

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.19975 of 2006

ORDER:

This writ petition, under Article 226 of the Constitution of India, by the unsuccessful workman-driver of APSRTC is directed against the Award, dated 30.01.2006, of the learned Presiding Officer of the Labour Court, Guntur, passed in ID.no.115 of 2003.

2. I have heard the submissions of *Sri K. Krishna Kishore*, learned counsel representing *Sri N. Siva Reddy*, learned counsel for the writ petitioner, and of *Sri P. Durga Prasad*, 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 respondents-Corporation.

4. The facts, which are necessary to be stated as a prelude to this order, in brief, are as follows:

The petitioner was appointed as a driver in the Corporation in January, 1979. It was reported by the Manager of Sattenapalli Depot of the Corporation that as per the instructions of higher authorities he along with Parirakshana Samithi members of Sattenapalli conducted a special drive on the Narasaraopet-Sattenapalli route, on 10.04.2002, and that he and the members of the Samiti observed jeep bearing registration no. AP 7 U 5490, proceeding from Mulakalur towards Narsaraopet, which was being driven by the petitioner-workman at that time. It was also further reported by him that the workman who was himself driving the Jeep informed them that he was employed as a driver of the Corporation and that they have confiscated his identity card. On such report, a preliminary enquiry was held. In that enquiry, the petitioner-

workman stated that the Jeep belongs to his neighbours and that he was driving the Jeep from Satenapalli to Narsaraopet as the regular jeep driver was tired enroute and that the jeep was engaged by him to transport his family members. However, on enquiries made by the Corporation it was revealed that the said Jeep belonged to the petitioner's wife, Smt.SK.Alimoon, and that contract carriage permit was obtained in respect of the said Jeep and that after the petitioner had transported his family members from Narsaraopet to Satenapalli in connection with the delivering of a child by his niece at Narsaraopet, there was no further necessity for him to again transport some persons from Satenapalli to Narsaraopet. Eventually it was found that after spell of five hours of duty on 10.04.2002, the petitioner had unauthorisedly engaged himself in transporting the passengers from Satenapalli to Narsaraopet and vice versa on the said jeep belonging to his wife. It was also revealed on verification of his personal service records that he had not obtained sanction of the competent authority for acquiring the said property in the name of his wife, and, thus concealed the fact that he had acquired the jeep in his wife's name and that the said suppression of fact would tantamount to misconduct. A further enquiry and verification of traffic police challan and receipt, dated 14.04.2002, revealed that after paying a penalty of Rs.100/- levied against the petitioner, he had compounded an offence punishable under the provisions of MV Act and signed at the signature column as Sk. Jaleel instead of as Md.Jalaluddin and that he indulged in forgery and deceived the police department as well as the Corporation. All the said acts constitute serious misconduct. Based on the said acts of misconduct, the Depot Manager, Narsaraopet, served a charge sheet on the petitioner enlisting the acts of misconduct. As his explanation was found unsatisfactory, a detailed enquiry was duly held by nominating an enquiry officer. After due enquiry, the enquiry officer submitted a report finding the petitioner guilty of the charges formulated against him. As the petitioner's explanation to the enquiry report

was unsatisfactory and not convincing, he was finally removed from service. His appeal and request for review were rejected by the appellate and review authorities. Thereafter, he raised an industrial dispute and filed a claim petition. On merits and by the orders impugned in this writ petition, the Presiding Officer of the Labour Court having found that the charges 1 and 3 are only proved and that the charges 2 and 4 are not proved had partly allowed the claim petition of the petitioner-workman and had set aside the order of removal from service and directed that the petitioner be reinstated into service without back wages and without continuity of service and entitlement of monetary benefits from the date of removal till date of the Award, but, however directed that the pay of the petitioner on such reinstatement shall not be less than his last drawn pay.

5. The charges 1 and 3, which are held proved read thus: Charge no:1: *For having been unauthorisedly engaged yourself in transporting the passengers from Sattenapalli to Narasaraopet and vice versa through a private Jeep bearing No.AP 7U 5490 which pertains to your wife, Smt. Sk. Alimoon, after the spell of your 05-00 hrs., NRF-Sajjapuram day out duty, which is highly detrimental to the interests of the Corporation as detected by the DM/ SAP along with the Parirakshana Samithi at about 17-30 hrs., on 10-04-2002 during the course of Special Drive conducted by them on 10-04-2002 which constitutes misconduct under Reg.28(X)(XXXI) and (XXXII) of APSRTC Employees Conduct Regulations, 1963; Charge No.3 For having failed to inform about the acquired property ie., Jeep on the name of your wife Smt. Sk. Alimoon thus concealed the fact of possessing the property, which constitutes mis-conduct under Reg.28 (XVII), (XXII), (XXXI) and (XXXII) of APSRTC Employees Conduct Regulations, 1963.” [Reproduced verbatim]*

6. Aggrieved of the orders of the Labour Court, the present writ petition is filed by the petitioner-workman.

7. Learned counsel for the petitioner would contend as follows:

The petitioner joined as driver of the Corporation in the year 1979 and worked continuously without any remark or complaint from any quarter till the alleged incident was allegedly detected. The petitioner gave an explanation stating that there are disputes between him and his wife; and, that he left his wife three years prior to the incident due to family disputes; and, that his mother transferred the Jeep in the name of his wife without his knowledge; and, that on the day of incident the petitioner was driving the Jeep, after his duty hours, and transporting friends and relatives in the Jeep from Sattenapalli to Narasaraopet, as his Niece has delivered a baby; and, that the petitioner never signed as Jaleel in the police challan. The learned Presiding officer of the Labour Court found on merits that the charge related to the accusation that the petitioner misrepresented that the Jeep belongs to his neighbours though actually the Jeep belonged to his wife is not proved and also further found that the charge relating to the accusation that the petitioner signed as Jaleel in police challan instead of signing as Sk.Jalaluddin is also not proved. Hence, the learned Presiding Officer of the Labour Court ought to have held that the charges 1 and 3 are also not proved, as the said charges are inter connected to the said charges, which are not proved. The learned Presiding Officer of the Labour Court was in error in holding that charges 1 and 3 are proved though the said charges are also not proved. The learned Presiding Officer of the Labour Court should have seen that the 1st charge relates to a stray or single incident of the petitioner driving a Jeep after duty hours and that it is not the case of the Corporation that he is regularly driving the Jeep of his wife and transporting passengers from Sattenapalli to Narasaraopet and vice versa. In any view of the matter, the two charges levelled and proved do not constitute gross misconduct and, therefore, the punishment of removal from service and the modified punishment of reinstatement without back wages and

continuity of service and denial of monetary benefits is grossly disproportionate. Hence, the writ petition may be allowed and the Award of the Labour Court may be set aside in all respects and as the charges 1 and 3 are also not proved the petitioner may be directed to be reinstated into service with back wages, monetary benefits and all attendant benefits. Under the first charge it is stated the acts mentioned therein constitute misconduct under items X, XXXI and XXXII of clause (1) of Regulation 28. In-fact, the acts mentioned in the charge do not attract the provisions of the said items. Similarly, under charge no.3, it is stated therein that the acts therein constitute misconduct under items XVII, XXII, XXXI and XXXII of clause (1) of regulation 28 whereas the ingredients of the said items of the said clause are not attracted to the alleged acts of misconduct.

8. 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 un-necessarily interfered with the said findings of the Enquiry Officer and erroneously held that the charges 1 and 3 are only proved, while in fact all the charges are proved. However, after taking a lenient view purely on grounds of mercy and generosity, the learned Presiding Officer interfered with the punishment imposed by the Corporation by setting aside the punishment of removal from service and imposed a punishment of reinstatement into service without back wages and without continuity of service and entitlement of monetary benefits from the date of removal till date of the Award, but, however directed that the pay of the petitioner on such reinstatement shall not be less than his last drawn pay. In any view of the matter, the said penalty is not disproportionate to the gravity of charges held proved; and, in fact, it is sufficient punishment in the

facts and circumstances of the case. The service is not a service with pensionary benefit and, therefore, the petitioner is not entitled to any relief.

9. In reply learned counsel for the petitioner has also stated that the petitioner has retired from service a few years back.

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

11. A careful perusal of the material record including the Award of the Labour Court would show that after necessary examination of the facts and evidence, the learned Presiding Officer of the Labour Court arrived at a conclusion that charges 1 and 3 are proved and accordingly confirmed the findings of the Enquiry Officer related to the said charges. 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.

12. In the decision in *Union of India v. P. Gunasekaran*¹ 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;

¹ (2015) 2 SCC 610

(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.”

12.1 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.

12.2 Therefore, having regard to the facts and the legal position, this Court holds that the first contention that the finding of the Labour Court that the charges 1 and 3 are not proved needs no countenance.

13. Coming to the quantum of punishment in the case on hand, the learned Presiding Officer of the Labour Court found that out of the four charges, charges 1 and 3 are only proved and set aside the punishment of removal from service and imposed a penalty of reinstatement into service without back wages and without continuity of service and entitlement of monetary benefits from the date of removal till date of the Award, but, however directed that the pay of the petitioner on such reinstatement shall not be less than his last drawn pay. It is undisputed that the petitioner has already retired from service. Even if a benefit of continuity of service is to be now conferred by interfering with the punishment, as per submissions of learned counsel for both the sides, no

² (2006) 6 SCC 187

purpose would be served as continuity of service will not confer on the petitioner, any monetary benefit, except dismal benefit. Further, considering the graveman of the charges proved, it is manifest that the petitioner-workman has not acted *bona fide* and that the acts of misconduct are of such nature warranting the penalty imposed by the Presiding Officer of the Labour Court and that in the facts and circumstances of the case the penalty imposed is not disproportionate to the acts of the misconduct held proved.

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.

27.02.2017
Vjl



JUSTICE M. SEETHARAMA MURTI