THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.18325 of 2007

ORDER:

This writ petition, under Article 226 of the Constitution of India, by the petitioner/conductor, is directed against the Award, dated 14.02.2007, of the learned Chairman, Industrial Tribunal-cum-Labour Court at Warangal, ('the Tribunal', for brevity) passed in I.D.No.106 of 2004.

2. I have heard the submissions of *Sri A.K.Jaya Prakash Rao*, learned counsel for the writ petitioner, and of *Sri B.Mayur Reddy*, learned Standing Counsel for APSRTC representing the 2nd respondent. I have perused the material record.

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

The petitioner was initially engaged from 17.02.1997, as a daily wage Conductor. His services were regularised with effect from 01.09.1998. On 12.11.2003, while he was conducting the bus of the 2nd respondent Corporation on the route Hanamkonda-Hyderabad, a check was exercised by the checking officials at stage No.3/4. According to the Corporation, during the said check, certain cash and ticketing irregularities were detected. Basing on the report of the checking officials, the petitioner was placed under suspension, by order dated 29.11.2003, and he was issued a charge sheet with the charges, which read verbatim as under:

(i) For having issued three (3) unconcerned tickets bearing No.611/685454 to 456 of Rs.20/- denomination to a batch of three passengers found travelling with these tickets, having boarded the bus at Hanamkonda bound for Jangaon ex-stages 1 to 12 from whom you have collected Rs.20/- each and the above tickets are not concerned to you present S.R.No.10537194 dt.12-11-2003 and way bill and the same were already sold out and accounted by you in S.R.No.10535822 dt.5-11-03, which constitutes misconduct under Reg.28 (xxiii) and (xxxii) of APSRTC Employees (Conduct) Reg. 1963.

(ii) For having found an unconnected ticket bearing No.144/362289 of Rs.77/- denomination to a passenger found travelling with said ticket, having boarded the bus at Kazipet and bound for Ghanpur ex-stages 2 to 7 from whom you have collected Rs.7/- and the above ticket is not concerned to your present S.R.No.105737194 dt.12-11-2003, which constitutes misconduct under Reg.28 (xxiii) and (xxxii) of APSRTC Employees (Conduct) Reg. 1963."

The petitioner submitted an explanation to the charge sheet, on 11.03.2004. However, as the Corporation is not satisfied with the said explanation, a domestic enquiry was ordered. The enquiry Officer, after duly conducting a domestic enquiry, submitted a report holding that the charges are proved. As the comments and objections of the petitioner to the said enquiry report were found unconvincing and unsatisfactory, a show-cause notice, dated 24.03.2004, was issued to the petitioner proposing punishment of removal from service. As the petitioner's further explanation to the said show-cause notice was found unsatisfactory, the Disciplinary Authority passed final orders, dated 05.04.2004, removing him from service. His appeal was rejected, on 04.09.2004, by the appellate authority. Aggrieved thereby, the petitioner raised an industrial dispute and filed a claim petition. The same was resisted by the Corporation. On merits, the learned Chairman of the Tribunal dismissed the claim petition of the petitioner. Aggrieved thereby, the petitioner filed this writ petition.

4. The case of the petitioner and the submissions made on his behalf are as follows:

The petitioner joined the services of the Corporation as a Conductor in the year 1997 and he rendered unblemished service. When a charge sheet was issued, he gave a detailed explanation; but the Disciplinary Authority ordered for a domestic enquiry. The Enquiry Officer examined the TTI, but has not appreciated the evidence properly. The TTIs did not follow the formalities at the time of check and submitted their report in a biased manner. The petitioner's objections/comments were not considered properly and he was removed from service, by order dated 05.04.2004. His appeal was rejected. He submitted that the passengers in the bus were possessing valid tickets and that they have shown the old tickets and also the new tickets; but the TTI took undue advantage of the old tickets and suppressed the current tickets that were issued at the place of boarding and that were shown by the passengers and framed false charges against him. The punishment imposed is disproportionate to the alleged misconduct allegedly held proved. He did not commit any illegality or irregularity. The petitioner has no fraudulent intention; and, no loss of revenue is caused to the Corporation. The Enquiry Officer did not appreciate the facts correctly and the evidence & the explanation of the petitioner in proper perspective. The appellate authority mechanically confirmed the findings of the Enquiry Officer. In any view of the matter, the punishment imposed is shockingly disproportionate to the alleged acts which are committed without any fraudulent intention of causing loss of revenue to the Corporation. Hence, the Award may be set aside and the petitioner may be reinstated into service with continuity of service, full back wages and other attendant benefits.

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. After issuance of a show cause notice and serving a copy of the enquiry report on the petitioner, his explanation was called for. As his explanation was unconvincing and not satisfactory, he was served with a final show cause notice and was removed from service by proceedings, dated 05.04.2004. His appeal was rejected by orders, dated 04.09.2004, by the appellate authority as it concurred with the findings of the Enquiry Officer that the charges are proved. The petitioner was earlier punished once with deferment of annual increment and postponement of regularization twice. A fair and proper enquiry was conducted by following the principles of natural justice and in accordance with the APSRTC Employees (CC&A) Regulations, 1963. The Enquiry Officer on the basis of the material available record held that the charges are proved. Three passengers paid an amount of Rs.20/- each and one passenger paid Rs.7/- immediately after boarding the bus. The petitioner issued tickets bearing No.611/685454, 685455 and 685456 of Rs.20/- denomination and a ticket bearing No.144/362289 of Rs.7/- denomination. The check exercised by the TTIs revealed that the said three tickets of Rs.20/- denomination were already issued by the petitioner to the passengers, on 05.11.2003, and were accounted for in the SR, dated 05.11.2003. Thus, the petitioner reissued those tickets. He would have pocketed the amount had the check been not conducted. It was also found that the ticket of Rs.7/- denomination issued by the petitioner was an unconcerned ticket. The TTI obtained passengers' statements in the presence of the petitioner. The petitioner issued the used ticket, that is, the ticket that was supplied to him on 05.11.2003. The petitioner kept the used tickets in his custody and reissued the same tickets for the second time to three passengers with a *mala fide* intention to defraud the revenue of the Corporation. The enquiry was properly conducted and the charges were held proved. The learned Chairman of the Tribunal also held that the charges are proved. The workman-conductor holds a post of trust and faith and his relationship is a fiduciary relationship with the employer. 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 financial embezzlement, the learned Chairman of the Tribunal rightly did not disturb the findings reached by the officers of the Corporation. In view of the misconduct proved, the penalty of removal from service is justified. 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. I have bestowed my attention to the facts and given earnest consideration to the submissions.

7. To begin with, it is necessary to consider the graveman of the charges. The 1st charge relates to collection of Rs.20/- each and issuance of three (3) unconnected tickets bearing No.611/685454 to 456 of Rs.20/- denomination to a batch of three passengers found travelling with these tickets, having boarded the bus at Hanamkonoda and bound for Janagaon, ex-stages 1 to 12. The second charge relates to collection of requisite fare and issuance of unconnected ticket bearing No.144/362289 of Rs.7/- denomination to a passenger, who boarded the bus at Kazipet bound for Ghanapur, ex-stages 1 to 7. The above tickets are not concerned to the current SR of the petitioner and the said tickets were already sold out tickets. After due enquiry, the Enquiry Officer found that the charges are proved. The explanation of the petitioner to charges is that the passengers concerned showed the old tickets with them and also the current tickets issued by the petitioner, but, TTIs have taken advantage after seeing the old and new tickets with the passengers and suppressed the fact that the passengers were having the current tickets which were issued at the places of boarding and hence, he protested the indifferent attitude of the TTIs at the time of checking itself and offered detailed spot explanation and that the TTIs did not listen to his explanation and consider

his request to verify the cash and forcefully obtained the statements of the passengers under threat and foisted the charges after tearing the current tickets issued to the passengers. It is borne out by the record that the passengers in their spot statements did not support the version of the petitioner. Their statements lead to the framing of charges. The TTI also seized the SR and Way Bill. The TTI stated in his evidence that the petitioner did not make a request to verify the cash. However TTI admitted issuance of six tickets of Rs.20/- denomination and two tickets of Rs.7/- denomination and that the same were matching with the passengers travelling in the bus. Though the petitioner requested to examine the passengers, they were not examined. In this backdrop, the learned counsel for the petitioner forcefully contended that the learned Chairman of the Tribunal erroneously observed that the petitioner ought to have examined the passengers, though the onus of proof as well as burden of proof are on the Corporation. He also contended that the learned Chairman illegally accepted the version of the Corporation that the petitioner reissued the tickets of Rs.20/- denomination which were already accounted for earlier and also issued unconcerned ticket of Rs.7/- denomination, which is unconnected to his tray and wrongly confirmed the finding of the enquiry officer that the charge is proved. He also contended that the non-counting of the cash with Conductor is a vital aspect of the matter and that had the cash been counted, the truth would have come out. The instant case is not a case where the charge relates to non collection of requisite fare; but, the charge relates to collection of fare and re-issuance of already sold and accounted for tickets and unconcerned ticket. Leaving aside the said observation that the petitioner ought to have examined the passengers for a moment, what is to be noted is that non verification of the cash of the conductor is not a vital aspect in the case on hand. The law is fairly well settled that the examination of passengers is not essential. [See:

Divisional Controller, N.E.K.R.T.C. Vs. H.Amaresh[1]]. Further, the petitioner in his spot statement admitted that he collected fare of Rs.20/- each and issued tickets with nos. 611/685454 to 456 to the passengers and also collected Rs.7/- from another passenger and issued the ticket with no. 114/362289, which are proved to be already issued and accounted for tickets. He did not mention the numbers of the current tickets he was claiming to have issued to the said passengers from his current tray. When the Corporation adduced some legal evidence and discharged the initial onus which is upon it, it is for the petitioner to adduce at least a semblance of reliable evidence. If really he had issued any such correct tickets to the said passengers he ought to have mentioned the numbers of the said tickets in his spot statement or pointed out the same from the records like Star Documents, Statistical return, check sheet or any such documents produced before the Tribunal. Eventually, the learned Chairman on independent consideration of the facts and proper appreciation of evidence upheld the findings of the Enquiry Officer and held that the charges are proved.

8. On a careful examination of the facts and the evidence brought on record coupled with the spot explanation of the petitioner, this Court finds that the Enquiry Officer is justified in holding that the charges formulated against the petitioner are proved.

9. Thus, a careful perusal of the material record including the Award of the Tribunal would show that after examination of the facts, relevant evidence and circumstances, the learned Chairman arrived at the conclusion that the charges are proved and accordingly, confirmed the findings of the Enquiry Officer. This Court, in the facts and circumstances, does not find any grounds much less valid grounds calling for interference with the concurrent findings of the Enquiry Officer and the learned Chairman of the Tribunal.

[1] AIR 2006 SC 2730 = (2006) 6 SCC 187

When once conclusions arrived at by the enquiry officer and the learned Chairman of the Tribunal are found to be sustainable on facts and evidence, and when such findings are based on some legal evidence, this Court will not normally substitute its subjective opinion in the place of the one concurrently arrived at by the said officers.

10. In the decision in Union of India v. P. Gunasekaran[2] 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:
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> (a) the enquiry is held by a competent authority;
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> (b) the enquiry is held according to the procedure prescribed in that behalf;
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> (c) there is violation of the principles of natural justice in conducting the proceedings;
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> (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
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> (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;
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> (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
>
> (i) the finding of fact is based on no evidence.
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> Under Article 226/227 of the Constitution of India, the High Court shall not:
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> (i). re-appreciate the evidence;
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> (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;

[2] (2015) 2 SCC 610

(vii). go into the proportionality of punishment unless it shocks its conscience."

11. In Divisional Controller, N.E.K.R.T.C. Vs. H.Amaresh (1st aaupra), 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 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.

Therefore, having regard to the findings supra and the legal position obtaining, this Court holds that the contentions of the petitioner/conductor that the findings of the Tribunal that the charges are proved is incorrect and that the said findings deserve to be set aside, need no countenance in the facts and circumstances of the case.

12. Coming to the quantum of punishment, learned counsel for the petitioner would submit that the punishment imposed shocks conscience as it is grossly disproportionate to the misconduct. He also submits that the learned Chairman of the Tribunal ought to have ordered reinstatement of the petitioner while imposing any other penalty like denying part of the back wages and monetary benefits but the learned Chairman of the Tribunal ought not to have confirmed the capital penalty of removal from service by looking into the past record, which is not the subject matter of the charges. The

learned Chairman of the Tribunal having examined the proportionality of the penalty held that in a case of this nature the penalty of removal from service is justified and shall not be interfered with. In a case of this nature where the conductor, whose relationship is fiduciary, is found guilty of charges related to cash and ticketing irregularities there is nothing wrong in the Corporation losing trust or faith in such an employee and awarding punishment of removal. In such cases, there is no place for generosity or misplaced sympathy. Accordingly, the submissions made on behalf of the petitioner with regard to reduction of penalty are rejected being devoid of acceptable merit.

13. On the above analysis, this Court finds that the award of the Tribunal does not call for interference and that the writ petition, which is devoid of merit, is liable to be dismissed.

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

Pending miscellaneous petitions, if any, shall stand closed.

There shall be no order as to costs.

M.SEETHARAMA MURTI, J

25th April, 2017
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