

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

WRIT PETITION No.24682 of 2006

ORDER:

This writ petition, under Article 226 of the Constitution of India, by the petitioner/ conductor, is directed against the Award, dated 23.08.2005, of the learned Presiding Officer, Labour Court-III, Hyderabad, passed in I.D.No.100 of 2003.

2. I have heard the submissions of *Sri V. Narasimha Goud*, learned counsel for the writ petitioner, and of *Sri A.Ravi Babu*, learned Standing Counsel for TSRTC, representing the respondents. I have perused the material record.

3. The facts and the chronology of events, which emerge from the pleadings and the submissions, in brief, are as follows:

The petitioner was appointed as a Conductor in the 1st respondent-Corporation in March, 1989. On 17.03.2003, while he was conducting the bus on route Suryapet and Kodad via Narasimhalagudem, a check was exercised by the checking officials at stage No.9/ 8, that is, Mettu. During the said check, certain cash and ticketing irregularities were detected. Basing on the material available on record, the Disciplinary Authority suspended the petitioner from service, on 09.04.2003. A charge sheet was served on the petitioner on the same day. The charges formulated verbatim are as follows:

'1. For having issued the tickets of Rs.11/- deno. Bearing No.185/144970 to 976 E.7 to 7 passengers who boarded the bus at Suryapet-stage No.14 and bound for Repala stage No.8, out of 7 you have issued 3 used tickets to three passengers i.e., 185/144970, 971 & 972 of Rs.11.00 which were already issued at stage No.9 in the earlier trip from Narasimulagudem to Suryapet and shown the issue against stage No.9 and subsequently erased duly punching on tickets left side as 1,4,7 and right side as 08 & thereby shown as 6 total 1,4 & right side as 08 7 thereby shown as 6 total punches and the remaining 4 tickets i.e., 973 to 976 punched as 1,4 & 8 while you were conducting the vehicle No.4461 on route Suryapet-Narasimulagudem on 17-3-2003, which constitutes misconduct under Reg.28 (xxii) & (xxx) of APSRTC Employees, (Conduct) Reg.1963.

2. For having shown the number of passengers as 13 only instead of 20 according to issued as against stage No.13 of Rs.11/- deno tickets and written the 7 digit as unclear so as to modify the 7 digit as and closed the SR and prepared grounds to reissue these 7 tickets in 18.30 hrs., Suryapet-Narasimulagudem trip in SR No.05341263 on 17.03.2003, which constitutes misconduct Re.28 (xxxii) of APSRTC Employees (Conduct) Reg.1963.

3. For having erased the number of issues at stage no.2 against 9 & 11 deno., tickets in 13.30 hrs., 1st trip Kodad-Narasimulagudem and for having erased the issues column of Rs.11.00 den., in 14.45 hrs., down Narasimulagudem-Kodad against stage No.6 and 17.20 hrs., Narasimulagudem-Suraypet trip against stage No.9 which constitutes misconduct under Reg.28 (xxxii) of APSRTC Employees (Conduct) Reg.1963.

As the petitioner's explanation to the charges was found unsatisfactory, a detailed enquiry was ordered by appointing an Enquiry Officer. After due enquiry, the Enquiry Officer submitted a report holding that all the charges are proved. Thereafter, a show cause notice proposing the penalty of removal from service was served on the petitioner. Afterwards, the petitioner was removed from service by proceedings, dated 30.09.2003. Aggrieved thereof, the petitioner raised an Industrial Dispute before the Labour Court and filed a claim petition. The Corporation resisted the same. The learned Presiding Officer of the Labour Court while holding that charge nos.2 and 3 are not proved held to the effect that acts constituting the charge no.1 are mistakes of the petitioner without any element of misconduct; he, therefore, set aside the removal order, dated 30.09.2003, and directed the Corporation to reinstate the petitioner with continuity of service but without back wages and attendant benefits and directed for stoppage of two (02) increments with cumulative effect. Aggrieved thereby, the petitioner preferred this writ petition.

4. Learned counsel for the petitioner would submit as follows:

The petitioner having joined the services of the Corporation as a Conductor in the year 1989 rendered unblemished service. At the time of check, the checking officials neither found any passenger without a ticket nor any other irregularities. As such, they did not issue any memo on the

spot. However, after five days of the check, a memo was served in the 2nd respondent depot, Kodad. The petitioner submitted his detailed explanation, *inter alia*, stating that three tickets of Rs.11.00 bearing Nos.970, 971 & 972 were issued for the first time while coming from Suryapet and Repala; those tickets were duly punched at stage no.1,4 & 8 and accounted for at stage no.13; the seven tickets were not issued earlier and he has reissued the three tickets of Rs.11.00 denomination. TTI, K.R. Reddy, who was inimically disposed off towards petitioner, foisted the case by framing false charges. Another TTI, P.A. Reddy, who was examined during domestic enquiry, deposed that charge memo bearing no.393533 was cancelled. Enquiry officer has not accepted the evidence of passengers and found that the charges are proved. He did not commit any illegality or irregularity. He has no fraudulent intention as rightly held by the Presiding Officer of the Labour Court. The learned Presiding Officer of the Labour Court came to the conclusion that the acts of the petitioner are purely mistakes and accordingly held that charge no.1 is proved for mistake without any element of misconduct and that charges 2 and 3 are not proved. However, the learned Presiding Officer of the Labour Court erroneously held that the penalty of removal from service is liable to be set aside and that the punishment requires to be modified. While modifying the punishment, a punishment, which is not proportionate or commensurate to the gravity of the charges, was imposed and the penalty imposed under the Award of the Labour Court is grossly disproportionate to the findings to the effect that there is no misconduct, but there is only a mistake on the part of the petitioner. The petitioner has no fraudulent intention and no loss of revenue is caused to the Corporation. The Enquiry Officer did not appreciate the facts and the explanation of the petitioner correctly and the evidence in proper perspective. In any view of the matter, the quantum of punishment imposed by the Labour Court is shockingly disproportionate to the alleged mistaken acts, which are committed without

any fraudulent intention of causing loss of revenue to the Corporation. From the date of removal from service till reinstatement into service, on 29.08.2005, the workman remained unemployed without any alternative employment inspite of his best efforts and the denial of back wages and attendant benefits caused great hardship and financial loss to the workman-Conductor. Hence, the Award may be set aside and the petitioner may be granted back wages and all consequential benefits.

4.1 He placed reliance on the decision of this Court in *APSRTC v. N.V. Subbaiah*¹.

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

The charges formulated reflect that the petitioner indulged in serious cash and ticketing irregularities. When a check was exercised, certain irregularities were detected. On detection of such irregularities at the time of check, a charge sheet was issued and a detailed enquiry was duly conducted. The enquiry officer, after due enquiry, held that the charges levelled against the petitioner are proved. A show cause notice along with a copy of the enquiry report was served on the petitioner and his explanation was called for. As his explanation was unconvincing and unsatisfactory, he was removed from service by proceedings, dated 30.09.2003. The Presiding Officer of the Labour Court un-necessarily interfered with the penalty imposed by the disciplinary authority. The workman-conductor holds a post of trust and faith and his relationship with the employer is fiduciary in nature. When once there is a breach of trust and loss of faith, the Corporation is justified in imposing the penalty of removal from service. In view of the fact that the charges involved acts of financial embezzlement, the learned Presiding Officer of the Labour Court ought to have seen that the Corporation

¹ 2016 (3) ALD 517

lost faith and trust in the petitioner-conductor and, therefore, the punishment of removal from service is justified. Therefore, there is no justification in the Labour Court directing reinstatement of the workman into service. After due enquiry, when once it was found that the petitioner indulged in cash and ticketing irregularities, which resulted in loss of revenue to the Corporation, the Corporation is justified in passing an order of removal from service. However, the Corporation out of generosity did not challenge the findings of the Labour Court that the charges 2 and 3 are not proved and the findings reducing the penalty. 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.

6.1 He relied upon the following decisions: (i) Union of India v. P. Gunasekaran²; and (ii) Divisional controller, KSRTC (NWKRTC) v. A.T. Mane.³

7. I have bestowed my attention to the facts and given earnest consideration to the submissions.

8. The finding of the Labour Court that charges 2 and 3 are not proved became final. The charge no.1 relates to issuance of Rs.11/- denomination tickets Bearing No.185/ 144970 to 976 to 7 passengers who boarded the bus at Suryapet-stage No.14 and bound for Repala stage No.8. According to the contents of the said charge, out of the said 7 tickets issued to the passengers, 3 were used tickets i.e., 185/ 144970, 971 & 972 of Rs.11.00 and that the same were already issued at stage No.9 in the earlier trip from Narasimulagudem to Suryapet. Regarding acts of erasing and wrong punching

² (2015) 2 SCC 610

³ (2005) 3 SCC 254

of the said tickets, the later part of the charge verbatim reads as under: '...and subsequently erased duly punching on tickets left side as 1,4,7 and right side as 08 & thereby shown as 6 total 1,4 & right side as 08 7 thereby shown as 6 total punches and the remaining 4 tickets i.e., 973 to 976 punched as 1,4 & 8.' Therefore this part of the charge is in regard to six punches on the three tickets and three punches on the remaining four tickets and certain acts of erasings. While evaluating the pleadings and evidence related to this charge, the learned Presiding Officer of the labour Court recorded the following findings: 'Checking officials have not issued the charge memo at the spot, but, sent the charge memo subsequently after reaching the depot; during domestic enquiry, TTI admitted that charge memo 393528 was cancelled and that the petitioner has not refused to receive the memo at the spot; Exhibit M7, charge memo 533, 534 and 535, dated 09.03.2003, was corrected as 17.03.2003; the conduct of checking officials in regard to cancelling the charge memo prepared at the spot and issuing charge memo, exhibit M7, subsequently is established; the bus was carrying 12 passengers including 7 passengers covered by the charge as noted in exhibit M2, SR; out of 7 passengers boarded at Suryapet, the checking officials found 3 passengers only with used tickets, that is, reissued tickets; it is alleged in the charge sheet that they were previously issued in the earlier trip at stage no.9; but, no erasing is found at stage no.9 against Rs.11/- denomination tickets; some correction is found on figure '9' in figure '970'. The said correction would not disclose issue of three tickets or 7 tickets at stage no.9; it cannot be believed that ticket issued in previous trip were used and reissued by the time of check; the said correction has no bearing to prove the charge of reissue of tickets to these three passengers.' Recording the above findings, the learned Presiding Officer of the Labour Court held that theory of issue of tickets in the earlier trip at stage no.9 cannot be believed. While giving further reasons for not believing that charge no.1 is proved, it was also held that there is no

correction or erasing as deposed by TTI and that the stand taken by the Corporation that the tickets that were earlier issued at stage no.9 were issued again cannot be believed. However, it was observed that the said tickets are found with more than four punches and that it may be a mistake on the part of the petitioner and for which misconduct cannot be imputed by throwing the blame of re-issuance of tickets. Eventually it was held that the enquiry officer believed the evidence on imagination as the petitioner was in the habit of reissuing tickets and therefore held that he manipulated the SR by corrections with an intention to reissue the tickets again and that the said findings of the enquiry officer are not based on material on record but are only based on imagination and that the enquiry officer has not considered the evidence on record properly and correctly and that the findings of the enquiry officer on charge no.1 are not correct and that the petitioner has not issued tickets which were already issued to the three passengers. Accordingly while setting aside the findings of the enquiry officer on charge no.1, the learned Presiding Officer of the Labour Court found the petitioner guilty for mistaken acts for making excess punches on three tickets of Rs.11/- denomination and further held that mistake is proved in regard to noting the figure with an intention to reissue the tickets in future. As already noted, charge nos.2 and 3 are held 'not proved'. Even the major part of graveman of charge no.1 was held not proved and even in regard to the erasing part of the charge and correction, it was held that it has no bearing to prove the charge of reissue of tickets and that the noting of the figure is a mistake. It is apt to reproduce the relevant sentence from the Award, which reads as follows: -'Lenient view can be taken by giving lesser punishment for mistake committed by the petitioner and for the erasing found in the SR which were made knowingly or unknowingly.' After holding accordingly, the learned Presiding Officer of the Labour Court has set aside the punishment of removal from service and directed reinstatement of the petitioner as conductor with continuity of

service and without back wages and attendant benefits and further directed stoppage of two increments with cumulative effect.

9. Now that the principal constituents of the first charge were held not proved and that the acts viz., erasing and excess punching were held to be mistakes committed knowingly or unknowingly, the vital question is whether the reduced penalty imposed by the Labour Court is grossly disproportionate to the said findings and shocks conscience and, therefore, requires to be modified. Learned counsel for the petitioner forcefully contended that what was proved is not misconduct but only a mistake and it was also not proved as to whether such mistake is intentional or unintentional as per the findings in the Award. He, therefore, prayed for reducing the punishment. Learned standing counsel for the Corporation stated that the punishment is proportionate to the gravity of misconduct proved though the word 'misconduct' was not employed in the final finding of the Labour Court. Turning to the decision in A.T. Mane (3 supra) relied upon by the learned standing counsel for the Corporation in support of the contention that when once a conductor is found guilty of misappropriation of Corporation's funds, there is nothing wrong in the Corporation losing confidence or faith in such an employee and in awarding removal from service and that in cases of this nature, there is no place of generosity or misplaced sympathy, what is to be noted is that in the case on hand, the Labour Court held that the charge is not proved and that certain acts which tantamount to mistakes are only proved. There is no dispute with the proposition that when once charge is held proved, this Court generally will not interfere with the measure of punishment unless this Court finds that the punishment imposed is grossly disproportionate to the misconduct and shocks the conscience of the Court. The decision in N.V. Subbaiah (1 supra) is relied upon by the petitioner in support of the proposition that the petitioner is entitled not only for reinstatement with continuity of service but also full back wages and other

consequential benefits when the petitioner was found not guilty of the charges levelled against him and when he was not gainfully employed elsewhere during the period of his removal and that in such cases this Court is also having wide discretionary power to impose a penalty which is proportional, more particularly, when the charge is not proved and the punishment imposed shocks the conscience of the Court. In the decision in P. Gunasekaran (2 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;
- (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;
- (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. In the decision in P. Gunasekharan (2 supra), it was held that this Court can go into the proportionality of punishment when it shocks its conscience.

Be that as it may, this Court on analysis of the facts, evidence and findings borne out by the material record is of the view that for mere mistakes for which there is no proof as to whether they were knowingly or unknowingly committed, the above referred punishment imposed is highly excessive and shocks conscience and, therefore, requires to be modified to a lesser punishment. Keeping in view the facts of the case and that only mistakes are proved and not the principal constituents of charge no.1, this Court finds that the punishment imposed by the Labour Court can be set aside and a direction can be given to reinstate the petitioner with continuity of service with attendant benefits but with 50% of back wages, as in the considered view of this Court the said course meets the ends of justice.

11. In the result, the Writ Petition is allowed in part and the penalty imposed by the Labour Court, which is impugned in this writ petition, is set aside and the Corporation is directed to reinstate the petitioner with continuity of service and attendant benefits but with 50% back wages.

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

25th April, 2017
Vjl

M. SEETHARAMA MURTI, J