

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

WRIT PETITION No.19160 of 2007

ORDER:

This writ petition, under Article 226 of the Constitution of India, by the petitioner-Conductor is directed against the orders, dated 23.08.2005 and 09.12.2005 respectively of the 4th and 3rd respondents. While seeking to set aside the said orders, the petitioner requests the Court to grant consequently increments, treat the period of suspension as on duty and other reliefs.

2. I have heard the submissions of *Sri G. Ravi Mohan*, learned counsel appearing for the writ petitioner, and of *Ms. Vladimeer Khatoon*, learned counsel representing *Sri A. Ravi Babu*, learned Standing Counsel for TSRTC, representing the respondents. I have perused the material record.

3. The chronology of events and the facts borne out by the record, in brief, are as follows:

The petitioner was appointed as a Conductor in the Corporation, in the year 1989. On 06.04.2005, while he was performing his duties on bus bearing No.6380, on route Nereducherla-Miryalaguda, a check was exercised by the checking officials at stage no.8 at 20:20 hrs. According to the Corporation, at the time of said check, it was detected that the petitioner was involved in cash and ticketing irregularities and that, therefore, the checking officials issued a charge memo, dated 06.04.2005. Thereafter, a charge sheet, dated 26.04.2005, was served on the petitioner. The contents of the charges formulated verbatim are as follows:

- i) For having failed to observe the rule of “issue and start” which constitutes serious misconduct under Regulation 28 (vi) (a) of APSRTC Employees (Conduct) Regulations, 1963.
- ii) For having failed to collect fare and to issue tickets to two passengers who boarded the bus at Nereducherla and bound for Ponugodu ex-stages 9 to 7 though the seating capacity is 40 only at the time of check which constitutes misconduct in terms of under Regulation 28 (vi) (a) of APSRTC Employees (Conduct) Regulations, 1963.
- iii) For having closed the STAR DOCUMENT stage No.8 i.e., Garidepally without issuing the ticket to the two passengers who boarded the bus at Nereducherla and bound for Ponugode constitutes misconduct in terms of Regulation 28 (xvii) of APSRTC Employees (Conduct) Regulations, 1963.

As the management found that the petitioner's explanation to the charges was unsatisfactory, an enquiry was ordered by appointing an enquiry officer. The enquiry officer having duly conducted an enquiry gave a report holding that the charges formulated against the petitioner are proved. Thereafter, a show cause notice, dated 26.07.2005, was served on the petitioner. The final show cause notice was also issued. As the comments and objections of the petitioner were found unconvincing and unsatisfactory, a final order, dated 23.08.2005, was passed imposing a penalty of deferment of annual increments for a period of two years with cumulative effect by treating the suspension period as 'not on duty'. The petitioner's appeal was rejected by the appellate authority *vide* proceedings, dated 09.12.2005. Aggrieved thereby, the petitioner filed this writ petition.

4. Before advertent to the contentions and examining the issue involved on merits, it is pertinent to note that the learned standing counsel appearing for the Corporation contended that the petitioner ought to have raised an industrial dispute by filing a claim petition before the Tribunal/Labour Court and that the writ petition filed

without exhausting the statutory remedy is not maintainable. Learned standing counsel placed reliance on a decision in *Radha Raman Samanta v. Bank of India and others*¹ in support of the said contention. The facts of the case show that the issue involved in the cited case is status of the employment of the writ petitioner therein. However, the employee without seeking a remedy under the Industrial Disputes Act as regards his status as a badli workman filed a writ petition. The same was allowed. A Division bench reversed the decision of the single Judge on the ground that the claimant ought to have sought the remedy under the I.D. Act. The Supreme Court having found that the question of alternative remedy was not raised on earlier occasion held that the Division bench ought not to have gone into the question of maintainability of the writ petition. Hence, the decision is of no assistance to the Corporation. Per contra, learned counsel for the petitioner submitted that no capital punishment of dismissal or removal or termination was imposed and, therefore, the writ petition is the only remedy available and there is no alternative remedy. Before proceeding further, it is necessary to refer to the 'Industrial dispute' as defined in Section 2(k) and the provision of Section 2A of the Act.

(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute

(1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal,

¹ (1004) 1 SCC 605

retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of three months from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1).

Under Section 2-A (2) of the Act, an individual workman, who was discharged or dismissed or retrenched or whose services were otherwise terminated has a remedy under the said provision of law as the intention of the legislation was that an individual workman placed in such circumstances should be given relief without being any necessity of his case being espoused by a Labour union or by a substantial number of workmen. The provision under the said Section of law is not attracted to the case on hand. Any dispute between an individual workman and the employer is not *per se* an industrial dispute unless and until the situation is covered by the provision of Section 2-A (2) of the Act. All other disputes not covered by the said provision shall be espoused or taken up by a union or a number of workmen making a common cause with the aggrieved individual workman. Unless a union or a number of workmen sponsor the case of the petitioner, the machinery under the Act is not available to the case of such workman and he cannot make a claim by directly invoking the provision of section 2 A (2) of the Act. Since the penalty imposed upon the petitioner is not discharge or dismissal or

retrenchment and as the services of the petitioner were not otherwise terminated, the proceedings of the respondents 3 and 4 are amenable for judicial review and, therefore, the writ petition invoking the jurisdiction under Article 226 of the Constitution of India is maintainable and the contentions of the Corporation that the writ petition is not maintainable are misconceived.

4.1 Now that it is held that the writ petition is maintainable, it is necessary to examine the merits of the matter.

5. Learned counsel for the petitioner while reiterating the chronology of events would submit as follows:

The petitioner has not indulged in any irregularities. When a charge memo and charge sheet were issued he gave a detailed explanation denying the charges. His explanation was not considered by the disciplinary authority in proper perspective. The enquiry was conducted in gross violation of principles of natural justice. No evidence was adduced by the management to prove the charges. Aggrieved of the punishment imposed by the disciplinary authority, the petitioner preferred an appeal. The appeal was mechanically rejected without considering the contentions of the petitioner. The petitioner's review petition submitted, on 07.01.2006, was kept pending and was not disposed of by the reviewing authority. The petitioner has not collected any amount from any passenger contrary to the regulations. The said fact discloses that there is no *mala fide* intention on the part of the petitioner. He never intended to defraud the Corporation of its revenue. The punishment imposed is not proportionate to the alleged charge and allegedly proved misconduct. Therefore, the punishment imposed is harsh and disproportionate to the gravamen of the charge

proved. The passengers boarded the bus between stages numbers 9 and 8. The check took place at stage no.8, that is, within one fare stage. During the course of check and in their spot explanations, the passengers concerned admitted that that they have not paid any amount to the petitioner and that they boarded the bus in between two stages. The said statement of the passengers is not considered by the enquiry officer and the officers of the department. The petitioner issued tickets to all the passengers till stage no.8 and closed the STAR document. After closing the said document, the passengers concerned boarded the bus in between stages 8 and 9. Therefore, the petitioner acted fairly while discharging the duties. In any view of the matter, the punishment is shockingly disproportionate to the charge proved. Hence, the writ petition may be allowed.

6. Learned standing counsel for the Corporation would submit as follows:

When a check was exercised it came to light that the petitioner indulged in acts of misconduct and that, therefore, a domestic enquiry was ordered and duly conducted. After detailed enquiry the enquiry officer gave a report holding that the charges are proved. Therefore, after following due procedure, the punishment of deferment of annual increments for a period of two years with cumulative effect by treating the suspension period as 'not on duty' is imposed by taking a lenient view though the petitioner indulged in cash and ticketing irregularities. The appeal preferred by the petitioner was rejected by the appellate authority. No review petition is preferred by the petitioner as alleged in the writ petition. The explanations offered by the petitioner from time to time were considered in proper perspective. The checking officials at the time of check made the petitioner to collect the fare and then

obtained the statements of the passengers and those statements were attested by the petitioner on the spot. In the detailed enquiry that was conducted by the enquiry officer, the management adduced necessary evidence and after evaluation of facts and evidence, the enquiry officer correctly held that the charges are proved. The disciplinary authority, however, considering various aspects has taken a lenient view and imposed a reasonable punishment. In any view of the matter, the punishment imposed is proportionate to the gravity of the proved misconduct. The appellate authority also confirmed the finding of the enquiry officer. The petitioner failed to issue tickets to passengers even though the load of passengers in the bus is only 42 including the said two passengers. The ticket less passengers boarded the bus in between stages, that is, between stages 9 and 8 is incorrect. The statement of the said passengers reveals that they have boarded the bus at stage no.9. The check took place at stage no.8. The distance between two stages is considerably a long distance of 5 KMs and the ticket less passengers travelled the said distance. The said irregularity is not disputed by the petitioner at the time of check and in his spot statement. Since already a lenient view is taken and as the punishment imposed was proportionate to the charges proved, no interference is called for in this writ petition while exercising writ jurisdiction. Hence, the petition may be dismissed.

7. I have given earnest consideration to the facts and submissions. The graveman of the second charge reveals that the petitioner failed to collect fare from two passengers and failed to issue tickets to the said two passengers who boarded the bus at Nereducherla and bound for Ponugodu ex-stages 9 to 7 despite the fact the seating capacity is only 40 at that time. The other two charges are incidental charges for duly

closing of the STAR document at stage no.8, that is, Garidepalli without issuing the tickets to the said passengers who boarded the bus at Nereducherla and failure to observe the rule 'issue and start'. The specific case of the petitioner is that two passengers boarded at a point in between stages 9 and 8 and that after issuing tickets to all the passengers he closed the STAR till stage no.8 and that, after closing the said STAR document, the two passengers boarded the bus in between stages 8 and 9 and that the passengers also admitted in their spot statements that they have not paid the amount to the petitioner when they boarded the bus in between the said two stages and that in the facts and circumstances of the case the punishment imposed shocks the conscience of an ordinary prudent man and, therefore, the punishment is liable to be reduced. However, as already noted, the enquiry officer held that the charges are proved. Considering the nature of irregularities and the misconduct of the petitioner, the disciplinary authority imposed a punishment of deferment of annual increments for a period of two years with cumulative effect by treating the suspension period as 'not on duty' and the same was confirmed by the appellate authority. The contention of the petitioner that the charge is not proved needs no countenance. However, in the case on hand in view of the contentions of the petitioner the aspect as to whether the punishment imposed is grossly disproportionate to the charges proved and shocks the conscience requires examination. According to the petitioner, the passengers gave statement that they boarded the bus in between stages 9 and 8 and the same was not considered by the enquiry officer. Be that as it may. Even assuming for a moment that the passengers boarded the bus at a point in between the stages, the petitioner ought to have collected the fare from them while they were boarding the bus itself.

He did not do so. Therefore, the contention that the charge is not proved needs no countenance. But according to the petitioner, the check was exercised at the very next following stage and, therefore, there is no *mala fide* intention on his part. His further submission is that the checking officials made him to collect the fare from the passengers and, therefore, no loss has occasioned to the Corporation.

8. Having regard to the submissions, this Court is of the considered view that the punishment imposed is grossly disproportionate to the charge proved and, therefore, it shocks the conscience and requires to be reduced proportionately.

9. Accordingly, the Writ Petition is accordingly allowed in part and the punishment of deferment of annual increments for a period of two years with cumulative effect by treating the suspension period as not on duty is set aside and a punishment of deferment of annual increments for a period of two years without cumulative effect is imposed.

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

M. SEETHARAMA MURTI, J

25.04.2017
Vjl