

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.5812 of 2006

ORDER:

The unsuccessful petitioner-workman (driver) filed this writ petition, under Article 226 of the Constitution of India, assailing the Award, dated 03.02.2004, of the learned Presiding Officer of the Labour Court III, Hyderabad, passed in ID.no.112 of 2001.

2. I have heard the submissions of *Sri P. Govinda Rajulu*, learned counsel for the writ petitioner, and of *Sri B. Mayur Reddy*, learned Standing Counsel appearing for the respondents 1 and 2. I have perused the material record.

3. The parties in this writ petition shall hereinafter be referred to as the petitioner-workman and respondent-Corporation.

4. The facts which are necessary for consideration, in brief, are as follows:

The petitioner was appointed as driver in the respondent Corporation in the year 1985. While the petitioner was driving the bus of the Corporation, on 25.12.1997, on route Narayanpet to Mumbai, a check was exercised by the checking officials. During the check, it was found that four passengers are allowed to travel in the bus on the strength of the petitioner's family privilege bus pass by unauthorisedly collecting the requisite fare amount of Rs.788/- from them at their boarding point itself. The checking officials submitted a report accordingly. Therefore, a charge sheet, dated 06.01.1998, was issued to the petitioner with the following charges:

- (i) for having carried four (3 adults & one chargeable child) passengers unauthorisedly from Narayanpet to Mumbai on the strength of your family privilege Bus pass No:0448099 dt.10.12.97 and unauthorisedly collected the requisite fare amount of Rs.788/- from them at their boarding place itself i.e., Narayanpet who were found travelling without tickets on the strength of Bus pass from

Narayanpet to Mumbai ex-stages 1 to 35, which constitutes misconduct under Reg.28(x) of APSRTC Employees (conduct) Reg.1963.

- (ii) for having misused the said privilege bus pass by carrying four (4) passengers on 25-12-97 on the route Narayanpet to Mumbai which constitutes misconduct under Reg.28(iv) of APSRTC Employees (conduct) Reg.1963.

[Reproduced verbatim]

As the explanation submitted by the petitioner was unsatisfactory and not convincing, a domestic enquiry was ordered by appointing an enquiry officer. After due enquiry, the enquiry officer submitted a report finding that the charges formulated against the petitioner are proved. After issuing a show cause notice, a final order, dated 28.05.1998, was passed terminating the services of the petitioner. The petitioner raised an industrial dispute and filed a claim petition. The claim petition was resisted by the Corporation. The learned Presiding Officer of the Labour Court, having found that the findings of the enquiry officer that the charges levelled against the petitioner are proved are sustainable, considered the proportionality of the punishment to the charge held proved and recorded a finding that the punishment of removal from service is shockingly disproportionate and accordingly set aside the punishment of removal from service and imposed a modified penalty viz., reinstatement into service with continuity of service but with deferment of two annual grade increments but without back wages and attendant benefits. Aggrieved thereof, the petitioner filed this writ petition.

5. Learned counsel for the petitioner while stating the facts of the case, which are already covered by the narration of events supra, would contend as follows:

The learned Presiding Officer of the Labour Court did not re-appreciate and evaluate the evidence though the Labour Court is the court of first appeal and the last court of fact. No witness much less independent witness was

examined at the time of domestic enquiry. The official who conducted the check was examined; and based on the exhibited documents, a conclusion was arrived at and a harsh punishment of removal from service was ordered by the disciplinary authority. In the absence of legal evidence, the disciplinary authority and the learned Presiding Officer of the Labour Court ought not to have held that the charges are proved. The statement of the conductor was obtained under coercion. The said statement given under threat is a false statement. The passengers who travelled on the bus are related to the family members of the driver. The modified punishment imposed by the Labour Court is disproportionate to the gravity of the charge proved, in any view of the matter.

6. Per contra, learned Standing Counsel for the Corporation would contend as follows:

The enquiry officer, after a detailed enquiry found that all the charges are proved. The Presiding Officer of the Labour Court having found that the charges are proved and that the enquiry officer is correct in holding that the charges are proved, un-necessarily interfered with the quantum of punishment and imposed a modified punishment of reinstatement into service with continuity of service, however, with deferment two annual grade increments with cumulative effect, but, without back wages and attendant benefits. The learned Presiding Officer of the Labour Court ought not to have set aside the punishment of removal from service which is just and fair as the charge proved related to causing financial loss to the Corporation by misuse of privilege pass of the petitioner-driver. In any view of the matter, the penalty imposed by the Labour Court is not disproportionate to the gravity of charges held proved; and, in fact, it is not even sufficient punishment in the facts and circumstances of the case. However, the Corporation did not assail the award imposing the said penalty. The petitioner-driver retired from service on attaining the age of

superannuation. The Supreme Court time and again observed in various decisions that when once the charges are proved, the punishment of removal from service imposed by the disciplinary authority shall have primacy and shall not be interfered with. The writ petition is devoid of merit and is liable for dismissal.

7. In reply learned counsel for the petitioner did not dispute the fact that the petitioner having served the Corporation after reinstatement had retired from service on attaining the age of superannuation.

8. I have bestowed my attention to the facts and submissions.

9. In the case on hand, there is not only the evidence of checking official but also documentary evidence. Though the petitioner-workman is a driver and is not discharging the duties associated with cash and ticketing irregularities, he was responsible for causing financial loss to the Corporation in view of the fact that four passengers were allowed to travel in the bus on the strength of the petitioner's family privilege bus pass by unauthorisedly collecting the requisite fare amount of Rs.788/- from them at their boarding point itself. Therefore, the misconduct of the petitioner-workman which resulted in financial loss to the Corporation is also in the nature of corruption and hence, the Corporation is justified in coming to the conclusion that the said acts of the petitioner-driver resulted in loss of trust and faith. The law is well settled that the examination of passengers in the domestic enquiry is not always necessary. The documents exhibited in 'M' series particularly statistical return of the bus, bus pass issued to the petitioner, which was confiscated by the checking officials, coupled with the contents of the explanation submitted by the petitioner revealed that the passengers travelling on the strength of the bus pass of the petitioner are not the petitioner's relatives, who are entitled to travel on the facility of the bus pass issued to the petitioner, and that they travelled unauthorisedly on the family privilege bus pass of the petitioner and

that from them the fare was unauthorisedly collected at their boarding point itself, but, they were travelling without tickets and thus, the petitioner misused the said privileged bus pass for carrying four passengers. Thus, the charges are sufficiently established by ample evidence brought on record at the time of domestic enquiry and, therefore, the contentions now advanced on behalf of the petitioner-driver are devoid of merit. The law is fairly well settled that this Court is not supposed to examine the adequacy and reliability of evidence and re-appreciate the evidence. (See: Union of India v. P. Gunasekaran¹). This Court in the facts and circumstances of the case does not find any grounds much less valid grounds calling for interference with the said concurrent findings of fact recorded by the enquiry officer and the Presiding Officer of the Labour Court. When once conclusions arrived at by the enquiry officer and the Presiding Officer of the Labour Court are found to be sustainable on facts, this Court will not normally substitute its subjective opinion in the place of the one arrived at by the said officers.

10. In the decision in Union of India (1 supra), 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;

¹ (2015) 2 SCC 610

(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.”

11 Therefore, having regard to the facts and the settled legal position, this Court holds that the first contention that the charges are not proved needs no countenance.

12. Coming to the quantum of punishment, it is already noted that the punishment of removal from service is modified to a lesser punishment as already mentioned supra. Now it is to be examined as to whether the said punishment is to be further reduced.

12.1 In Divisional Controller, N.E.K.R.T.C v. H. Amaresh², the Supreme Court held as follows:-

In the instant case, the mis-appropriation of the funds by the delinquent employee was only Rs. 360.95. This Court has considered the punishment that may be awarded to the delinquent employees who mis-appropriated funds of the Corporation and the factors to be considered. This Court in a catena of judgments held that the loss of confidence as the primary factor and not the amount of money mis-appropriated and that the sympathy or generosity cannot be a factor which is impermissible in law. When an employee is found guilty of pilferage or of mis-appropriating a 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. The judgment in Karnataka State Road Transport Corpn. Vs. B.S. Hullikatti, (2001) 2 SCC 574 was also relied on in this judgment among others. Examination of passengers of vehicle from whom the said sum was collected was also not essential. In our view, possession of the said excess sum of money on the part of the respondent, a fact proved, is itself a mis-conduct and hence the Labour Court and the learned Judges of the High Court misdirected themselves in insisting on the evidence of the passengers which is wholly not essential. This apart, the respondent did not have any explanation for having carried the said excess amount. This omission was sufficient to

² (2006) 6 SCC 187

hold him guilty. This act was so grossly negligent that the respondent was not fit to be retained as a conductor because such action or inaction of his was bound to result in financial loss to the appellant irrespective of the quantum.

12.2. On the quantum of punishment, the Supreme Court, in Divisional Controller, KSRTC (NWKRTC) Vs. A.T.Mane³, held as follows:-

Coming to the question of quantum of punishment, one should bear in mind the fact that it is not the amount of money misappropriated that becomes a primary factor for awarding punishment, on the contrary, it is the loss of confidence which is the primary factor to be taken into consideration. In our opinion, when a person is found guilty of misappropriating corporation's fund, there is nothing wrong in the corporation losing confidence or faith in such a person and awarding a punishment of dismissal.

12.3. Again in U.P. State Road Transport Corporation, Dehradun Vs. Suresh Pal⁴, the facts disclose that in the domestic enquiry it was found that the petitioner/ workman was guilty of not issuing tickets to twenty passengers who were traveling by the time when the check was done by the Checking Official of the UPSRTC; The Corporation imposed a punishment of dismissal from service; The same was upheld by the Labour Court and the High Court; However, the learned judge of the High Court directed reinstatement of the conductor into service by substituting the punishment of dismissal with the punishment of 'one censure entry' and stoppage of two increments with cumulative effect without back wages. The Supreme Court held that after having held that the charge against respondent conductor was proved, it was not open to the High Court to interfere with the quantum of punishment.

12.4. In Karnataka State Road Transport Corporation Vs. B.S.Hullikatti⁵, the Supreme Court held as follows:-

On the facts as found by the Labour Court and the High Court, it is evident that there was a short-charging of the fare by the respondent from as many as 35 passengers. We are informed that the respondent had been in service as a Conductor for nearly 22 years. It is difficult to believe that he did not know what was the correct fare which was to be charged. Further-more, the

³ (2005) 3 SC 254

⁴ (2006 (3) LLJ 967(SC) = (2006) 8 SCC 108

⁵ AIR 2001 SC 930

appellant had during the disciplinary proceedings taken into account the fact that the respondent had been found guilty for as many as 36 times on different dates. Be that as it may, the principle of *res ipsa loquitur*, namely, the facts speak for themselves, is clearly applicable in the instant case. Charging 50 paise per ticket less from as many as 35 passengers could only be to get financial benefit by the Conductor. this act was either dishonest or was so grossly negligent that the respondent was not fit to be retained as a Conductor because such action or inaction of his is bound to result in financial loss to the appellant-Corporation.

It is misplaced sympathy by the Labour Courts in such cases when on checking it is found that the Bus Conductors have either not issued tickets to a large number of passengers, though they should have, or have issued tickets of a lower denomination knowing fully well the correct fare to be charged. It is the responsibility of the Bus Conductors to collect the correct fare from the passengers and deposit the same with the Company. They act in a fiduciary capacity and it would be a case of gross misconduct if knowingly they do not collect any fare or the correct amount of fare.

In our opinion, the order of dismissal should not have been set aside, but we are informed that in the meantime the respondent has already superannuated. We, therefore, on the special facts of this case, do not set aside the order of reinstatement, but direct that the respondent would not be entitled to any back wages at all but he would be entitled to the retrial benefits.

13. Reverting to the facts of the case on hand, as already noted, though the charge was held proved, the Presiding Officer of the Labour Court while setting aside the punishment of removal from service imposed a lesser punishment of withholding of two annual grade increments with cumulative effect while directing reinstatement into service, however, without back wages and attendant benefits. The petitioner retired from service having served the Corporation after reinstatement. This Court is of the opinion that the Labour Court ought not to have set aside the order of removal from service; however, as this Court is informed that the petitioner has already superannuated and discharged his duties till such time without any remark or complaint, this Court having regard to the facts of this case is of the opinion that the order of punishment imposed by the Labour Court need not be set aside and the original punishment need not be restored at this distance of time; further, this Court

does not find any strong reason to interfere with the measure of punishment imposed in the Award of the Tribunal.

14. In the result, the Writ Petition is dismissed.

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

JUSTICE M. SEETHARAMA MURTI

08.03.2017
Vjl

