (i) In Divisional Controller v. A.T.Mane (3rd supra), it was held as follows:

“...Once a domestic tribunal based on evidence comes to a particular conclusion, normally it is not open to the Appellate Tribunals and courts to substitute their subjective opinion in the place of the one arrived at by the domestic tribunal.”

(ii) N V Subbaiah (2nd supra) was relied upon in support of the proposition that the Industrial Tribunal-cum-Labour Court is empowered to adjudicate a dispute on merits by re-appreciating the evidence based on record and that it is also having jurisdiction and competency to examine the aspect of proportionality of punishment imposed upon a workmen in case the misconduct alleged against the workmen is proved and that in the case on hand, the Labour Court failed to properly appreciate the evidence and apply the provision of Section 11-A of the Act.

(iii) In A.V.Swami v. Industrial Tribunal-cum-Labour Court (1st supra), it was held as follows:

“The proviso to Section 11-A of the Industrial Disputes Act, 1947 reads that in any proceeding under this section, the Labour Court shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter. Therefore, the question is whether the past record of service comes within the category of “materials on record” for the purpose of this case. It is

³ (2005) 3 Supreme Court Cases 254

⁴ (2006) 6 Supreme Court Cases 187

⁵ W.P.no.8225 of 2001 dated 21.01.2016

an undisputed fact that the past record of service was neither considered nor referred to by either the workman or the second respondent-Corporation at the time of the enquiry against the petitioner. But the past record of service has been considered in a detailed fashion by the Labour Court while coming to the conclusion that the order of removal is justified in the circumstances of the case.....The past record of service is evidently not material on record as visualised in the proviso to Section 11-A. Therefore, the question is, would the Tribunal have come to the same conclusion, viz., that the order of removal is justified had it not looked into the past record of the petitioner. Suffice it to state that from the manner in which the award has been passed, it is easy to see that a lot of emphasis has been placed on the past record of service of the petitioner. The approach of the Industrial Tribunal was clearly wrong and not justified by the proviso to Section 11-A. The Labour Court should have come to the conclusion that the order of removal is justified only on the basis of the appreciation of the material on record and not by taking into consideration the past record of service of the petitioner.”

(iv) In Divisional Controller, N.E.K.R.T.C (4th supra) relied upon by the respondents, it was held as under:

“...When an employee is found guilty of pilferage or of misappropriating the Corporation’s funds, there is nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of dismissal. In such cases, there is no place for generosity or misplaced sympathy on the part of the judicial forums and interfering therefore with the quantum of punishment.”

8.2 Turning to the quantum of punishment, the case of the petitioner is that his past unblemished record and long service ought to have been considered. Per contra, the case of the Corporation is that when once charges are held proved and when legally sustainable concurrent findings of fact are recorded by the officers of the Department and the Tribunal/ Labour Court and when the employee is found guilty of cash and ticketing irregularities, the punishment imposed by the Disciplinary Authority does not call for any interference and

that what is a primary factor is the loss of confidence. It was also submitted that either dishonest acts or gross negligent acts of a Conductor constituting misconduct are sufficient to hold that he is not fit to be retained as a Conductor and that in such cases, there is no place for generosity or misplaced sympathy on the part of the judicial Fora.

9. In the decision in *Union of India v. P. Gunasekaran*⁶, the Supreme Court dealt with the scope of interference of this Court under Articles 226 or 227 of the Constitution of India and held, *inter alia*, as under:

“In disciplinary proceedings High Court is not and cannot act as a second court of first appeal and 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 and that 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;

⁶ (2015) 2 SCC 610

- (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.

10. Therefore, having regard to the facts and findings recorded supra and the settled legal position, this Court holds that the contentions of the petitioner that the charges are not proved and that the punishment calls for interference need no countenance.

11. Viewed thus, this Court finds that the contentions of the petitioner do not merit consideration and that the writ petition which is devoid of merit is liable for dismissal.

12. In the result, the writ petition is dismissed.

Pending miscellaneous petitions, if any, in this writ petition shall stand closed. There shall be no order as to costs.

17th April, 2017
RAR

M. SEETHARAMA MURTI, J