

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

WRIT PETITION No.11855 of 2007

ORDER:

This writ petition, under Article 226 of the Constitution of India, by the unsuccessful petitioner-workman-Conductor, is directed against the Award, dated 28.12.2006, passed in I.D.No.91 of 2004 on the file of Industrial Tribunal-cum- Labour Court, Visakhapatnam.

2. I have heard the submissions of *Sri A.Nagendra Rao*, learned counsel appearing for the writ petitioner, and of *Sri S.V.Ramana*, learned Standing Counsel for APSRTC, representing the respondents. I have perused the material record.

3. The facts, which are necessary to be stated as a preface to the order, in brief, are as follows:

The petitioner was appointed, on 11.05.1987, as a Conductor in the services of the Corporation. He was transferred to Narsipatnam Depot in April, 1992, Paderu Depot in April, 1997 and Anakapalli Depot in April, 2001. While so, on 02.03.2003, when the petitioner was on duty as Conductor and was conducting the bus, bearing registration No.AP 10Z 4172, on route Anakapalli to Madugula, a check was exercised by the checking officials at Chodavaram ex. Stages 3/4 to 5 and they detected certain cash and ticketing irregularities. Later, the petitioner was served with a charge memo, exhibit M3, and, a charge sheet, exhibit M7, dated 07.03.2003. The charges formulated verbatim are as follows:

1. For having failed to observe the rule 'Issue and Start' while you were conducting service bus No.AP 10Z 4172 on route Anakapalle-Madugula on 02.03.2003 which constitutes misconduct vide REg.28(xxxi) of APSRTC Employees (Conduct) Regulations 1963.

2. For having failed to issue tickets worth of Rs.12.00 i.e., Rs.4/- den. E-3 to a batch of 3 lady passengers who boarded the bus at Sai Baba Temple and found lighting at Chodavaram Ex-stages ¾ to 4 even after collecting the requisite fare of rS.12.00 from them at the boarding point itself while you were conducting the bus No.AP 10Z 4172 on route Anakapalle-Madugula on 02.03.2003 which constitutes misconduct vide Rg.28 (vi.a) and (x) of APSRTC Employees (Conduct) Regulations 1963.
3. For having closed the ticket numbers of all denominations in S.R. upto stage No.5 without issuing tickets to above passengers while you were conducting the vehicle No.AP 10Z 4172 on route Anakapalle-Madugula on 02.03.2003 which constitutes misconduct vide Reg. 28(xxxii) of APSRTC Employees (Conduct) Regulations 1993."

Not being satisfied with the explanation of the petitioner, regular enquiry was ordered. The Enquiry Officer, after due enquiry, submitted a detailed report holding that the charges levelled against the petitioner are proved. Thereafter, a copy of the enquiry report was served upon the petitioner and an opportunity was given to him to submit his objections and comments. As his objections and comments in his explanation to the show-cause notice were found unsatisfactory and unconvincing, the petitioner was removed from service by an order dated, 28.05.2003, of the Disciplinary Authority. The appeal preferred by the petitioner was rejected by an order dated, 26.03.2004. Therefore, the petitioner raised an industrial dispute by filing a claim petition. The same was resisted by the Corporation. On merits, the learned Chairman-cum-Presiding Officer dismissed the claim petition and passed a 'nil' award. Aggrieved thereby, the petitioner filed this writ petition.

4. The case of the writ petitioner, in brief, is this:

The petitioner was suffering from chronic Diabetes; and hence, he was not attending to his duties. Even though he had applied for leave on medical grounds, the Corporation took serious steps and ordered his removal from service. On appeal, by proceedings dated 24.03.2001, the petitioner was

reinstated into service by reducing his pay to the minimum scale of pay of a Conductor for a period of two years and it was directed that it shall have the effect of postponing his future increments and that the period from the date of his removal till the date of reporting to duty shall be treated as 'not on duty' for the purpose of leave and increments. Be that as it may. On 02.03.2003, while the petitioner was conducting the bus, bearing No.AP 10 Z 4172, on route Anakapalli to Madugula, the checking officials exercised a check and found certain cash and ticketing irregularities. He was issued a charge sheet, dated 07.03.2003 and was placed under suspension. On 28.04.2003, the petitioner submitted his explanation. The Enquiry Officer failed to appreciate his defence and relied upon the statements of TTIs. The enquiry officer has not extended a reasonable opportunity to substantiate his defence. In fact, the petitioner has issued tickets to the three lady passengers. At the time of check, he requested the TTIs to ascertain the said fact by going through the SR entries; but, the TTIs refused to check the SR entries with the physical presence of passengers in the bus. No passenger was examined before the enquiry officer. However, the statements of such passengers given to the checking officials were taken into consideration, though such statements are not legal evidence. The enquiry was not conducted properly and by following the principles of natural justice. Though the charges were not proved, the enquiry officer erroneously held that the charges were proved. The petitioner has not committed any cash and ticketing irregularities. The lady passengers informed that they have lost the tickets issued by the petitioner while they were throwing pealed skins of Plantains out of the bus. The checking officials counted the total number of passengers and found that the number of passengers tallied with the number of tickets issued. However, the said fact was not taken into consideration. The petitioner maintained the trip sheet correctly and the same was also shown to the checking officials. The trip sheet shows the correct number of passengers

in the bus at the relevant time as per the enquiry report and the SR. The total number of passengers in the bus was 40; amongst them, one is a staff member and another is a bus pass holder. Thus, the number of passengers in the bus including the three lady passengers, who lost the tickets, tallied with the SR. The checking officials threatened the lady passengers and obtained false statements from them as if no tickets were issued to them despite collecting Rs.12/- from them. If really there are any cash and ticketing irregularities, there would be an irregularity in respect of Rs.3/- and Rs.4/- denomination tickets and not Rs.7/- denomination tickets. The checking officials obtained the signature of the petitioner on the passengers' statements without showing the statements and the passengers' statements were got recorded under threat and the attestations of the petitioner on the said statements were also obtained under threat and coercion and a false case was created. There is no application of mind to the facts and the explanation of the petitioner by the enquiry officer. The learned Chairman of the Tribunal, without appreciating the facts correctly and the evidence brought on record in proper perspective, mechanically confirmed the findings of the enquiry officer. The learned Chairman of the Labour Court did not apply his mind to the case facts before recording his findings. He erroneously held that verification of cash is not necessary in this case and that the explanation of the petitioner is an afterthought. While considering the proportionality of the punishment, the learned Chairman of the Labour Court erroneously held that the petitioner was involved in cash and ticketing irregularities number of times and punishments of deferment of increments on different charges were imposed upon the petitioner and that the petitioner was also suspended earlier on similar charges. The petitioner was earlier charge sheeted for absenteeism but not for cash and ticketing irregularities. Therefore, the findings of the learned Chairman of the Tribunal are based on erroneous factual findings and the

erroneous observation that the petitioner failed to mend his ways and rectify himself, despite opportunities given by the management. Therefore, the petitioner is entitled to reliefs claimed in the writ petition. Hence, the enquiry report and the order of the appellate authority as well as the award may be set aside and the petitioner may be directed to be reinstated into service, in the interests of justice.

5. Per contra, learned standing counsel for the Corporation while supporting the award of the tribunal would contend as follows:

The petitioner is not a disciplined workman. Earlier he was absent to duty for 135 days. He also availed leave and sick leave for nine days before such absence from duty. He is a habitual absentee to his duties and he frequently absented from attending to duties without prior permission or sanction of leave. Though he was earlier removed from service, his review petition was considered purely on grounds of mercy and generosity and he was reinstated into service by imposing a lesser penalty. On the date the check was exercised, it was found that the petitioner indulged in cash and ticketing irregularities. Thereafter a charge memo and charge sheet were successively issued and only after considering his explanations, an enquiry was duly directed to be conducted. After due enquiry, the enquiry officer gave a report with the findings that the charges were proved. The explanation given by the petitioner to the show cause notice was found unsatisfactory and unconvincing. Considering the fiduciary relationship between the petitioner and the employer, the disciplinary authority rightly found that the removal from service is the appropriate and just punishment in the facts and circumstances of the case. Learned Chairman of the Tribunal having examined the facts correctly and the evidence in proper perspective rightly concurred with the findings of the enquiry officer that the charges are proved. When once such a finding was arrived at by the learned Chairman of the Tribunal, the penalty of removal

from service which is wholly justified needed no interference. Therefore the Tribunal rightly dismissed the claim petition of the petitioner. The Supreme Court time and again observed in various decisions that when once the charges are proved, the penalty imposed by the disciplinary authority shall have primacy and shall not be interfered with by the Tribunal or the High Court.

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

7. It is necessary to first look at the charges. The charges formulated are verbatim extracted supra.

7.1 Dealing with the gravamen of the second charge, it is to be noted that the petitioner having collected Rs.12/- at the boarding point itself, failed to issue tickets of total worth Rs.12/-, that is, three tickets of Rs.4/- denomination each, to a batch of three lady passengers, who were found alighting the bus at Chodavaram stage having boarded the bus at Saibaba Temple stage. The 3rd charge relates to closing the ticket numbers of all the denominations in the SR up to stage no.5 even without issuing tickets to the above passengers. The 1st charge is in regard to violation and non-observance of the rule 'Issue and Start'. One of the contentions of the Corporation is that during his tenure of service of nine years and nine months, he indulged in cash and ticketing irregularities on eighteen occasions and he was imposed penalties of deferment of his annual increments on seventeen occasions. The petitioner himself admits that he was also visited with penalties for absenteeism. The explanation of the petitioner is that one passenger paid Rs.12/- to him and he had issued tickets of Rs.7/- denomination which were taken out erroneously from the tray but the TTIs failed to verify the ticket issues in the SR with that of the number of passengers. His said defence was not considered for the reason that if he had really issued tickets of Rs.7/- denomination, the passengers would have shown such tickets to the checking officials; but, the

said fact was not revealed to the checking officials and that on the other hand, the passengers stated that they had paid the fare but the Conductor did not issue tickets by asking them to sit. The passengers' statements revealed that they boarded the bus at Saibaba temple to travel up to Chodavaram stage and that they paid Rs.20/- towards ticket fare and that the Conductor returned Rs.8/- but did not give them any tickets and that when they asked for the tickets to be issued, the Conductor told them to sit by further stating that the tickets would be given later. The record before the Enquiry Officer, that is, the Statistical Return of the Conductor and the Check Sheet of the TTIs, revealed that the check took place at stage No.5, i.e., after passing one fare stage from Saibaba temple and that the TTIs found that the passengers are alighting at stage no.5 without tickets. Turning once again to the explanation of the Conductor/petitioner, it is to be noted that his version is that he had erroneously taken out tickets of Rs.7/- denomination, but the TTIs failed to verify the ticket issues in the SR with that of the passengers in the bus and failed to exercise the check as requested by the petitioner. However, the Statistical Return revealed that there were no ticket issues of Rs.7/- denomination at stage No.3 and also in between stages no.3 and 4 to support the version of the petitioner/Conductor that he had given tickets of Rs.7/- denomination by erroneously taking from the ticket tray instead of giving three Rs.4/- denomination tickets to the passengers in the bus. The presence of the alighting passengers without tickets and the facts and circumstances cumulatively taken into consideration lead the Enquiry Officer and the Disciplinary Authority to come to a concurrent conclusion and finding of fact that the charges are proved. The learned Chairman of the Tribunal having examined the facts and analysed the evidence agreed with the findings of the officers of the management and therefore, recorded a factual finding that the findings of the enquiry officer that the charges are proved are correct. The

learned Chairman also noted that the Conductor is expected to issue proper tickets of proper denominations to the passengers after collecting the fare and then, start the bus by following the rule 'Issue and Start'; but, the conductor failed to follow the said rule also. There is no dispute in regard to the fact that the bus conductors act in a fiduciary capacity and it is their duty to collect correct fare from the passengers and issue correct tickets of correct denomination to the passengers and punch them in the correct order and account for the cash by depositing the same with the Corporation. The conductors are not supposed to collect fares and not issue tickets or collect fares and re-issue the tickets, which were already issued, or collect correct fare and issue the tickets of lesser denomination and the like acts.

7.2 On the above analysis, this court, in the facts and circumstances of the case, does not find any grounds much less valid grounds calling for interference with the findings recorded by the learned Chairman of the Tribunal. Further, the law is fairly well settled that this Court shall not go into the adequacy or the reliability of the evidence and shall not interfere with the findings of the Tribunal, if there is some legal evidence, which supports the findings. When once conclusions arrived at by the Chairman of the Tribunal are found to be sustainable on facts and the evidence, this Court will not normally substitute its subjective opinion in the place of one arrived at by the Tribunal.

8. Before proceeding further, it is necessary to note that the petitioner relied upon the following decisions: (i) In *A.V.Swami v. Industrial Tribunal-cum-Labour Court*¹, it was held as follows:

“The proviso to Section 11-A of the Industrial Disputes Act, 1947 reads that in any proceeding under this section, the Labour Court shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter. Therefore, the question is whether the past record of service comes within the

¹ 2014 SCJ Online (AP) 789

category of “materials on record” for the purpose of this case. It is an undisputed fact that the past record of service was neither considered nor referred to by either the workman or the second respondent-Corporation at the time of the enquiry against the petitioner. But the past record of service has been considered in a detailed fashion by the Labour Court while coming to the conclusion that the order of removal is justified in the circumstances of the case.....The past record of service is evidently not material on record as visualised in the proviso to Section 11-A. Therefore, the question is, would the Tribunal have come to the same conclusion, viz., that the order of removal is justified had it not looked into the past record of the petitioner. Suffice it to state that from the manner in which the award has been passed, it is easy to see that a lot of emphasis has been placed on the past record of service of the petitioner. The approach of the Industrial Tribunal was clearly wrong and not justified by the proviso to Section 11-A. The Labour Court should have come to the conclusion that the order of removal is justified only on the basis of the appreciation of the material on record and not by taking into consideration the past record of service of the petitioner.”

In the case on hand, even assuming for a moment that the past record of the petitioner/ conductor is not to be looked at, yet in view of the gravity & nature of the charges, held proved, and in view of the precedential guidance in the following decisions, this Court finds that there is no merit in the contentions of the petitioner/ conductor.

8.1. (i) In Divisional Controller, KSRTC (NWKRTC) v. A.T.Mane² it was held as follows:

“...Once a domestic tribunal based on evidence comes to a particular conclusion, normally it is not open to the Appellate Tribunals and courts to substitute their subjective opinion in the place of the one arrived at by the domestic tribunal.”

² (2005) 3 Supreme Court Cases 254

(ii) In *APSRTC v. N V Subbaiah*³, it was held that the Industrial Tribunal-cum-Labour Court is empowered to adjudicate a dispute on merits by re-appreciating the evidence based on record and that it is also having jurisdiction and competency to examine the aspect of proportionality of punishment imposed upon a workman in case the misconduct alleged against the workman is proved.

(iv) In *Divisional Controller, NEKRTC v. H.Amaresh*⁴, it was held as under:

“...When an employee is found guilty of pilferage or of misappropriating the 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.”

8.2 Turning to the quantum of punishment, the case of the petitioner is that his past record should not be relevant for deciding the quantum of punishment. Be that as it may, the case of the Corporation is that during the tenure of service of nine years and nine months, the petitioner indulged in cash and ticketing irregularities on eighteen occasions and he was imposed penalties of deferment of his annual increments on seventeen occasions. The petitioner himself admits that he was also visited with penalties for absenteeism. The further case of the Corporation is that when once charges are held proved and when legally sustainable concurrent findings of fact are recorded by the officers of the Department and the Tribunal/Labour Court and when the employee is found guilty of cash and ticketing irregularities, the punishment imposed by the Disciplinary Authority does not call for any interference and

³ 2016 (3) ALD 517

⁴ (2006) 6 Supreme Court Cases 187

that what is a primary factor is the loss of confidence. It was also submitted that either dishonest acts or gross negligent acts of a Conductor constituting misconduct are sufficient to hold that he is not fit to be retained as a Conductor and that in such cases, there is no place for generosity or misplaced sympathy on the part of the judicial Fora.

9. In the decision in *Union of India v. P. Gunasekaran*⁵, 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;

⁵ (2015) 2 SCC 610

- (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. Therefore, having regard to the facts and findings recorded supra and the settled legal position, this Court holds that the contentions of the petitioner that the charges are not proved and that the punishment calls for interference need no countenance.

11. Viewed thus, this Court finds that the contentions of the petitioner do not merit consideration and that the writ petition which is devoid of merit is liable for dismissal.

12. In the result, the writ petition is dismissed.

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

17th April, 2017
RAR

M. SEETHARAMA MURTI, J