THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.727 of 2012

ORDER:

Heard Sri A. Rama Rao, learned Standing Counsel for petitioner and Sri S.Ganesh Babu, learned counsel for 1st respondent.

2. This Writ Petition is filed by the Andhra Pradesh State Road Transport Corporation challenging the Award dt.19-11-2010 in I.D.No.87 of 2006 of the Industrial Tribunal-cum-Labour Court, Anantapur (2nd respondent).

3. The 1st respondent was appointed as Conductor in the said Corporation in 1991. Alleging that certain ticket irregularities were committed by 1st respondent, the Assistant Manager (T), Koilakuntla issued a charge sheet against 1st respondent framing the following charges:

> *"(1) For having closed the Rs.6/- deno. As 269/766370 in the way bill instead of showing the sale of tickets as per STAR as 269/766390 and swallowed the sale of E.20 tickets worth of Rs.120/- for yourself after spel of 08-30 hrs., Owk-Chennampalli service on 4-5-2004 and the same tickets were reissued on 5-5-2004 at stage No.1 of 8-45 hrs., Koilakuntla-Owk trip which constitutes misconduct under Reg.28(x) of APSRTC Employees (Conduct) Reg.1693.*
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> *(2) For having closed the Rs.11/- deno. As 083/722003 in the way bill instead of showing the sale of tickets as per STAR as 083/722013 and swallowed the sale of E.10 tickets worth of Rs.110/- for yourself after spel of 08-30 hrs., Owk-Chennampalli service on 22-4-2004 and the same tickets were reissued on 24-4-2004 at stage No.1 of 8-30 hrs., Koilakuntla-Sivapuram trip*

which constitutes misconduct under Reg.28(x) of APSRTC Employees (Conduct) Reg.1693.

(3) For having closed the Rs.9/- deno. As 076/553270 in the way bill instead of showing the sale of tickets as per STAR as 076/553277 and swallowed the sale of E.7 tickets worth of Rs.63/- for yourself after spel of 08-30 hrs., Owk-Chennampalli service on 23-3-2004 and the same tickets were reissued on 24-3-2004 at stage No.1 of 8-30 hrs., Koilakuntla-Sivapuram trip which constitutes misconduct under Reg.28(x) of APSRTC Employees (Conduct) Reg.1693.

(4) For having closed the Rs.7/- deno. As 242/976366 in the way bill instead of showing the sale of tickets as per STAR as 241/976376 and swallowed the sale of E.10 tickets worth of Rs.70/- for yourself after spel of 08-30 hrs., Owk-Chennampalli service on 14-3-2004 and the same tickets were reissued on 15-3-2004 at stage No.1 of 8-45 hrs., Koilakuntla-Owk trip which constitutes misconduct under Reg.28(x) of APSRTC Employees (Conduct) Reg.1693."

4. The 1st respondent did not give any explanation to the said charges.

5. A disciplinary enquiry was conducted and the Depot Manager, APSRTC, Koilakuntla issued proceedings dt.30-07-2004 removing the 1st respondent.

6. The 1st respondent filed an appeal against the said order, which was dismissed.

7. Therefore, the 1st respondent filed an application under Section 2-A(2) of the Industrial Disputes Act, 1947 (for short "the Act") before the 2nd respondent challenging the said order and seeking his

reinstatement into service with back-wages and all other attendant benefits.

8. Before the 2nd respondent, though no oral evidence was adduced, the 1st respondent marked Ex.W-1 and the Corporation marked Exs.M-1 to M-15.

9. The 2nd respondent passed the impugned award setting aside the order of the petitioner as well as the orders of the appellate and review authority and directed to reinstate the 1st respondent into service with continuity of service and all other attendant benefits. It however, denied back-wages. It further directed deferment of two annual increments without cumulative effect after his reinstatement.

10. It was contended by 1st respondent before the 2nd respondent-Tribunal that mistakes occurred due to non-wearing of spectacles and that his spectacles got broken in service. He further contended that by circular dt.24-07-1995, the Corporation itself directed that mistakes, if any, occurred by Conductors have to be scrutinized by the Depot Clerks while receiving the S.R. and way bills, and since 1st respondent had put in 13 years of service, punishment of removal from service is disproportionate and a lesser punishment should have imposed.

11. The Petitioner Corporation contended that the 1st respondent had remitted less bus cash on 4 different occasions and misappropriated a sum of Rs.363/- and it was his bounden duty to

remit the cash in accordance with the sale proceeds made in the Statistical Return(SR) and the Way bill.

12. The 2nd respondent, in the award, observed that the Corporation had issued a circular dt.24-07-1995 making it a duty of the Assistant Depot Clerks and Depot Clerks to verify the tickets proceeds with the Statistical Return and the way bill maintained by the 1st respondent; that the said Officials did not take any steps to verify the actual sale proceeds with the Statistical Return and the tickets in the tray; and if discrepancies are noticed by the Assistant Depot Clerks or Depot Clerks in collecting the cash in accordance with the sale proceeds, they ought to have asked the 1st respondent to attend the cash payment on the next day as the accounts did not tally. Since this did not happen, the 1st respondent cannot be said to have committed any wrong warranting termination of his employment. It also further held that the punishment of removal imposed on 1st respondent is excessive.

13. Assailing the same, this Writ Petition is filed.

14. Sri A.Rama Rao, learned Standing Counsel for the Corporation contended that the punishment imposed by the Corporation on 1st respondent was warranted having regard to the seriousness of the misconduct committed by 1st respondent and that 2nd respondent ought not to have interfered with the quantum of punishment imposed by the Corporation. He contended that the misconduct alleged against 1st respondent was serious and grave since

it resulted in loss of revenue to the Corporation and since a Conductor is a fiduciary position, non-remittance of actual sale proceeds by 1st respondent amounts to breach of trust warranting punishment of removal.

15. Sri N.Ganesh Babu, learned counsel for 1st respondent, however, supported the order passed by 2nd respondent and contended that there is no necessity to interfere with the orders passed by the 2nd respondent-Tribunal.

16. I have noted the contentions of both sides.

17. The charges framed against 1st respondent by the Corporation are that he had misappropriated on 4 different occasions a total sum of Rs.363/-, which he had received on account of sale of tickets and he had not accounted for the same.

18. No explanation was furnished by 1st respondent to the said charge in writing in the disciplinary enquiry.

19. It was orally contended by him that his spectacles got broken and mistakes occurred. This explanation cannot be accepted because the misconduct alleged against him is spread over period from March, 2004 to May, 2005, almost 2 months. Assuming that the spectacles of the 1st respondent did break, nothing prevented him from getting another set of spectacles made. He cannot take advantage of the broken spectacles to not account for the amounts received by him for sale of tickets.

20. Even if the Corporation had issued any circular directing the Assistant Depot Clerks and Depot Clerks to verify the cash on 24-07-1995, the primary onus to account for the amounts received by him from the sale of tickets is on the 1st respondent and he cannot blame the Assistant Depot Clerk or Depot Clerk for not pointing out the discrepancy in the cash immediately. Having admitted that discrepancies in collection of cash were there during the course of enquiry, he cannot escape the consequences of his action in not accounting for the cash received by him from the sale of tickets by blaming others.

21. There is no dispute about the proposition that the bus conductors act in a fiduciary capacity and that it is their responsibility to collect the correct fare from passengers and deposit the same with the petitioner Corporation. They are not expected to collect fares and not issue tickets to passengers and it is their duty to issue tickets to passengers after collecting correct fare. In **Karnataka State Road Transport Corporation Vs. B.S.Hullikatti**[1], the Supreme Court has held:

> *"5. 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. Furthermore, the appellant had during the disciplinary proceedings taken into account the fact that the respondent had*

[1] (2001) 2 SCC 574

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.

6. 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."

22. Thus, the Court held that misplaced sympathy should not be shown in cases where tickets were not issued or tickets of lower denomination than the correct fare were issued. Having regard to the fact that in that case the respondent had superannuated from service, it did not interfere with the order of reinstatement passed by the Labour Court.

23. This view was reiterated in **V.Ramana Vs. A.P.SRTC and others**[2]. Although the said case did not arise out of a challenge to the order passed by the Labour Court or Industrial Tribunal under Section 11-A of the Act, the Supreme Court considered the question of quantum of punishment by applying the principles of Section 11-A of

[2] (2005) 7 SCC 338

the Act. It rejected the contentions that these were minor lapses and that smallness of the amount should be considered and punishment of termination from service was not appropriate. It held, after considering the principles of proportionality of punishment, that unless the punishment imposed by the disciplinarily authority shocks the conscience of the Court/Tribunal, there is no scope for interference. It held that the Conductor holds a post of trust and punishment of removal from service is appropriate for a person guilty of breach of trust.

24. Similar view was expressed in **Divisional Controller, N.E.K.R.T.C. Vs. H.Amresh**[3], wherein the Supreme Court found fault with the Labour Court's view in directing reinstatement in spite of a finding that the Conductor had not returned Rs.360.95 Ps., found with him. The Labour Court had substituted the punishment of dismissal from service with reinstatement and 75% of the back wages, which was confirmed by the Single Judge of the High Court of Karnataka at Bangalore and Division Bench of the said High Court. The Court held:

> *"12. In the instant case, the misappropriation 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 misappropriated 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 misappropriated and that the sympathy or generosity cannot be a factor which is impermissible in law. When an employee is found*

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[3] (2006) 6 SCC 187

guilty of pilferage or of misappropriating 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 Corporation*** *v.* ***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 misconduct 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."*

25. It held that even though the charge of misappropriation was proved beyond any doubt, the Labour Court had erroneously taken a lenient and sympathetic view and the learned Single Judge and the Division Bench ought not to have upheld the said order.

26. Again in **U.P. State Road Transport Corporation, Dehradun Vs. Suresh Pal**[4], 20 passengers were traveling when check was done by the Checking Official of the U.P.S.R.T.C. Although the Corporation imposed punishment of dismissal from service and the same was upheld by the Labour Court, it was set aside by a learned Single Judge who directed reinstatement of the respondent into

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[4] (2006) 8 SCC 108

service by substituting the punishment of dismissal with punishment of one censure entry and stoppage of two increments with cumulative effect without back wages. The Supreme Court held that having found the charge against respondent conductor to be proved, it was not open to the High Court to interfere with the quantum of punishment.

27. In W.P.No.616 of 2004 decided by this Court on 23-03-2015, all the above decisions were considered and it was held that misplaced sympathy ought not weigh with the Industrial Tribunals in giving a lenient punishment to a Conductor who had not accounted for money received by him for issuing tickets and his duty is fiduciary nature.

28. In this view of the matter, I am of the opinion that the 2nd respondent, having taken note of the fact that the 1st respondent did admit that he committed a mistake in not accounting for the sum for the tickets he has sold, erred in taking a very lenient view of the said conduct of 1st respondent and in directing his reinstatement into service with continuity of service and all other benefits by imposing only deferment of two annual increments without cumulative effect.

29. In my considered opinion, having regard to the conduct of 1st respondent and findings in the disciplinary enquiry, the 2nd respondent-Tribunal erred in exercising its discretion under Section 11-A of the Act and in setting aside the order of removal from service imposed by Corporation on 1st respondent.

30. Accordingly, the Writ Petition is allowed and the award dt.19-11-2010 in I.D.No.87 of 2006 of the 2nd respondent is set aside. No costs.

31. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 14-07-2017
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