

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

WRIT PETITION No.3516 of 2008

ORDER:

This writ petition is filed, under Article 226 of the Constitution of India, by the petitioner/workman/Driver assailing the Award, dated 17.05.2007, passed by the learned Presiding Officer, Labour Court II, Hyderabad, in I.D.No.77 of 2005.

2. I have heard the submissions of *Sri V.Narasimha Goud*, learned counsel for the petitioner, and of *Sri N.Vasudeva Reddy*, learned Standing Counsel for the Andhra Pradesh State Road Transport Corporation, (hereinafter "Corporation") appearing for the respondents 2 and 3.

3. The facts, which are necessary to be stated as a prelude to this order, and the case and submissions of the petitioner, in brief, are as follows:-

The petitioner/Driver joined the service of the Corporation, on 27.11.1986. He attended to duty, on 18.04.2003. On 19.04.2003, at about 04:30 hours, when he was getting ready to attend to duty, police came to his house and took him into custody; they took the petitioner to Zaheerabad Police Station on suspicion and in connection with the incident in which his elder brother was beaten. The police detained the petitioner in their custody from 19.04.2003 to 30.04.2003 and did not allow him to move. A case in Crime No.55 of 2003 was registered against the petitioner for allegedly beating his elder brother and the petitioner was produced before the Judicial Magistrate of First Class,

Zaheerabad, on 30.04.2003, and was remanded to judicial custody. He was in judicial custody upto 31.05.2003. On account of his illegal detention and restrictions on his movement, he could not inform his superior authority about the reason for his absence from duties. While so, a charge sheet was issued to the petitioner stating that he failed to inform about his arrest by the police officials, on 30.04.2003, in connection with the case in Crime No.55 of 2003 registered for the offence punishable under Section 307 of the Indian Penal Code and that he further failed to submit correct information to the respondent-Corporation regarding his association in any manner with the said offence. In his reply, he, however, explained in detail, all the circumstances. However, an enquiry was conducted by appointing an enquiry officer. The petitioner was removed from service, on 17.01.2004, on the report submitted by the enquiry officer that the charges are proved. The appellate authority rejected his appeal by an order dated 17.07.2004. He was convicted in S.C.No.26 of 2004. However, by a judgment dated 01.03.2005, the learned Sessions Judge, Medak, Sanga Reddy, allowed his appeal in CrI.A.No.138 of 2004 and acquitted him of the said charge. The alleged arrest and the offence for which the petitioner was tried are not connected or related to the employment. Having been aggrieved of the findings of the enquiry officer and the appellate authority and the penalty imposed against him, the petitioner raised an Industrial Dispute and filed a claim petition. The learned Presiding Officer of the Labour Court held that in the facts and circumstances of the case, for misconduct proved, a major penalty need not be imposed. Nonetheless, the Presiding Officer of the Labour Court while setting

aside the order of removal from service directed that petitioner be appointed as a fresh candidate without any back wages. When once the learned Presiding Officer of the Labour Court came to the conclusion that the punishment was shockingly disproportionate and that there is no dereliction of duty on the part of the petitioner, the learned Presiding Officer of the Labour Court ought to have ordered reinstatement with back wages, continuity of service and attendant benefits. However, the learned Presiding Officer of the Labour Court erred in directing to appoint the petitioner as a fresh candidate. The absence from duty is only on account of the illegal detention by the police; and, only on account of illegal detention by the police, the petitioner lost his livelihood. There are no grounds to deny the petitioner continuity of service and back wages. Hence, the writ petition is filed.

4. Per contra, the case of the respondent-Corporation and the submissions made on its behalf, in brief, are as follows:

The Assistant Manager (Traffic), Zaheerabad Depot, by his report, dated 21.04.2003, informed that the petitioner absented from attending to his duties from 19.04.2003 and that the petitioner submitted a sick certificate, on 19.04.2003 at 19:45 hours, for the period from 19.04.2003 to 22.04.2003 and that subsequently a telegram was sent to the Depot Manager's office, on 22.04.2003, for extension of leave stating that his wife's health was not good and requesting to grant extension of leave upto 05.05.2003 and that in this regard, the Sub Inspector of Police, Zaheerabad, by a report informed that the petitioner was arrested in connection with a criminal case, on 30.04.2003, and was

remanded to judicial custody and that a case in Crime No.55 of 2003 has been registered against the petitioner for the offence punishable under Section 307 IPC for attempting to murder his elder brother and that the police officer requested to take departmental action against the petitioner. Thus, the petitioner failed to inform about his arrest to the Depot Manager or his immediate superior or official. It is a serious misconduct. Based on the said reports of the Assistant Manager and the Police Officer, the petitioner was placed under suspension and was served with a charge sheet, on 30.05.2003. As the petitioner's explanation was not convincing, an enquiry officer was appointed for conducting a detailed enquiry. After duly conducting a detailed enquiry, the enquiry officer submitted a report stating that the charges are proved. The enquiry report was duly served on the petitioner. He submitted his objections/comments to the said report, on 10.10.2003. As the same were found not convincing and satisfactory, he was served with a show cause notice, dated 31.12.2003, calling upon him to show cause as to why the penalty of removal from service shall not be imposed. As his explanation, dated 12.01.2004 was found not satisfactory and convincing orders, dated 17.01.2004, were passed removing him from service. The appellate authority rejected the appeal of the petitioner by proceedings dated 17.07.2004. The learned Presiding Officer of the Labour Court also found that the charges are proved and that by the acts of misconduct the petitioner violated the APSRTC Employees' (Conduct) Regulations, 1963 (for short, "Regulations"). The Tribunal categorically found that as per the evidence of M. B. Prasad it is quite clear that the sick certificate was received by the

Controller though the petitioner denied the same by stating that he did not send the sick certificate and that it is also clear that the said sick certificate is accompanied by the medical certificates issued by the Government Community Hospital, Zaheerabad, and that the acts done by the petitioner amounted to violation of the regulations of the Corporation. However, having found that there is no dereliction of duty, the learned Presiding Officer of the Labour Court felt that lesser punishment meets the ends of justice. The Presiding Officer did not come to the conclusion that a minor punishment shall be imposed. And, it was only opined that a lesser punishment would meet the ends of justice. Therefore, the learned Presiding Officer of the Labour Court directed reinstatement of the petitioner into service as a fresh candidate without back wages. Though the said punishment is not proportionate to the misconduct proved, the respondent Corporation out of mercy and generosity did not assail the award of the Labour Court and implemented it.

5. At the hearing, learned counsel for the petitioner-Driver would submit as follows:

The petitioner, who was detained by the police, was not allowed to move and that the petitioner did not send either the leave application or sick certificate along with medical certificate issued by a Government hospital or the telegram. In the circumstances in which the petitioner was placed it is not possible for him to do so. The Regulations 26 and 28 of the Regulations are not attracted to the case on hand and that only on account of the false criminal case in which the petitioner was ultimately acquitted and on account of the illegal detention firstly by the police and

later by virtue of the remand orders of the Judicial authority, the petitioner could not attend to his duties and that his absence to duties is on account of the said reasons and not for any wilful reasons. Even before the petitioner had an opportunity to submit about his arrest and custody, the charge sheet was issued. The findings that the petitioner submitted a sick certificate and applied for leave along with the certificate issued by the Government Community Hospital and also sent telegram for extension of leave stating that his wife is un-well etcetera are not true. There is no legal evidence to prove the said aspect of the matter. Only on account of the fact that the police detained him in illegal custody, which is impossible to establish for a person like the petitioner working in the Corporation as a Driver, the petitioner could not attend to duties. Hence, the Award directing reinstatement of the petitioner as a fresh candidate without back wages and continuity of service may be set aside and reinstatement with back wages, continuity of service and attendant benefits may be ordered in the interest of justice.

6. Per contra the learned Standing Counsel while supporting the findings in the report of the enquiry officer, the order of the appellate authority and the award of the Tribunal and while reiterating the case of the Corporation, sated supra, would further submit that the petitioner was involved in a criminal case of grave nature and that the petitioner suppressed the fact that he was arrested in connection with the said criminal case and submitted a false sick certificate and leave request with false Government Hospital Certificate and also sent a telegram falsely stating that his wife is unwell and that all these acts on his part amount to

serious misconduct and that if he was in custody, nothing prevented him from informing the true facts to the superior officers through his friends, colleagues or family members. Instead of bringing to the notice of the Corporation, the true facts, the petitioner suppressed the same and tried to give a false version to avoid disciplinary action and that in the facts and circumstances of the case, the penalty of removal from service is only justified; but, the Labour Court took a lenient view out of mercy and the Corporation did not assail it and implemented the award and that the petitioner's contentions are devoid of merit and that the writ petition is liable to be dismissed.

7. I have given earnest consideration to the facts and submissions. Before proceeding further, it is necessary to advert to the charges formulated, which verbatim read as under:

"1. For having failed to inform the matter of your arrest by the police officials of Zaheerabad on 30.04.2003, in a Criminal case No.55/03 under Section 307 of IPC and remanded by the court, which constitutes misconduct vide regulation 26 of APSRTC Employees (Conduct) Regulations, 1963.

2. For having failed to submit correct information to the Corporation regarding any matter connected with any offences, committed by you even though you were arrested by the Police on 30.04.2003 in a criminal case and remanded by the court, which constitutes misconduct vide regulations 28 of APSRTC Employees (Conduct) Regulations, 1963."

8. Turning next to the explanation of the petitioner, which was given in response to the charge sheet, it is to be noted that the petitioner stated that on 18.04.2003 he performed TIMS duty and returned to his house and that on 19.04.2003 at about 04:30 hours, when he was getting ready to attend to duty, the police took him to Zaheerabad Police Station on suspicion about his

involvement in a case and for investigation and that, therefore, he followed the police and that from 19.04.2003 to 30.04.2003 he stayed in Zaheerabad police station and that on 30.04.2003 he was remanded to judicial custody and was sent to Sangareddy Jail in connection with the criminal case and that he is quiet innocent and that during the period he was detained in police custody, he was not allowed to move out or go anywhere and, therefore, he could not inform the Depot Officers about the incidents and that he was detained in the police station only on suspicion till 30.04.2003 and that he was in judicial custody from 30.04.2003 to 31.05.2003 and that he went to the depot on 02.05.2003 and reported to duty and that on 03.05.2003 he was given a charge sheet and that a suspension order was passed against him. Be that as it may, if the version of the petitioner that he was detained in police custody from 19.04.2003 to 30.04.2003 is true, his family members or colleague or relative or friend could have informed of the same to the Depot manager. But no such information was communicated to the officers of the Depot. It is pertinent to note that though it is specifically stated in the allegations constituting the charges, which are mentioned in the charge sheet, that the petitioner absented from duty with effect from 19.04.2003 and submitted a sick certificate on 19.04.2003 at 19:45 hours for the period from 19.04.2003 to 22.04.2003 and that subsequently a telegram was sent to the office on 22.04.2003 for extension of leave stating that the petitioner's wife's health was not good and requesting to grant leave upto 05.05.2003, the petitioner in his explanation, dated 05.06.2003, submitted in response to the charge sheet did not state anything about the sick certificate and

the telegram seeking extension of leave and did not deny the same. Admittedly, the petitioner attended to his duty at the depot, on 02.05.2003, but, he did not choose to inform his superiors on his own about his detention by the police and his detention in judicial custody in connection with a criminal case registered against him on the complaint of his sister-in-law that he has beaten his elder brother. On the other hand, it was borne out by record that the petitioner submitted sick certificate, on 19.04.2003 at 19.45 hours, for the period from 19.04.2003 to 22.04.2003 and that subsequently a telegram was sent to the office on 22.04.2003 for extension of leave stating that his wife's health was not good and requesting to grant leave upto 05.05.2004. It is also borne out by record that the sick certificate issued by the Government Community Hospital, Zaherabad, was accompanied by a letter, dated 21.04.2003. The petitioner did not contradict or repudiate the evidence brought on record by cross examining the witness examined by the department having stated that he did not wish to cross-examine the said witness. Though the enquiry officer also referred to the allegations in the crime against the petitioner in his enquiry report, they are not admittedly relevant for consideration being not subject matters of the charges formulated against the petitioner and hence, the said aspect shall be excluded from consideration. Be that as it may. Having regard to the facts, the circumstances and the evidence brought on record, the enquiry officer, the appellate authority, as well as the learned Presiding Officer of the Labour Court came to concurrent conclusions that the petitioner concealed the facts, particularly, of his arrest by the police and remand to judicial custody and submitted false sick

certificate and sent telegram with incorrect contents without bringing the true facts to the notice of the officers of the Depot.

10. On the above analysis, this court finds that the contention of the petitioner that his failure to inform his superiors about his arrest on 30.04.2003 and remand to judicial custody does not constitute misconduct, does not stand the test of judicial scrutiny.

11. Coming to the quantum of punishment and its proportionality to the misconduct proved, it is to be recalled that the disciplinary authority imposed a penalty of removal from service and that the Labour Court held that a lesser punishment would meet the ends of justice and accordingly set aside the punishment of removal from service and directed reinstatement of the petitioner as a fresh candidate without back wages. No doubt the petitioner submitted false sick/medical certificate and sent a telegram seeking extension of leave on the ground his wife was unwell. Eventually, the petitioner was charge sheeted for non-intimation about his arrest by the police and remand to judicial custody till the department received the said information from other sources and for not giving correct information regarding the offence allegedly committed by the petitioner even though he was arrested by the police, on 30.04.2003. But for his custody, arrest and detention in connection with the crime, the petitioner would not have suffered these consequences. Nonetheless, the criminal case ended in acquittal. In that view of the matter, this court is of the considered view that the punishment directing reinstatement of petitioner as a fresh candidate without any back wages imposed by the Labour Court is shockingly disproportionate being not

commensurate with the gravity of the charge which was held proved. The petitioner has put in a long service of about more than 17 years service from the date of his appointment till the date of removal and is still continuing in service. Therefore, denying the benefit of long service he has put in is harsh and shocks the conscience of this court, when such punishment is viewed keeping in view his otherwise clean record and his acquittal in the criminal case which is totally unconnected with his duties. Sri N. Vasudeva Reddy, learned Standing Counsel, placed reliance upon a decision in **Union of India and others v. Bishamber Das Dogra**¹ in support of the contention that past record of an employee and his repeated acts of misconduct can be taken into account and shall be kept in mind while imposing punishment and that in a case of this nature, where indiscipline is intolerable, the punishment imposed by the departmental authority shall not be interfered with. In the case on hand, there is no material brought on record about the past misconducts of the petitioner and past misconduct and the punishments imposed, if any, are not made subject matter of the charge and are not established for taking into consideration while deciding on the measure of punishment. The law is well settled that this Court can consider the aspect of proportionality of punishment if the penalty imposed shocks the conscience of the Court. [See: **Union of India v. P. Gunasekaran**²]. Considering the facts and circumstances of the case, this Court is of the considered view that this is a fit case to further reduce measure of penalty and impose a lesser punishment which may be appropriate to the gravity of the misconduct held proved. Accordingly, the

¹ (2009) 13 SCC 102² (2015) 2 SCC 610

punishment of reinstatement as a fresh candidate without back wages is set aside and penalty of reinstatement with continuity of service but without back wages and attendant benefits is imposed.

12. Resultantly, the Writ Petition is allowed in part and the penalty of re-instatement of the petitioner as a fresh candidate without any back wages imposed by the Labour Court is set aside, and instead the penalty of re-instatement with continuity of service but without back wages and attendant benefits is awarded.

Miscellaneous petitions pending, if any, shall stand closed.

There shall be no order as to costs.

27th March, 2017
LMV

JUSTICE M. SEETHARAMA MURTI



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