

**HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND**

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

WRIT APPEAL No.466 OF 2009

JUDGMENT: *(Per Hon'ble Dr. Justice Shameem Akther)*

1. This Appeal, under clause 15 of Letters Patent, is preferred against the order dated 21.10.2008 passed in Writ Petition No.21529 of 1999; wherein, the learned Single Judge of this Court dismissed the writ petition confirming the award dated 16.11.1998 passed by the Presiding Officer, Labour Court-I, Hyderabad (for short, 'the Tribunal') in I.D. No.70 of 1997.

2. The parties hereinafter are referred to as arrayed in the Writ Petition.

3. The Writ Petition was filed under Article 226 of the Constitution of India challenging the validity of the impugned award dated 16.11.1998 passed by the Presiding Officer, Labour Court-I, Hyderabad.

4. The case of the respondent-workman, as averred in the writ petition, in brief, is that he was initially appointed as Conductor in the Mehdipatnam depot of Andhra Pradesh State Road Transport Corporation (APSRTC) in 1976 and, subsequently, transferred to Falaknuma depot and had put up 18 years of unblemished service, till the date of his removal. On 27.10.1993, when the respondent-workman was conducting the bus on Route No.70, a check was exercised at Stage No.4/3 by the Head Quarters Enforcement Squad at about 11:10 a.m. and, having noticed some cash and ticket irregularities,

disciplinary proceedings were initiated against him. In the disciplinary proceedings, altogether five charges were framed against him, which read as under:

“1. For having violated the rule to complete the ticket issue within one fare stage of TIC point towards Teegalakunta, which constitutes misconduct in terms of Reg.28 (vi-a) of A.P.S.R.T.C. Employees’ (Conduct) Regulations, 1963.

2. For having failed to issue ticket to a passenger found alighting without ticket at Md. Shukur Kaman who have boarded the bus at Charminar ex-stages 4 to 4/3 even after collecting the requisite fare of Rs.0.75 p.s. at boarding place of Charminar, which constitutes misconduct in terms of Reg.28(x) of A.P.S.R.T.C. Employees’ (Conduct) Regulations, 1963.

3. For having failed to collect the fare and issue tickets to the lady passengers found traveling without tickets from Charminar to Fathe Darwaza ex-stages 4 to 4/3, which constitutes misconduct in terms of Reg.28(xxxii) of A.P.S.R.T.C. Employees’ (Conduct) Regulations, 1963.

4. For having failed to produce the MTD 141 card at the time of check, which constitutes misconduct in terms of Reg.28 (xxxii) of A.P.S.R.T.C. Employees (Conduct) Regulations, 1963.

5. For having refused to receive the charge memo issued by the checking officials at the time of check, which constitutes misconduct in terms of Reg.No.28(viii) of A.P.S.R.T.C. Employees’ (Conduct) Regulations, 1963.”

5. With the above charges, when a charge memo was served on the respondent-workman, he filed his explanation denying the said charges and, therefore, an inquiry officer was appointed to conduct inquiry. The inquiry officer, who conducted the inquiry, has submitted

his report holding that all the charges leveled against the respondent-workman were proved and, based on the same, he was removed from service by the disciplinary authority *vide* its order dated 17.03.1994. Questioning the same, he preferred an Appeal before the appellate authority, the same was dismissed by the appellate authority *vide* its order dated 18.07.1994 and the review preferred was also dismissed by the review authority *vide* its order dated 24.09.1996. Aggrieved thereby, the respondent-workman raised an Industrial Dispute in I.D. No.70 of 1997, by filing an application under Section 2-A(2) of the Industrial Disputes Act, 1947 (for short, 'the Act'). The Tribunal, while appreciating the evidence and the documents Exs.M-1 to M-19, marked on behalf of the writ petitioners-APSRTC, and referring to the proceedings in the domestic inquiry, allowed the I.D. by setting-aside the order of removal and directed the writ petitioners-APSRTC to reinstate the respondent-workman into service with full back wages and continuity of service.

6. Aggrieved by the order of the Tribunal in I.D. No.70 of 1997, dated 16.11.1998, the APSRTC preferred Writ Petition No.21529 of 1999, wherein the learned Single Judge of this Court, after hearing arguments of both the counsel, perusing the material available on record, the inquiry report and the award of the Tribunal, dismissed the Writ Petition holding that the charges leveled against the respondent-workman were not proved and also held that the domestic inquiry proceedings were conducted in a mechanical manner, ignoring the explanation offered by the respondent-workman.

7. Aggrieved by the impugned order dated 21.10.2008, the writ petitioners-APSRTC preferred this Appeal.

8. Heard the arguments of learned standing counsel for the appellants-APSRTC and the learned counsel for the respondent-workman.

9. Learned standing counsel for the appellants-APSRTC would submit that the respondent-workman collected Rs.0.75 p.s. from a passenger but did not issue ticket to him. Further, there is clear evidence of Mr. S. Fasiuddin, T.T.I. that two lady passengers, who boarded the bus at Charminar, were found traveling without tickets; it proved the charges leveled against the respondent-workman. The learned Single Judge failed to see that the respondent-workman had not pleaded with regard to alternative job or whether he remained unemployed during the interregnum period; allowing the claim petition *i.e.*, I.D. No.70 of 1997 with continuity of service and back wages is arbitrary and illegal. The Tribunal went wrong in ordering reinstatement of the respondent-workman with continuity of service and back wages holding that the charges were unsustainable. The departmental inquiry clearly establishes the charges leveled against the respondent-workman and the Appeal and the Review made there from were also dismissed. The finding of the inquiry officer and the confirmation thereon by the authorities concerned is based on material on record. There is justification of removal of the respondent-workman from service and, ultimately, prayed to allow the Appeal.

10. On the other hand, learned counsel appearing on behalf of the respondent-workman contends that the charges leveled against the respondent-workman are false; there is no material to sustain the charges; the respondent-workman had given proper explanation for not issuing a ticket for Rs.0.75 p.s. The explanation was accepted by the

Tribunal. The findings of the Tribunal are based on record. The learned Single Judge is right in upholding the order of the Tribunal and dismissing the Writ Petition. There are no justifiable grounds to allow the contentions raised on behalf of the writ petitioners-APSRTC and prayed for dismissal of the Appeal.

11. In view of the rival contentions put forth on behalf of both the counsel, the following points have come up for determination:

- 1) Whether the charges leveled against the respondent-workman are sustainable? If so, whether the impugned order of the learned Single Judge is liable to be set-aside?
- 2) To what result?

12. **POINT Nos.1 and 2**: Both the points go together. The inquiry officer had submitted an inquiry report holding that all the charges leveled against the respondent-workman were proved. Basing on the inquiry report, an order of removal from service was passed on 17.03.1994 by the disciplinary authority. The order of removal was confirmed by the appellate authority *vide* its order dated 18.07.1994 and also confirmed by the review authority *vide* its order dated 24.09.1996.

13. Aggrieved by the same, the respondent-workman raised an Industrial Dispute *i.e.*, I.D. No.70 of 1997, by filing an application under Section 2-A(2) of the Act. As per the material placed on record, no oral evidence was let in by both the parties therein, except marking the documents Exs.M-1 to M-19, on behalf of the writ petitioners-APSRTC. Further, the Tribunal, having examined the entire record, referring to the proceedings of the domestic inquiry, arrived at a conclusion that the

charges leveled against the respondent-workman were not proved. Further, opining that the domestic inquiry was conducted in a mechanical manner, ignoring the explanation submitted by the respondent-workman, the Tribunal has allowed the I.D. by setting-aside the removal order, directed reinstatement of the respondent-workman with continuity of service and back wages. As per the record, proceedings against the respondent-workman were initiated basing on the cash and tickets available at the time of check. Charge No.2 relates to the allegation that on ex-stages 4 to 4/3, having collected the requisite fare of Rs.0.75 p.s. from the passenger, failed to issue ticket to him. The allegation with regard to Charge No.3 is that the respondent-workman had failed to collect fare and issue tickets to two lady passengers, who were traveling from Charminar to Fathe Darwaza, ex-stages 4 to 4/3. With regard to Charge No.2, the respondent-workman had offered his explanation stating that the passenger covered by Charge No.2 boarded the bus when it was proceeding at Himmatpura, where there were speed-breakers, the passenger tendered only Rs.0.50 p.s. and when the respondent-workman was insisting for the remaining tender of Rs.0.25 p.s. to issue a ticket, the other lady passengers, who were covered under Charge No.3, also boarded the bus, and before the bus reaching one fare stage, a check was conducted. The statement given by the driver of the bus was marked as Ex.M-12 and it is in favour of the respondent-workman. As seen from the inquiry report, the explanation offered by the respondent-workman was not taken into consideration while imposing the penalty of removal from service. There is nothing to doubt that there were no speed-breakers at Himmatpura, where the first passenger is said to have been boarded the bus. The specific

explanation with regard to charge No.2 is that when the respondent-workman was insisting for payment of remaining Rs.0.25 p.s. for issuance of ticket, the passenger could not offer the required tender and, hence, he could not issue ticket for Rs.0.75 p.s. to the passenger. It is also a case that even the bus did not pass one fare stage by then. The explanation given by the respondent-workman is satisfactory and it is in conformity with the material on record. Valid reasons are assigned by the Tribunal in setting-aside the order of removal and ordering reinstatement of the respondent-workman with continuity of service and back wages. Except charge Nos.2 and 3, there are no charges with regard to misappropriation of any amount by the respondent-workman. The order of the Tribunal is supported by reasons. The learned Single Judge while dealing with the contentions raised on behalf of the writ petitioners-APSRTC, came to the conclusion that the order passed by the Tribunal is based on evidence and record. No illegality was committed by the Tribunal in passing the award; no interference was warranted by the learned Single Judge in Writ Petition under Article 226 of the Constitution of India. Viewing from any angle, there is nothing to hold that any of the findings, recorded by the learned Single Judge and the authorities concerned, are not based on record. In the facts and circumstances of this case, it is not appropriate to take a different view. It is also pertinent to state that under Clause 15 of the letters patent, no interference is made, unless there is a patent irregularity. The impugned order does not suffer from any illegality or infirmity. The Appeal is devoid of merits and it is liable to be dismissed. The points are answered accordingly.

14. Accordingly, the Writ Appeal is dismissed confirming the impugned order dated 21.10.2008 in Writ Petition No.21529 of 1999.

15. As a sequel, pending miscellaneous petitions, if any, shall stand dismissed. No order as to costs.

(RAMESH RANGANATHAN, ACJ)

(Dr. SHAMEEM AKTHER, J)

Date: 27-04-2017
DSH



HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

83



27042017

WRIT APPEAL No.466 OF 2009

(Judgment of the Division Bench delivered by
Hon'ble Dr. Justice Shameem Akther)

Date. 27-04-2017

DSH