

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.6193 of 2007

ORDER:

The unsuccessful petitioner filed this writ petition, under Article 226 of the Constitution of India, requesting to issue a writ order or orders, more particularly, one in the nature of writ of Certiorari setting aside the award, dated 29.06.2006, in I.D.No.122 of 2000 passed by the learned Presiding Officer, Labour Court-II, Hyderabad, and to direct the respondent-APSRTC, represented by its Depot Manager, Kamareddy Bus Depot, Kamareddy, Nizamabad District ('respondent/Corporation', hereinafter) to reinstate the petitioner into service with full back wages, continuity of service and other consequential benefits.

2. I have heard the submissions of *Sri S Chandra Sekhar*, learned counsel for the petitioner, and of *Sri N.Vasudeva Reddy*, learned Standing Counsel appearing for the respondent-Corporation. I have perused the material record.

3. The parties in this writ petition shall hereinafter be referred to as the petitioner and the respondent/ Corporation as arrayed in the writ petition for convenience and clarity.

4. The admitted facts, in brief, are as follows:

The petitioner was appointed, on 28.06.1979, as a Cleaner in the respondent/ Corporation and was later promoted in the month of April, 1989, as a Mechanic. He worked as a Mechanic in APSRTC Depot, Kamareddy. While so, on 21.02.1999, he and one, Ch.Narsimhlu, driver of the same Depot, were instructed to hand over the scrap vehicle at Karimnagar workshop. Accordingly, in the early morning of 22.02.1999, he along with the said Narsimhlu and another driver, Jaleel shareef, started from Kamareddy Depot with the scrap vehicle bearing No.5580 and power vehicle bearing registration

No. AP 9 Z 5507 to go to Karimnagar. They having reached Karimnagar on the afternoon on 23.02.1999 handed over the scrap vehicle at the Scrap Yard, Karimnagar Depot. However, the petitioner herein and the said Narsimhulu along with others were alleged to have committed theft of the materials of the Corporation at the Zonal workshop, Karimnagar, and were charged with the following charges:

- “1. For having stolen the APSRTC materials detected in the bus No.AEZ 2642 at Zonal Workshop premises on 24/2/1999 at about 22.30 hours, after handing over the scrap vehicles, in connivance with 1. Sri K.V.Raju, E-334266, Cleaner, 2. D.Rajender, E- 63064, 3. K.Suresh, E- 33442, Mechanic, 4. I.Swamy, E-334340, Mechanic, 5. Ch.Narsimulu, E-103190, Driver and 6. A.M.Reddy, E- 66911, Mechanic of Kamareddy depot with a mala fide intention to make wrongful gain out of Corporation property which is a serious misconduct in terms of Reg. No.28 (x) of APSRTC Employees (Conduct) Regulations, 1963.
2. For having escaped from the spot while checking the theft material in bus No. AEZ 2642 by the Security Personnel at 22-30 hours on 24/2/99 which is a serious misconduct under Reg. 4(3) of APSRTC Employees (conduct) Regulations, 1963” and Regulations 28 (xxii) of APSRTC Employees (Conduct) Regulations, 1963.”

While initiating a Departmental enquiry against the writ petitioner and others, a criminal complaint was also lodged against them for committing theft of the materials of the Corporation. A calendar case in C.C.No.261 of 1999 was taken on file and was tried. The learned Additional Judicial Magistrate of First Class, Karimnagar, found all the accused 1 to 7 including the petitioner herein guilty of the offence punishable under Section 381 IPC and convicted them and awarded sentences. Having been aggrieved of the judgment of the said learned Judicial Magistrate of First Class, the present petitioner, who is A7 in the said case, preferred an appeal in Criminal Appeal No.69 of 2002; and the learned Sessions Judge, Karimnagar, allowed the said criminal appeal and acquitted the petitioner/ A7 by extending a benefit of doubt.

4.1 During the domestic enquiry held against the petitioner, one V.C.Rao, Security Guard, and, K.Mallaiah, Security Assistant Sub Inspector, were examined on behalf of the Department. The Enquiry Officer submitted a report finding the petitioner guilty of the aforesaid charges leveled against him. Eventually the petitioner was removed from service, on 30.11.1999, and ultimately by the Award impugned in this writ petition the petitioner's claim was rejected by the learned Presiding Officer of the Labour Court II. Aggrieved thereby the petitioner filed this writ petition.

5. The learned counsel for the petitioner would contend as follows:

Admittedly, the petitioner along with others, on instructions, went along with a scrap vehicle bearing registration No.5580 and a power vehicle bearing registration No. AP 9 Z 5507 from Kamareddy to Karimnagar and handed over the scrap vehicle at Karimnagar Zonal workshop on 23.02.1999. He was supposed to return to Kamareddy along with the power vehicle bearing registration No.AP 9 Z 5507. In fact, on the night of 23.02.1999, he left the scrap yard of Karimnagar and reached Kamareddy and did not attend to duty on the next day, 24.02.1999, as it is his weekly off day. However, even though he was not involved in the alleged incident of theft, he was falsely implicated; and eventually he was acquitted in the calendar case. The learned Presiding Officer of the Labour Court confirmed the findings in the departmental proceedings initiated against the petitioner only on the ground that the findings and the judgment in the criminal proceedings acquitting the petitioner/ A7 by extending a benefit of doubt are not conclusive. Since a punishment of removal from service was imposed, the petitioner was removed from service. The case of the petitioner is on the same footing as that of Narsimhulu, whose petition in I.D.No.218 of 1999 was allowed by an award, dated 02.11.2002, passed by another Presiding Officer of the Labour Court-II. The petitioner, who is similarly situated as Narsimhulu, is also entitled to the same reliefs, which are granted in the said I.D.No.218 of 1999 to Narsimhulu, besides the benefit of

back wages. The evidence of both the witnesses examined in the domestic enquiry, on a careful perusal, would show that they did not state anything incriminating against the petitioner. According to the evidence of the first witness, he stopped the vehicle bearing No. AEZ 2642 and asked the Security Assistant Sub Inspector to stay there and went to call the Works Manager and that at that time and when he checked the vehicle bearing No. AEZ 2642 in which the alleged material which was committed theft off was found, the petitioner was not available at the scrap yard, but he was at the vehicle bearing No. AP 9Z 5507. The only statement the said witness has made is that when the Works Manager asked the identity card, the petitioner has not produced the identity card and escaped from the spot without handing over the identity card. The 2nd witness also did not state anything incriminating against the petitioner to come to a safe conclusion that the petitioner was involved in the theft of materials of the Corporation and that the charges leveled against him are proved. The second witness also stated that when the checking process is going on and when the statements of other accused are being taken, the petitioner and Narsimhulu did not produce their identity cards when asked and escaped from the spot and therefore, their statements could not be taken into consideration. Thus, the evidence adduced before the Enquiry Officer, who conducted the domestic enquiry, would reveal that the petitioner was neither found having possession of the material committed theft of, which was said to have been found in bus bearing no. AEZ 2642, nor was the said material recovered from him. Further, by the time the witnesses came to the spot, the petitioner and Narsimhulu are with bus no. AP9Z 5507, which was released from the main gate of the zonal workshop of Karimnagar, and travelled a distance of five furlongs; and the bus was stopped at that place for taking tea at a road side hotel. Therefore, there is no evidence to show that the petitioner has anything to do with the other bus AEZ 2642, which allegedly contained the alleged stolen material. Since the petitioner's case is precisely

on the same footing as that of Ch.Narsimhulu, the petitioner is also entitled to the same reliefs granted to Ch.Narsimhulu in the Award of the Labour Court-II passed in ID No.218 of 1999. For the terms therein and the reasons alike, the petitioner's claim before the Labour Court II should have been allowed. Therefore, the Award of the Labour Court in the petitioner's ID is unsustainable both under facts and in law and is liable to be set aside.

6. On the contrary, learned Standing Counsel for the Corporation while supporting the award of the Labour Court would contend as follows:

The petitioner was found at the workshop of Karimnagar on 24.02.1999 along with the other accused in the bus bearing registration No. AEZ 2642; and, in the said bus the material of the Corporation, which is committed theft of was also found. The said fact is established in the calendar case through the evidence of PW1. Before the learned Judicial Magistrate of First Class, all the material witnesses were examined. The learned Magistrate, while analyzing the evidence, noticed that A1 was driving the bus and that A2 to A7 were sitting in the bus; but, at the material time, A6 and A7 ran away while A1 to A5 were caught red-handed along with MOs 1 to 9 exhibited in the calendar case, which were stolen. It is not in dispute that the said material belongs to the Corporation. Therefore, the evidence adduced in the calendar case clinchingly proved the complicity of the present petitioner/ A7. In the domestic enquiry, the witnesses examined by the department were not cross examined. The said fact is fatal to the case of the petitioner. Though the petitioner contends that his case stands on the same footing as that of the Ch.Narasimhulu, the petitioner did not bring to the notice of the Presiding Officer of the Labour Court-II, the award in I.D.No.218 of 1999 though it was passed much earlier to the disposal of I.D.No.122 of 2000 filed by the petitioner. Had the petitioner produced the copy of the said award before the Labour Court in support of his contentions, the learned Presiding Officer would have considered the said contentions and would have also given adequate

reasons in support of his conclusions. Therefore, the award in I.D.No.218 of 1999 is of no avail to the petitioner. The writ petition, which is devoid merit, is liable to be dismissed.

7. The admitted facts and the contentions of the parties are stated supra, in detail. Therefore, there is no need to restate the same. I have carefully gone through the depositions of the two witnesses who were examined before the Enquiry Officer as well as the report of the Enquiry Officer, a copy of which is placed on record.

8. The petitioner admittedly came to the Zonal workshop at Karimnagar for handing over a scrap vehicle bearing registration No.5508 powered by vehicle bearing registration No. AP 9 Z 5507 and handed over the scrap vehicle at the said workshop, Karimnagar, on 23.02.1999. Thereafter, he along with other accused was alleged to have committed theft of the material of the Corporation; and, it was alleged that when he was going along with other accused in the bus bearing registration No.AEZ 2642, with the stolen material, he was noticed by the Security Guard and that on that the Works Manager was alerted and that by the time the Works Manager came, he was not available at the bus bearing registration No. AEZ 2642. The Corporation's version is that the presence of the petitioner herein was noticed in the bus along with the stolen material by the security guard on 24.02.1999. However, the said Security Guard, who was said to have seen the accused in the bus along with the stolen material, was not examined and the only Security Guard examined before the Enquiry Officer in answer to the first material question stated that when the incident took place on 24.02.1999 and when he went to the Works Manager, at that time, the petitioner was not available at the bus bearing No. AEZ 2642 and that he was at the vehicle bearing No.5507. But, he further stated that the petitioner did not produce the identity card when asked by the Works Manager. Even if the said statements are to be taken into consideration

in entirety, the same only prove that the petitioner did not produce his identity card when demanded to produce the same and that he was not with the other accused at the bus bearing No. AEZ 2642. Thus, it is clear from the statement of this witness that the petitioner was at the vehicle bearing No.5507 but not at the vehicle bearing No. AEZ 2642 even by the time the witness went to call the Works Manager. Similarly, the evidence of the next witness, on a plain perusal, would show that he found the excess material in the bus bearing No. AEZ 2642 of Karimnagar Depot and that the 'on duty' security guard, i.e., the first witness asked him to stay at the vehicle and went away to call the Works Manager and that in the presence of Works Manager when the gate pass is verified at the vehicle, they found the excess material and that while the statements of other witnesses are being taken and when the petitioner was asked to produce his identity card, he escaped from the spot. Thus, he did not state that the petitioner was found either in the bus along with the stolen material or that the stolen material was recovered from him. Therefore, his evidence also does not disclose any incriminating material to come to a safe conclusion that the petitioner was responsible for the theft and that the charge leveled against him stands proved. In fact, the Enquiry Officer came to a conclusion that the charges leveled against the petitioner are proved by taking into consideration four circumstances, which are as follows:

- "1. The vehicle no.2642 contained excess material when checked by the security personnel.
2. There is no possibility for committing the theft of the excess material individually, but it must be committed jointly by a group of persons of Kamareddy depot when deputed to hand over the scrap material.
3. After completion of the work of the petitioner at Zonal Workshop in the early hours there is no necessity for the petitioner to stay till late hours unless he has mala fide intention of committing theft.
4. If the security persons have not suspected and did not check the vehicle 2642 the stolen material worth Rs.7400/- would have been taken away from the zonal workshop and as such as per the recorded evidence there is the hand of the petitioner in committing theft of material in connivance with other staff of kamareddy depot."

Even if the said observations of the enquiry officer are cumulatively considered, it is not possible to come to a conclusion that the charges of theft leveled against the petitioner are proved as required under facts and in law. In

the same set of circumstances, the Labour Court, while allowing the ID 218 of 1999 filed by Narsimhulu has set aside the finding of the Enquiry Officer and also the punishment imposed against Narsimhulu and directed his reinstatement with all benefits and back wages.

9. As already noted, one of the contentions of the petitioner is that the petitioner, who is similarly situated as Narsimhulu, shall also be entitled to the same reliefs, which are granted in I.D.No.218 of 1999 to Narsimhulu. The case of the Corporation is that the case of the petitioner stands on a different footing than that of Narsimhulu. It is also the submission of the Corporation that the petitioner was not diligent in prosecuting his claim petition before the Labour Court and that his claim petition was dismissed for default and was later restored after a lapse of about three years and that the petitioner belatedly challenged the order of his removal from service, dated 30.11.1999, in the year 2000 and that the petitioner did not produce the copy of the Award in favour of Narsimhulu in I.D.No.218 of 1999 before the Labour Court and that on account of laches and on the principle of 'no work no pay' the petitioner is not entitled to claim back wages. In *K.V.S.Ram v. Bangalore Metropolitan Transport Corporation*¹, the Supreme Court eventually restored the award passed by the Labour Court having taken note of the fact that the Labour Court ordered reinstatement in exercise of its discretion under Section 11-A of the Industrial Disputes Act, 1947, in the light of the fact that similarly situated workmen were reinstated with lesser punishment. Hence, the contention of the petitioner herein that since he is similarly placed as Narsimhulu, he cannot be treated differently and that he shall be held entitled to the relief of reinstatement as was granted to Narsimhulu merits consideration and deserves countenance to that extent. This Court is no doubt conscious of the jurisdictional limitations and the scope of it's interference. In *Union of India*

¹ AIR 2015 SC 998

v. P.Gunasekaran², 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.”

Thus, as per the aforesaid well settled legal position, the findings of the Labour Court based on conjectures and surmises and on no legal evidence and which are in fact, the result of non-application of mind are liable to be set aside. Viewed thus, this Court finds that the petitioner is entitled to the relief insofar as setting aside of the award of the Labour Court II impugned in this writ petition and his reinstatement only.

10. Now that this Court has come to a conclusion that the award of the Labour Court is liable to be set aside and as a sequel, the petitioner is entitled

² (2015) 2 Supreme Court Cases 610

to be reinstated, the next short question is as to whether the petitioner shall be held entitled to the back wages.

11. A perusal of the Award in subject I.D.No.122 of 2000 of the petitioner would show that the claim petition of the petitioner was dismissed for default on 29.10.2003 for non-prosecution and that it was later restored to file on 20.02.2006 and that thereafter, the order which was impugned in this writ petition came to be passed on 29.06.2006. Further, as per the settled legal position, the petitioner shall not be allowed back wages as he did not discharge any duties, the punishment being removal from service. Applying the principle of 'no work no pay' and also considering the facts of the case and the further fact that he was acquitted in the criminal case, by extending a benefit of doubt and that his petition in I.D.No.122 of 2000 stood dismissed for a period of three years till it was restored on 20.02.2006 and that he failed to produce a copy of the Award in I.D.No.218 of 1999 before the Labour Court II when his matter was heard and disposed of by the said Court, this Court finds that the writ petitioner shall not be entitled to back wages.

12. Before parting, it is pertinent to mention that the learned counsel for the petitioner placed reliance on the following decisions: (i) Rajinder Kumar Kindra v. Delhi Administration through Secretary (Labour) and others³; (ii) A.P.S.R.T.C, Cuddapah v. K.Bajjanna⁴; (iii) Man Singh v. State of Haryana and ors⁵; and, (iv) Rajendra Yadav v. State of M.P and ors⁶. I have gone through the cited decisions. On a careful consideration, it appears that the relief of back wages granted in those cases turned on facts of those cases, and no principle which is universally applicable was laid down in the said cited decisions. Having regard to the facts peculiar to the case on hand, this Court is

³ AIR 1984 SUPREME COURT 1805

⁴ 2002 (1) CLR 214

⁵ AIR 2008 SC 2481

⁶ (2013) 3 SCC 73

of the view that the ratios in the cited decisions are of no avail to the petitioner herein.

13. In the result, the Writ Petition is allowed in part and the award passed by the Labour Court-II, Hyderabad in I.D.No.122 of 2000 is set aside directing the Corporation to notionally reinstate the petitioner into service, however, without back wages. Since it is brought to the notice of this Court that the petitioner has already attained the age of superannuation on 30.11.2016, it is needless to state that he would be entitled to the continuity of the period of service from the date of removal till date of retirement, i.e., 30.11.2016 with attendant benefits but without back wages.

Pending miscellaneous petitions, if any, shall stand closed.

No costs.

M. SEETHARAMA MURTI, J

17th January, 2017
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