

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.18437 of 2007

ORDER:

The unsuccessful petitioner-workman (Conductor) filed this writ petition, under Article 226 of the Constitution of India, assailing the Award, dated 30.10.2002, passed by the learned Presiding Officer of the Labour Court, Guntur, in ID.no.58 of 1999.

2. I have heard the submissions of *Sri I. Koti Reddy*, learned counsel for the writ petitioner, and of *Sri P. Durga Prasad*, learned Standing Counsel appearing for the respondent. I have perused the material record.

3. The parties in this writ petition shall hereinafter be referred to as the petitioner-workman and respondent-Corporation.

4. The facts and chronological events as borne out by the record and as per the submissions made before this Court, in brief, are follows:

The petitioner was appointed as a Conductor in the respondent Corporation, on 21.05.1994. His services were regularised with effect from 17.01.1995. On 21.01.1996, while he was conducting the bus service on route Cumbam to Papinenipalli, a check was exercised at stage No.3/4 at 10:00 hours. According to the Corporation, during the said check it was detected that the petitioner indulged in certain cash and ticketing irregularities. The checking officials obtained the spot explanation of the workman and the statements of the passengers concerned travelling in the bus and submitted a spot report to the Depot Manager. In fact the checking officials also served a charge memo on the petitioner-Conductor. Based on the said material a charge sheet was issued to the petitioner. The charges formulated verbatim are as under:

Charge no.1: for having issued the ticket No.600/265466 of Rs.6,50/- denomination, E.1 to a passenger who boarded the bus at Cumbum and bound for Papinenipalli, but the said ticket was already issued at stage no.7 from Papinenipalli to Cumbum in 07.00 hrs., down trip as per the S.R.No.A3/1991466, dt.21.1.96 which constitutes misconduct under Reg.28(vi)(a) of APSRTC Employees Conduct Reg.1963.

Charge no.2: for having issued the ticket No008/175331 and 332 of Rs.5.25 ps., den, E.2 to two passengers who boarded the bus at Cumbum and bound Arthaveedu, but the said tickets were already issued at 5.30 hrs., Cumbum to Papinenipalli trip as per the S.R.No.A3/1991466, dt.21.1.96 which constitutes misconduct under Reg.28(vi)(a) of APSRTC Employees Conduct Reg.1963.

Charge no.3: for having issued the ticket No.000/175339 and 342 of Rs.5.23/- denm E.2 to two passengers who boarded the bus at Cumbum and bound for Arthaveedu, but the same tickets were already issued 7 hrs., trip Papinenipalli to cumbum down trip as per the S.R.No.A3/1991466, dt.21.1.96 which constitutes misconduct under Reg.28(vi)(a) of APSRTC Employees Conduct Reg.1963.

Charge no.4: for having issued 15 tickets of Rs.5.25/- denm., bearing No.008/175349 to 363 to 15 passengers who boarded the bus at Cumbum, but accounted in the SR only upto 355 i.e., 7 tickets only, whereas the ticket Nos.175356, 357, 358 were also found with three other passengers travelling in the bus and it is clear from the hand tray that the opening No.5.25 ps., denm was 175364 at stage no.3 which speaks that you have issued 15 tickets of Rs.5.25 ps denm at stage no.1 and further the ticket bearing No.175356, denm., at stage no.1 and further the ticket bearing Nos.175356, 357, 358 were also punched at stage nos. from '6' and to '1' instead of punching ay stages from '1' to '6' which constitutes misconduct under Reg.28(vi)(a) of APSRTC Employees Conduct Reg.1963.

Charge no.5: for having issued the ticket No.063/703294, 296, 297 and 068/703100 and 101 of Rs.4.25 ps demn., E5 tickets to 5 passengers who boarded the bus at Cumbum and bound for Donakonda but the same tickets were already issued at stage no.5 in 7 hrs., Papinenipalli to Cumbum down trip, as per S.R.No.A3/1991466, dt.21.1.96 which constitutes misconduct under Reg.28(vi)(a) of APSRTC Employees Conduct Reg.1963.

Charge no.6: for having issued ticket No.900/606081 and 082 of Rs.3.35 ps., den., to two passengers who boarded the bus at Cumbum and bound for Mittameedipalli, but the same tickets were already issued at stage no.1 in 17 hrs., on 20.1.96 Cumbum to Bimilingam up journey trip as per S.R.A3/19914665, dt.20.1.96 which constitutes misconduct under Reg.28(vi)(a) of APSRTC Employees Conduct Reg.1963.

Charge no.7: for having issued the ticket 900/606884 and 885 of Rs.3.25 ps., denm., to two passengers who boarded the bus at Cumbum and bound for Mittameedipalli but the same tickets were already issued sta stage no.4 in 7 hrs., Papinenipalli to Cumbum down trip as per SR A3/1991466,

dt.21.1.96 which constitutes misconduct under Reg.28(vi)(a) of APSRTC Employees Conduct Reg.1963.

As the explanation submitted by the petitioner was found unsatisfactory, an enquiry was ordered by appointing an enquiry officer. After duly conducting an enquiry, the enquiry officer submitted a report holding that the charges are proved. A show cause notice, dated 16.03.1996, was issued to the petitioner along with a copy of enquiry officer's report. As the explanation, dated 03.04.1996, of the petitioner was found unconvincing and unsatisfactory a penalty of removal from service was imposed by an order, dated 04.04.1996. The appeal preferred by the petitioner to the Deputy Chief Traffic Manager was dismissed, on 28.11.1996. Review petition submitted to the Regional Manager was rejected on 12.05.1997. Therefore, the petitioner raised an industrial dispute by filing a claim petition. The same was resisted by the Corporation. On merits and by the Award impugned in this writ petition, the Labour Court dismissed the claim petition of the petitioner.

5. The case of the petitioner and the submissions made on his behalf, in brief, are as follows:

The petitioner did not commit any cash and ticketing irregularities as alleged in the charges. He did not reissue any tickets as alleged. When the check was conducted the passengers were in a drunken state. They showed previous tickets to the TTIs instead of showing the tickets actually issued in that trip by the petitioner. When the petitioner and the TTIs asked the passengers to show the tickets which were issued by the petitioner during that trip, the said passengers abused the TTIs in filthy language. The TTIs felt ashamed and booked the case against the petitioner with an intention to give a police report against the said passengers. The petitioner was informed accordingly by the TTIs. He believed the words of the TTIs. Later the TTIs came to know that the said passengers are influential persons and hence, it would be difficult to proceed against them by giving a police report. The TTIs

did not record any statements of the said passengers. In the later trip the TTIs took a statement from the petitioner to suit their convenience. The petitioner submitted his explanation to the charge sheet. The Depot Manager did not consider the explanation in proper perspective and erroneously ordered an enquiry. No opportunity much less a fair opportunity was given to the petitioner during the course of enquiry. He was not given an opportunity to call the passengers as witnesses to give evidence to disprove the charges formulated against the petitioner. The petitioner has not cross examined the witnesses. The enquiry was not conducted in accordance with procedure and principles of natural justice. The findings of the enquiry officer are perverse and biased. The punishment of removal from service is highly illegal and unjust as there is no evidence of re-issuance of tickets. The TTIs did not verify the cash and SR and failed to count the number of passengers and compare the same with the SR. The punishment imposed is shockingly disproportionate to the gravity of the misconduct. The appellate and reviewing authorities mechanically disposed of the appeal and review petition without considering the contentions and explanations of the petitioners. The learned Presiding Officer of the Labour Court without examining the facts correctly and the evidence in proper perspective endorsed the findings of the enquiry officer and also of the officers of the Corporation and confirmed the punishment even without properly examining the proportionality of punishment imposed with reference to the gravity of the charges which are allegedly proved.

6. Learned standing counsel would submit as follows:

The petitioner was awarded punishments earlier for ticketing irregularities as well as absenteeism. Punishment of censure and deferment of increments were awarded to him. There were 22 + 17 passengers in the bus. The checking officials obtained statements of those passengers who were travelling in the bus with unconcerned tickets. Their statements were

attested by the petitioner without raising any dispute at the spot. In the spot explanation he accepted the issuance of old tickets but he stated that the old unconcerned tickets were issued to the passengers due to his ill health. Therefore, the charges were formulated. As his explanation from time to time was found unsatisfactory and unconvincing, eventually, he was removed from service. The management sufficiently proved the charges by adducing necessary evidence during the course of enquiry. The appellate and reviewing authorities having examined the explanations of the petitioner rightly dismissed the appeal and rejected the review petition having agreed with the findings of the enquiry officer. The workman-conductor holds a post of trust and faith and his relationship with the employer is fiduciary in nature. When once there is a breach of trust and loss of faith, the Corporation is justified in imposing the penalty of removal from service. After due enquiry, when once it was found that the petitioner indulged in cash and ticketing irregularities, which resulted in loss of revenue to the Corporation, the Corporation is justified in passing an order of removal from service. The Labour Court examined the facts, the explanation of the petitioner and also evidence, in detail, and recorded reasoned independent findings while confirming the findings of the enquiry officer and the officers of the department. The Labour Court even examined the proportionality of punishment and came to a conclusion that considering the nature of the charges proved the punishment of removal from service is appropriate and needed no interference. 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.

7. I have given detailed and thoughtful consideration to the facts and submissions.

8. Dealing with the charges in seriatim it is to be noted that the first charge relates to issuance of already issued ticket of Rs.6.50 ps denomination to a passenger who boarded the bus at Cumbam and bound to Papinenipalli; the said ticket was already issued at stage no.7 from Papinenipalli to Cumbam in 07:00 hours down trip as per the SR.No.A3/ 1991466, dated 21.01.1996; the second charge relates to issuance of already issued tickets of Rs.5.25 ps denomination to two passengers who boarded the bus at Cumbam and bound to Arthaveedu; the said tickets were already issued at 05.30 hrs. Cumbam to Papinenipalli trip as per the SR.No.A3/ 1991466, dated 21.01.1996; the third charge relates to issuance of already issued tickets of Rs.5.23 ps denomination to two passengers who boarded the bus at Cumbam and bound to Arthaveedu; the said tickets were already issued at 7 hrs., from Papinenipalli to Cumbam down trip as per the SR.No.A3/ 1991466, dated 21.01.1996; the fourth charge relates to issuance of 15 tickets of Rs.5.25 ps denomination to 15 passengers who boarded the bus at Cumbam and accounting in the SR only upto 355, that is, 7 tickets only, whereas the ticket Nos.175356, 357 and 358 were also found with three other passengers travelling in the bus; and, further the ticket bearing nos.175356, 357, 358 were punched at stage nos. from '6' to '1' instead of punching at stages from '1' to '6'; the fifth charge relates to issuance of already issued tickets of Rs.4.25 denomination to five passengers who boarded the bus at Cumbam and bound to Donakonda; the said tickets were already issued at stage no.5 from Papinenipalli to Cumbam in 07:00 hours down trip as per the SR.No.A3/ 1991466, dated 21.01.1996; the sixth charge relates to issuance of already issued tickets of Rs.3.35 ps denomination to two passengers who boarded the bus at Cumbam and bound to Mittameedipalli; the said tickets were already issued at stage no.1 from Cumbam to Bimilingam up journey in 17:00 hours trip as per the SR.No.A3/ 1991465, dated 21.01.1996; the seventh charge relates to issuance of already issued tickets of Rs.3.25 ps

denomination to two passengers who boarded the bus at Cumbam and bound to Mittameedipalli; the said tickets were already issued at stage no.4 from Papinenipalli to Cumbam in 07:00 hours down trip as per the SR.No.A3/ 1991466, dated 21.01.1996. As already noted, in the spot explanation the petitioner stated that he might have issued the tickets due to his sickness. The checking officials also recorded the statements of the passengers to whom the unconcerned tickets were issued. The passengers in their statements also mentioned the details of the tickets and the denominations of the tickets. The said statements of the passengers were attested by the petitioner along with the checking officials. At that time he did not make any allegations against the checking officials or the passengers. However, at a later stage he stated that he issued proper tickets to all passengers and that while he was performing duties some of the passengers boarded the bus at Cumbam to travel to Papinenipalli and that they were also given tickets and that many of them were in drunken state and that the checking officials while checking the bus demanded the said passengers also to show their tickets and that at that time the said passengers showed used tickets instead of showing the tickets that were issued in that trip by the petitioner and that the checking officials having found that the tickets showed by them were tickets already issued demanded them once again to show their proper tickets but the said passengers who were in a drunken state picked up quarrel with checking officials and that at that time the checking officials went away without recording any statements from them and also from the petitioner and that they later obtained the statement from one passenger and left the bus with the conductor and that after returning they obtained statement from the conductor and issued a charge memo. Therefore, the later statement was considered as an improved statement and as a statement made on after thought. The checking officials also seized the tickets. As his later statement was at complete variance with his spot

statement and as the evidence adduced at the time of enquiry was sufficient to hold that the charges are proved, the Presiding Officer of the Labour Court recorded findings that all the charges are proved and held that there are no grounds to deviate from the findings recorded by the enquiry officers. The learned counsel for the petitioner contended that though the checking official did not support the case of the petitioner that he was suffering from fever, the checking officer, however, admitted in his cross examination that the petitioner was dull at the time of check. He would also point out that the checking official also admitted that the passengers behaved rudely and that the checking official doubted that they were in drunken condition. Based on the said admissions he submitted that the said admissions are of assistance to the petitioner to prove that there is no truth in the imputation and allegations. In the considered view of this Court the said statement of the checking official are of no avail to the petitioner as the multiple irregularities constituting the gravamen of the seven charges, which are proved, sufficiently established the complicity of the petitioner.

9. Learned counsel for the petitioner relied upon an order, dated 19.12.2003, of this Court in W.P.No.6523 of 1998 (between D.Venkata Narayana v. The Presiding Officer, Labour Court, Guntur and others) to show that in that cited case the issue was re-issuance of tickets by the conductor that were already issued and that the facts of the said case are identical to the case on hand. Placing reliance on the said decision it is contended that the punishment of removal from service may be set aside in the case on hand also as was done in the cited case by treating the suffering undergone by the petitioner as sufficient humiliation. It is trite to note that the opinion arrived at by this Court in the cited decision turned on facts of that case and there is no principle of universal application laid down in the cited decision.

10. Thus, a careful perusal of the material record including the Award of the Labour Court would show that after examination of the facts, relevant evidence and circumstances, the learned Presiding Officer of the Labour Court arrived at the conclusion that the charge is 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 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 and the 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.

11. 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;
- (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;

¹ (2015) 2 SCC 610

(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.

12. In Divisional Controller, N.E.K.R.T.C. Vs. H.Amaresh², 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.

13. On the quantum of punishment, the Supreme Court, in Divisional Controller, KSRTC (NWKRTC) Vs. A.T.Mane³, held as follows:-

Coming to the question of quantum of punishment, one should bear in mind the fact that it is not the amount of money misappropriated that becomes a primary factor for awarding punishment, on the contrary, it is the loss of confidence which is the primary factor to be taken into consideration. In our opinion, when a person is found guilty of misappropriating corporation's fund, there is nothing wrong in the corporation losing confidence or faith in such a person and awarding a punishment of dismissal.

² AIR 2006 SC 2730 = (2006) 6 SCC 187

³ (2005) 3 SC 254

14. Again in U.P. State Road Transport Corporation, Dehradun Vs. Suresh Pal⁴, the facts disclose that in the domestic enquiry it was found that the petitioner/ workman was guilty of not issuing tickets to twenty passengers who were traveling by the time when the check was done by the Checking Official of the UPSRTC; The Corporation imposed a punishment of dismissal from service; The same was upheld by the Labour Court and the High Court; However, the learned judge of the High Court directed reinstatement of the conductor into service by substituting the punishment of dismissal with the punishment of 'one censure entry' and stoppage of two increments with cumulative effect without back wages. The Supreme Court held that after having held that the charge against respondent conductor was proved, it was not open to the High Court to interfere with the quantum of punishment.

15. In Karnataka State Road Transport Corporation Vs. B.S.Hullikatti⁵, the Supreme Court held as follows:-

On the facts as found by the Labour Court and the High Court, it is evident that there was a short-charging of the fare by the respondent from as many as 35 passengers. We are informed that the respondent had been in service as a Conductor for nearly 22 years. It is difficult to believe that he did not know what was the correct fare which was to be charged. Further-more, the appellant had during the disciplinary proceedings taken into account the fact that the respondent had been found guilty for as many as 36 times on different dates. Be that as it may, the principle of *res ipsa loquitur*, namely, the facts speak for themselves, is clearly applicable in the instant case. Charging 50 paise per ticket less from as many as 35 passengers could only be to get financial benefit by the Conductor. this act was either dishonest or was so grossly negligent that the respondent was not fit to be retained as a Conductor because such action or inaction of his is bound to result in financial loss to the appellant-Corporation.

It is misplaced sympathy by the Labour Courts in such cases when on checking it is found that the Bus Conductors have either not issued tickets to a large number of passengers, though they should have, or have issued tickets of a lower denomination knowing fully well the correct fare to be charged. It is the responsibility of the Bus Conductors to collect the correct fare from the passengers and deposit the same with the Company. They act in a fiduciary capacity and it would be a case of gross misconduct if knowingly they do not collect any fare or the correct amount of fare.

⁴ (2006 (3) LLJ 967(SC) = (2006) 8 SCC 108

⁵ AIR 2001 SC 930

In our opinion, the order of dismissal should not have been set aside, but we are informed that in the meantime the respondent has already superannuated. We, therefore, on the special facts of this case, do not set aside the order of reinstatement, but direct that the respondent would not be entitled to any back wages at all but he would be entitled to the retiral benefits.

16. This Court already held supra that the finding that the charges are proved does not call for interference. Coming to the quantum of punishment in the case on hand, the learned Presiding Officer of the Labour Court having considered the proportionality of penalty to the gravity of the charges proved confirmed the penalty of removal from service. Considering the graveman of the charges proved it is manifest that the petitioner-workman has not acted *bona fide* and that his acts of misconduct are of such nature warranting the penalty imposed by the disciplinary authority and confirmed by the Labour Court. On the above analysis, this Court finds that the penalty imposed is not disproportionate to the acts of the misconduct held proved and that therefore the writ petition is devoid of merit and is liable to be dismissed.

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

Miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

JUSTICE M. SEETHARAMA MURTI

25.04.2017

Vjl