

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

WRIT PETITION No.4550 of 2006

ORDER:

The unsuccessful petitioner-workman filed this Writ Petition, under Article 226 of the Constitution of India, assailing the Award, dated 30.04.2002, of the learned Chairman-cum-Presiding Officer, Industrial Tribunal-cum-Labour Court, Anantapur, passed in I.D.No.137 of 1999.

2. I have heard the submissions of *Sri S.A.K.Mynoddin*, learned counsel appearing for the petitioner (hereinafter, 'workman') and of *Sri A.Rama Rao*, learned Standing Counsel appearing for the respondent/ APSRTC (hereinafter, 'Corporation'). I have perused the material record.

3. The admitted and undisputed facts are as follows:

On 27.07.1998, while the workman/ conductor was conducting the bus of the Corporation on the route Kodur-Y.Kota, a check was conducted by the checking officials of the Corporation. During the course of the said check, certain cash and ticketing irregularities were allegedly noticed and therefore, the said officials submitted a preliminary report. Thereafter, a charge sheet was issued by the management of the Corporation to the workman. The workman denied the charges. Thereafter, a domestic enquiry was ordered; and an enquiry officer was appointed and an enquiry was conducted. The Enquiry Officer found the workman guilty. By an order dated 01.02.1999, the management terminated the services of the workman. The appeal and the review application of the workman were dismissed by the appellate and review authorities by their respective proceedings dated 07.06.1999 and 21.06.1999. Aggrieved thereby, the workman raised an industrial dispute and filed his claim petition before the Tribunal in the aforesaid ID. The Corporation resisted the claim of the workman before the Tribunal. On merits and by the orders impugned in this writ petition, the learned Chairman of the Tribunal dismissed

the claim petition of the workman *inter alia* holding that the charges levelled against the workman are proved and that the workman is not entitled to any relief. Aggrieved thereby, the workman filed the present writ petition.

4. The learned counsel for the workman would contend as follows:

Without referring the matter to the Enquiry Officer, the Disciplinary Authority framed the charges and passed the final orders after the Enquiry Officer submitted a report. The same is against the principles of natural justice. The Disciplinary Authority performed the functions of a Prosecutor and a Judge. The said course is impermissible under law and is against the principles of natural justice. The resolutions of the Corporation are not the law. The Disciplinary Authority ought not to have acted as per the resolutions of the Corporation. The Regulations are *ultra vires* of the provisions of the statute and the Constitution. No fair opportunity was given to the workman to prove his innocence and that the superior entrusted the matter to his immediate subordinate and therefore, the principles of natural justice are violated. The petitioner was appointed as a Conductor in the Corporation in the year 1997 and discharged his duties without any remarks and to the satisfaction of his superiors. The charges levelled against him are baseless. He did not commit any misconduct. The Disciplinary Authority failed to properly consider the explanation submitted by the workman to the charge sheet. The Enquiry Officer also did not properly appreciate the defence of the workman. The appellate and the review authorities mechanically confirmed the findings of the Enquiry Officer and the punishment imposed by the management. The enquiry conducted is a farce and it is invalid and illegal. The findings of the Enquiry Officer as well as the Tribunal that the charges are proved suffer from infirmity and perversity. The Tribunal without considering the pleadings passed orders against the workman in a mechanical manner without granting the relief. During the enquiry no evidence, much less evidence of required

standard, was adduced by the management. No eyewitness was examined and the conclusions were arrived at by the Enquiry Officer on presumptions and by accepting the false case framed by the checking officials. In any view of the matter, the punishment is highly disproportionate. The Disciplinary Authority and the Tribunal ought to have held that the charges are not proved and ought to have held in favour of the workman in all respects.

5. Per contra, the learned Standing Counsel while stating the case of the Corporation would contend as follows:

The procedure was duly followed before terminating the services of the workman. The Tribunal, after a detailed examination of the matter, recorded findings upholding the validity of the Enquiry and also the penalty imposed while *inter alia* holding that the charges levelled against the workman are proved and that the workman is not entitled to any relief. The workman's record is very bad. He was censured twice earlier and he was fined on two occasions. The Tribunal appreciated the facts correctly and the evidence and the legal position in proper perspective before arriving at the just decision in the matter. The Tribunal found that the charges are proved and that there are no grounds to interfere with the punishment imposed by the management by exercising the discretion judiciously. The Tribunal is the last Court of fact. When the Tribunal exercised its jurisdiction judiciously keeping in view the facts and circumstances of the case, this Court need not interfere with the exercise of discretion by the Tribunal, more particularly, when the Award of the Tribunal does not suffer from any infirmities. As per the parameters laid down by the Supreme Court in various decisions, such well-considered and well-reasoned findings of the Tribunal shall not be interfered with by this Court in exercise of its powers under Article 226/ 227 of the Constitution of India. This Court need not re-appreciate the evidence as this Court is not a second Court

of first appeal as held by the Supreme Court. There is no merit in the writ petition and the writ petition is liable to be dismissed.

6. I have given earnest consideration to the facts and submissions.

7. On 27.07.1998, while the workman/ conductor was conducting the bus of the Corporation on the route Kodur-Y.Kota, a check was conducted by the checking officials of the Corporation, is not in dispute. The following charges were formulated.

“ 1) For having reissued the E5 tickets bearing Nos.189/426700 to 704 (E.5) to five passengers who boarded the bus at Kodur and bound for Y.Kota ex. Stages 9 to 12 which were already issued and accounted in the SR bearing No.A4/9220062 dt.23-7-98 in the same service in 11-30/11-40 hrs., Y.Kota – Kodur trip (down trip) which performing duty on route Kodur-Y.Kota on 23-7-98 which constitutes misconduct as per Reg. 28(x) of APSRTC Employees (Conduct) Reg.1963.”

2) For having reissued the E.25 tickets bearing Nos.189/426705 to 707 (E.3) 189/426877 to 898 (E.22) to 25 passengers who boarded the bus at Kodur and bound for Y.Kota ex. Stages 9 to 12, which were already issued and accounted in the service S.R.No.A4/9120062, dt.23-7-98 in 11-30/11-40 hrs., Y.Kota – Kodur trip (down trip) while performing the duty on route Kodur-Y.Kota on 23-7-98 which constitutes misconduct as per Reg.28(x) of APSRTC Employees (conduct) Reg. 1963.”

3) For having issued the E.1 ticket bearing Nos.176/763930 of Rs.4/- denm., to a passenger who boarded the bus at Kodur and bound for Y.Kota ex. stages 9 to 12 which was unconnected to the service that while performing duty on route Kodur-Y.Kota on 23-7-98 which constitutes misconduct as per Reg. 28(x) of APSRTC Employees (Conduct) Reg. 1963.”

(Reproduced verbatim)

8. In response to the case of the Corporation, the case of the workman is that he had issued tickets to all passengers who boarded the bus and also cautioned the passengers to take tickets and that if anybody fails to take tickets, consequences would follow. However, there was no response from the passengers. Therefore, he allowed the bus to move. As he was feeling unwell,

he did not tally the SR. The passengers referred to in the charges did not take tickets and gave false statements to avoid checking Inspector imposing fines upon them. The checking officials failed to check the bus cash. The special report was prepared in the absence of the workman. There is no misconduct. The explanation offered to the charges is not properly considered. The enquiry was not duly conducted. No evidence was adduced to prove the charges. The second and third charges are based on a special report which was drafted in the absence of the workman. The allegations mentioned in the second and third charges are not found in the charge memo. The said charges are fabricated. No top punched tickets were given by the checking officials. Under threat, the checking officials obtained statements from the passengers. The passengers gave statements to their dictation. The findings of the Enquiry Officer are not in conformity with the evidence adduced before him.

9. According to the case of the Corporation, when the checking officials conducted the check, the following cash and ticketing irregularities were found: 'The workman re-issued five tickets to five passengers, who boarded the bus at Kodur and bound for Y.Kota; the said tickets were already issued and accounted for in the SR at 11.00 hours during Y.Kota-Kodur trip. The workman also re-issued tickets to 25 passengers, who boarded the bus at Kodur; the said tickets were already issued and accounted for in the SR in 11.30/ 11.40 hours Y.Kota-Kodur trip (down trip). The workman issued one ticket to one passenger, who boarded the bus at Kodur and bound for Y.Kota; the said ticket was unconnected to the service, which the workman was performing on the route Kodur to Y.Kota, at that time on that day.' The checking officials in their special report informed that due to non-cooperation of the passengers, they did not complete the check memo and that they have taken over the confiscated tickets from the passengers and the service SR. However, in the special report, it was also mentioned that there were 60 passengers in the bus,

out of which 22 passengers were travelling from stage 9 to 11 and remaining 38 passengers were travelling from stage no.9 to 12 and that the petitioner had issued correct tickets to seven adult and four chargeable children and that the petitioner re-issued 30 tickets which were already issued and accounted in 11-40 hours trip and that the petitioner also issued one ticket of Rs.4/- denomination, which is an unconnected ticket to the service tray, and that when they were framing the charge, along with the first five tickets, the passengers disturbed them and hence, they framed charges in special report. In the circumstances stated, the failure of the checking officials to mention the 2nd charge in the check memo is found not fatal by the learned Tribunal. On due enquiry, it was found that the workman re-issued 30 tickets and one unconnected ticket. However, in the spot statement, the workman stated that due to mental imbalance, he reissued tickets and that there was no need for him to collect tickets from alighting passengers and to re-issue the same tickets to new passengers. The learned Chairman of the Tribunal having examined entire record accepted the explanation of the checking officials for not mentioning the 2nd charge in the charge memo and further held that the contention of the workman that the checking officials foisted false charges against him cannot be accepted and that there was no motive or necessity for the checking staff to file a false case and that in the circumstances that were prevailing at the time of check, the checking officials allowed the Bus to move to avoid further complications and that the SR maintained by the workman is proof positive to show that the workman/ conductor re-issued (30) tickets. The learned Chairman of the Tribunal also adverted to the claim of the petitioner that he re-issued the tickets due to ill-health and mental imbalances and that the said contention is far from reason. The (30) tickets, which were issued to (30) passengers from out of (59) passengers were produced before the Tribunal. Without giving any explanation much less valid explanation, he claimed that he

lost mental balance. The very claim that he issued tickets due to ill health and mental imbalance was not countenanced either by the Enquiry Officer or the Tribunal; and, very rightly, such a contention cannot be countenanced. Insofar as the one ticket unconnected to the service and which was said to have been issued by the workman, the only explanation is that he did not issue that ticket. However, the statements of the bus passengers established that the workman re-issued tickets and also the ticket which was unconnected to the service. Apart from that, the Tribunal noted that in the spot explanation, he admitted that he issued five tickets which were already issued in the down trip, but claimed that due to ill-health and due to mental imbalance, the above lapse has happened; and the Tribunal held that the said explanation is unacceptable. Having regard to the explanation of the workman and having relied upon the Traffic Inspector's report and evidence, which conclusively established the charges, and having further found that no points were elicited in the cross-examination of the said witness to discredit the evidence of the said witness and having thus considered the entire material on record including the SR maintained by the workman and the confiscated tickets, the learned Tribunal found that the enquiry that was duly conducted and that the charges are established. Be it noted that the first charge was mentioned in the charge memo and that there is no valid explanation for the said charge and that the said charge was held proved by the enquiry Officer. The Tribunal also, after careful scrutiny of the facts and evidence, held that the said charge is also proved apart from charges 2 and 3. Thus, the Tribunal, while holding that the enquiry duly conducted was valid, confirmed the findings of the enquiry officer. Then, the Tribunal also considered the proportionality of the punishment. Having due regard to the gravamen of the charges held to have been proved, the Tribunal further held that the punishment of removal from service is just and proper.

10. Before parting, it is necessary to refer to a decision of the Supreme Court in *Union of India v. P. Gunasekaran*¹ wherein the Supreme Court dealt with the scope of interference by 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.”

In *Divisional Controller, N.E.K.R.T.C v. H. Amaresh*,² the Supreme Court, while holding that where the charge was proved in domestic enquiry, the punishment of dismissal from service awarded by disciplinary authority, does not call for interference by the Labour Court or the High Court, had accordingly set aside the order of reinstatement passed by High Court. In the decision in *K.V.S. Ram v. Bangalore Metropolitan Transport Corporation*³, the Supreme Court held that when the Labour Court exercises its discretion keeping in view the facts of a case and cases of similarly situated workmen, the High Court

¹ (2015) 2 SCC 610

² (2006) 6 SCC 187

³ ARI 2015 SC 998

ought not to have interfered with the exercise of discretion by the Labour Court more particularly when the Award of the Labour Court does not suffer from any flaws. It is also held that it is settled proposition of law that while considering the management's decision to dismiss or terminate services of a workman, the Labour Court can interfere with the decision of the management only when it is satisfied that the punishment imposed by the management is highly disproportionate to the degree of guilt of the workman concerned and that once the Labour Court has exercised the discretion judiciously, the High Court can interfere with the Award only if it is satisfied that the Award of the Labour Court is vitiated by any fundamental flaws and that while interfering with the Award of the Labour Court, the High Court has to keep in view the parameters laid down by the Supreme Court for exercise of jurisdiction by the High Court under Article 226 and/ or 227 of the Constitution of India. On the quantum of punishment, the Supreme Court, in Divisional Controller, KSRTC (NWKRTC) v. A.T.Mane⁴, 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.

Again, in U.P. State Road Transport Corporation, Dehradun v. Suresh Pal⁵, 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 travelling by the time when the check was done by the checking Official of the UPSRTC; The Corporation imposed a punishment of dismissal from

⁴ (2005) 3 SCC 254

⁵ (2006) (3) LLJ 967 (SC) = (2006) 8 SCC 108

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. Thus, the Supreme Court had time and again deprecated the practice of interfering with the penalty imposed on a Conductor of a bus who acts in fiduciary capacity. Thus in the opinion of this Court the finding that the workman/ conductor is found guilty of misconduct as stated in the first charge is itself sufficient to sustain the Award of the Tribunal as it is not the amount of money misappropriated that becomes the primary factor for awarding punishment and on the contrary it is the loss of confidence which is the primary factor to be taken into consideration.

11. Be it noted that the learned counsel for the petitioner relied upon the following decisions:

(1) S.Pulla Reddy v. Depot Manager, APSRTC, Cuddapah⁶. The facts of the case disclose that the conductor therein was removed from service for charges of re-issuing the tickets once sold. On facts, this Court held that there are mitigating circumstances namely, non verification of cash and improbability of the act of re-issuing the tickets to the same passengers who had allegedly travelled in a same bus in an earlier trip. In the case on hand, in the explanation, the workman/ Conductor admitted that he did not issue tickets and that he had re-issued tickets due to ill-health and mental imbalances. Therefore, the decision is not helpful.

⁶ 1997 (2) ALD 558

(2) In *Md. Rasheed v. Managing Director, APSRTC, Musheerabad*⁷, this Court while approving the settled legal position that the Supreme Court took the view that it is not essential to examine the passengers in domestic enquiry in the matters of this nature, on facts of the cited case, held that when the factum of issuance of reissued tickets is disputed, the Corporation ought to have ensured that the concerned passengers are examined. In the facts and circumstances of the present case and in view of the factual findings supported by reasons recorded by the Tribunal, there was no necessity to examine any passengers as even the workman/ conductor admitted that the passengers gave statements to the checking officials but such statements were given under threats and further admitted in his spot explanation that he issued the tickets in question due to ill-health and mental imbalances.

(3) *Commissioner of Police, Delhi v. Jai Bhagwan*⁸. The facts of the cited case show that the workman/ Constable extorted Rs.100-00 by way of illegal gratification from a lady during the course of security check of passengers during his posting at the IGI Airport, New Delhi at the X-Ray Machine Belt. On her complaint, the crime was registered. The case facts further show that the complainant further identified the respondent and thereupon he returned the aforesaid sum of Rs.100/- to her in the presence of the Inspector and Sub-Inspector who were present at that time. In the facts and circumstances of the cited case, the Supreme Court held that in view of the non examination of that lady, there was absence of definite and clear proof supporting the case. As noted, the decision in the cited case turned on the facts of that case and is therefore, not helpful to the petitioner.

⁷ 2015 (6) ALD 157 (D.B)

⁸ 2011 CJ (SC) 909

12. In the case on hand, in the domestic enquiry, the charges were held proved and the Tribunal while exercising discretion judiciously confirmed the said findings as well as the penalty imposed after examining the proportionality of the punishment as well. The workman-conductor holds a post of trust and faith and acts in fiduciary capacity. When once there is a breach of trust, the penalty of removal from service is justified as rightly held by the Tribunal.

13. On the above analysis, this Court finds that the Award of the Tribunal does not suffer from any flaw. Viewed thus, this Court finds that the Award of the Tribunal does not call for any interference and that the writ petition is devoid of merit.

14. The Writ Petition is accordingly dismissed.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

There shall be no order as to costs.

13.02.2017
RAR

M. SEETHARAMA MURTI, J