

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

WRIT PETITION No. 25881 of 2007

ORDER:

This writ petition, under Article 226 of the Constitution of India, by the petitioner/conductor of the respondent corporation, is directed against the Award, dated 27.06.2005, of the learned Presiding Officer, Labour Court-I, Hyderabad, passed in I.D.No.41 of 2004.

2. I have heard the submissions of *Smt K. Udaya Sri*, learned counsel for the writ petitioner, and of *Sri N.Vasudeva Reddy*, learned Standing Counsel for APSRTC, representing the 1st respondent. I have perused the material record.

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

The petitioner was appointed, on 07.07.1989, as Mechanic in the respondent Corporation at Khammam Depot on regular basis. At the relevant point of time, he was working in Dilsukhnagar Depot of Hyderabad City region. While so, on 09.07.2002, G. Ramesh, Mechanical Foreman of Dilsukhnagar Depot, received a telephonic complaint from a lady passenger, who was waiting for the bus at Hyderabad-II Depot, stating that some staff who were in drunken condition and sitting in the relief van, which is parked in the premises of Hyderabad-II Depot Bus Stand, are misbehaving with the ladies at that place. On receiving of the said complaint, the Depot Manager, Dilsukhnagar has proceeded to the spot along with the Mechanical Foreman of the Depot and brought the vehicle along with four mechanical staff to the Depot and handed over

them to the Security personnel. At that time, the petitioner, while on duty, was found in a fully intoxicated condition along with three other mechanical staff. Hence, the petitioner was placed under suspension and a charge sheet was served upon him. The charge formulated verbatim reads as under:

“For having been found in intoxicated condition while on duty on 9-7-2002 in the relief van No.APZ 5053 in the premises of Hyderabad-II Bus Stand and for misbehaving with ladies in the bus stand tarnishing the image of the corporation in the public, which constitutes misconduct under Reg.28(xv) of APSRTC Employees (Conduct) Regulations, 1963.”

As the officer of the Corporation was not satisfied with the petitioner's explanation, a detailed enquiry was ordered by nominating the Chief Inspector, Hyderabad Division, as the Enquiry Officer. After due enquiry, he submitted a report that the charge formulated against the petitioner is proved. After issuing a show cause notice, dated 21.01.2003, and after noticing that the explanation of the petitioner is not convincing, final orders, dated 26.02.2003, were passed removing the petitioner from service. The petitioner's appeal to the Divisional Manager, Hyderabad, was dismissed by orders, dated 20.08.2003. Aggrieved thereby, the petitioner raised an industrial dispute and filed a claim petition. The same was resisted by the Corporation. The learned Presiding Officer of the Labour Court, having held that the charge was proved, however, set aside the order of removal from service passed against the petitioner and directed the Corporation to reinstate him into service with continuity of service and attendant benefits, but without back wages; and, further directed to differ two annual increments with cumulative effect on petitioner's willingness for reinstatement into service. As per the Award

of the Labour Court, the petitioner was reinstated into service and was posted to Jeedimetla Depot by orders, dated 21.09.2005. However, aggrieved of the Award of the Labour Court, the petitioner preferred this writ petition.

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

On 09.07.2002, while the petitioner was discharging his duties as a Mechanic, it appears that a lady passenger has given a complaint alleging that the petitioner is in an intoxicated condition and is misbehaving with some lady passengers. Denying the said charge, the petitioner gave a detailed explanation. The said lady passenger's address is not known. However, a charge sheet was issued by the Corporation by suspending the petitioner by order, dated 09.07.2002. The petitioner requested for furnishing the relevant documents, but the relevant documents were not issued to the petitioner. There is no written complaint against the petitioner. Though it is stated that the authorities received telephonic complaint, the name of the complainant and her address were not mentioned. The contents of the record and the averments in the letter, dated 09.07.2002, of the Security Head Guard are false and incorrect. Even though there is no evidence to establish that the petitioner was under intoxication and to prove the charge, the Enquiry Officer erroneously held that the charge is proved. In fact, the petitioner attended to the repairs of two buses at 10:45 hours and also to the repairs of the gear box of another vehicle. After he completed those works, the Depot Manager, Dilsukhnagar Depot, along with the Mechanical Foreman, came and instructed the petitioner to sit in the

relief van and took him to the Depot. On consideration of the explanation, no enquiry ought to have been ordered. The petitioner cross-examined the witnesses of the Corporation. The witness deposed that he has not observed whether or not the petitioner was in a drunken condition. There is no reliable evidence brought on record during the course of enquiry. The learned Presiding Officer of the Labour Court agreed with the explanation of the petitioner. The petitioner was not sent for medical examination to confirm whether or not he is under intoxication at the relevant point of time. The witnesses examined are biased witnesses. The petitioner never misbehaved with the lady passengers and never tarnished the image of the Corporation. When the learned Presiding Officer of the Labour Court came to the conclusion that the petitioner was not in a drunken condition in the premises of the depot where he actually worked, the learned Presiding Officer of the Labour Court ought to have held that the charge is not proved and ought to have exonerated the petitioner from the charge without imposing any penalty. Therefore, the Award of the Labour Court insofar as modifying the penalty and imposing lesser penalty is liable to be set aside by allowing the writ petition.

5. Per contra, learned Standing Counsel for the Corporation would contend as follows:

On receipt of a telephonic complaint from a lady passenger that the petitioner and others who were in a drunken condition and were misbehaving with the lady passengers, who were waiting in the Hyderabad-II Depot Bus Stand, the Depot Manager and the Mechanical Foreman of Dilsukhnagar Depot went to the spot and brought the

petitioner and others who were sitting in the relief van along with the vehicle to the Depot and handed over them and the van to the security personnel. The security Head Guard gave a letter, after verifying that the petitioner is in a drunken condition. Therefore, the charge was formulated. As the explanation of the petitioner to the charge was found unsatisfactory, an enquiry was ordered. The Enquiry Officer, having duly conducted the enquiry, gave a report that the charge is proved. The petitioner's appeal was dismissed confirming the punishment of removal from service. The Security Head Guard and the Mechanical Foreman gave evidence before the Enquiry Officer and, therefore, the evidence on record sufficiently established that the petitioner was in drunken condition while on duty. Since a telephonic complaint was made, the lady passenger could not be examined. The persons, who directly witnessed the incident immediately after the complaint was received, were examined. They have no reason or motive to speak falsehood against the petitioner. The learned Presiding Officer of the Labour Court found that the charge to the extent that the petitioner misbehaved with the lady passenger is established, but however, erroneously held that the petitioner was not in a drunken condition in the Depot premises, as he was not subjected to medical test. When such a finding was recorded, the penalty of removal from service imposed by the Corporation ought not to have been interfered with by the learned Presiding Officer of the Tribunal. However, the Corporation, out of sympathy and generosity, did not challenge the said finding by filing a writ petition, even though the modified penalty imposed by the Labour court is not proportionate to the gravity of the misconduct. 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 given detailed and thoughtful consideration to the submissions.

7. The graveman of the charge reflects that, on 09.07.2002, the petitioner who was found in an intoxicated condition in the relief van bearing registration No. APZ 5053 in the premises of Hyderabad-II Bus Stand misbehaved with the lady passengers present there and tarnished the image of the Corporation. A perusal of the material on record shows that during the enquiry, the Mechanical Foreman and the Security Head guard were examined. The Enquiry Officer as well as the learned Presiding Officer of the Labour Court considered the evidence of the said witnesses while arriving at their respective findings. It is pertinent to note that in the Award, the learned Presiding Officer of the Labour Court held verbatim as follows:-

The behaviour of the petitioner, who found in the public place in a drunken condition while he was on duty, naturally spoils the image of the corporation. The behaviour of the petitioner is absolutely uncalled for while he was on duty and being an employee of the Corporation though he was found to be in a drunken condition he did not cause any inconvenience to the work entrusted to him. According to the petitioner, he, after attending repairs of two buses (1) AP 10 Z 1460 of HCU Depot and HSD oil tank at Musaram bagh while another vehicle of Dilsukhnagar Depot bearing No.AEZ – 4078 for repairing of gear box at Tarnaka they have return in a relief bus of Dilsukhnagar bus station and in the mean time, the Depot Manager along with Mechanical

Foreman has come to them. It is therefore appears that the petitioner is not found in a drunken condition in the premises of the depot where he actually worked in the work shop of Hyderabad – II Depot. The petitioner proceeded along with other staff members to attend the repairs of two buses and on completion of the same they were found to be in a drunken condition. In the said circumstances, I feel that the major penalty imposed for removal of the petitioner from service is disproportionate to the gravity of the misconduct.”

After examination of facts, relevant evidence and circumstances, the learned Presiding Officer of the Labour Court arrived at a conclusion that the charge is proved and, accordingly, confirmed the findings of the Enquiry Officer while *inter alia* holding that the petitioner was not in a drunken condition by the time he attended to the repair work of the buses but was later found in the company of others in a drunken condition. 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 Presiding Officer of the Labour Court. When once conclusions arrived at by the enquiry officer and the learned Presiding Officer of the Labour Court 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. In that view of the matter the contention of the petitioner that the constituents of the charge are not proved is devoid of merit and needs no countenance.

8. In the decision in Union of India v. P. Gunasekaran¹ the Supreme Court dealt with the scope of interference of this Court under

¹ (2015) 2 SCC 610

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;
- (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."

9. Coming to the quantum of punishment, learned counsel for the petitioner/workman would submit that the punishment shocks conscience as it is excessive and grossly disproportionate to the misconduct and that

therefore, the learned Presiding Officer of the Labour Court ought not to have imposed such a harsh punishment. He, hence, urged that the punishment imposed may be reduced by awarding back wages and by setting aside the direction to differ two annual increments with cumulative effect. Per contra, the learned Standing Counsel for the Corporation would contend that the punishment of removal from service is itself justified and that in a case of this nature, there is nothing wrong in the Corporation awarding the punishment of removal from service. Nevertheless, since the learned Presiding Officer of the Labour Court has set aside the said punishment and imposed lesser punishment and as the Corporation did not challenge the award in so far as the said reduced punishment imposed by the learned Presiding Officer of the Labour Court, he submits that the said punishment in any view of the matter is proportionate to the gravity of the proved misconduct proved. In the considered view of this Court, in a case of this nature, there is no place for generosity and misplaced sympathy. Having given thoughtful consideration to the facts and submissions, this Court is of considered view that the modified and reduced penalty imposed by the learned Presiding Officer of the Labour Court is not disproportionate to the gravity of misconduct proved and does not shock the conscience of the Court and that on the other hand, such a punishment is proportional to the gravity of misconduct proved and hence, needs no interference.

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

11. In the result, the Writ Petition is dismissed. There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

28th April, 2017
Bv

M. Seetharama Murthi, J

