

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN**  
**AND**  
**THE HON'BLE DR JUSTICE SHAMEEM AKTHER**

**Writ Appeal No.12 of 2010**

**JUDGMENT:** (Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the Learned Single Judge in W.P.No.1330 of 2008 dated 22.04.2009. The appellant herein is the petitioner in the writ petition, and the applicant in I.D.No.38 of 2006 on the file of the Labour Court-III, Hyderabad. He approached the Labour Court, under Section 2-A(2) of the Industrial Disputes Act, to set aside the order passed by the 1<sup>st</sup> respondent dated 17.08.2005 removing him from service, and to direct that he be reinstated.

Facts, to the limited extent necessary, are that, while the appellant was conducting the bus between Kosgi and Hyderabad on 12.04.2005, the checking officials exercised a check of the bus at Kurukunta Stage 20/19 and issued a charge memo. The charges levelled against the appellant are as under:

1. For having failed to observe the rule "Issue a Start" which constitutes misconduct under Reg.28(xxxii) of APSRTC Employees (Conduct) Regulations, 1963.
2. For having collected the requisite fare of Rs.21.00 from two batches I total passengers 7 @ Rs.3.00 each at boarding point itself NWPT to Kurukunta, ex-stages 20 to 20-19 and issued tickets to passengers vide bearing No.371/912292 to 293, 371/912264, 391/912920 to 922 and document No.0223900048 dated 12.04.2005 at Stage No.29 on route Kosgi to Hyderabad and remaining tickets were shown in the trip of 6.30 hours from Ahadnagar to Kosgi, which constitutes misconduct under Reg.28(xxiii) of APSRTC Employees (Conduct) Regulations, 1963.
3. For having possessed deno. of Rs.3.00 tickets bearing No.371/912294, 381/912916 and Rs.4.00 deno. ticket bearing No.863/403804 and 863/4007729 to 732 in your cash bag without

any valid reason, which constitutes misconduct under Reg.1963.

4. For having non-cooperated with the checking officials while recording the statements of the passengers at the time of check on 12.04.2005, which constitutes misconduct under Reg. 28(xiii) of APSRTC Employees (Conduct) Reg.1963.

The appellant submitted his explanation to the charge memo and, as it was found not satisfactory, an enquiry officer was appointed who, after conducting an enquiry in compliance with principles of natural justice, submitted a report holding that all the charges were proved. A copy of the report was furnished to the appellant and, after receipt of his objections thereto, the 1<sup>st</sup> respondent held that the charges were rightly held proved for which the penalty of removal from service was the proper punishment. A notice was issued to the appellant to show cause why the punishment of removal from service should not be imposed on him and, thereafter, a final order of removal from service was passed against the appellant vide proceedings dated 17.08.2005. The appeal preferred by the appellant, to the Divisional Manager, Mahabubnagar, was dismissed. The revision filed before the Regional Manager, Mahabubnagar was also dismissed.

In its award in I.D.No.38 of 2006 dated 29.06.2007, the Labour Court held that the charges levelled against the appellant were proved; and the respondents were justified in removing the appellant from service. As the Labour Court was satisfied that the appellant was guilty of misappropriation with respect to charge No.2, which showed his intention to defraud the APSRTC, charge No.3 was also held proved. The Labour Court, following the judgment of the Supreme Court in ***Divisional Controller, KSRTC vs. A.T.Mane***<sup>1</sup>, held that no interference was called for with regards the punishment imposed, as a clear case of

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<sup>1</sup> 2005(3) SCC 254

misappropriation of funds of the Corporation was made out. Aggrieved thereby, the appellant invoked the jurisdiction of this Court.

In the order under appeal, the Learned Single Judge observed that, from the very nature of the allegations contained in the charge sheet and the findings recorded therein, it was evident that the appellant was guilty of serious misconduct, and it could not, therefore, be said that penalty of removal from service was disproportionate to the gravity of misconduct of the appellant. Having found no error either in the award of the Labour Court, or in the order passed by the Domestic Tribunal, the Learned Single Judge dismissed the writ petition. Aggrieved thereby, the present appeal.

It is contended before us by Sri N.Krishna, learned counsel appearing on behalf of the appellant, that the punishment imposed on the appellant, of removal from service, was disproportionate to the charges held established; and the allegations were not so serious as to warrant imposition of the punishment of removal from service.

In **UPSRTC vs. Suresh Chand Sharma**<sup>2</sup> the Supreme Court observed as under:

“...We do not find any force in the submissions made by Dr.J.N.Dubey, learned Senior Counsel for the employee that for embezzlement of such a petty amount, punishment of dismissal could not be justified for the reason that it is not the amount embezzled by a delinquent employee but the mens rea to misappropriate the public money.

In *Municipal Committee, Bahadurgarh vs. Krishnan Behari*<sup>3</sup> this Court held as under: (SCC p.715, para 4)

“4..... In a case of such nature --- indeed, in cases involving corruption --- there cannot be any other punishment than dismissal. Any sympathy shown in such cases is totally uncalled for and opposed to public interest. The amount misappropriated may be small or large; it is the act of misappropriation that is relevant...”

Similar view has been reiterated by this Court in *Ruston & Honsby (I) Ltd. Vs. T.B.Kadam*<sup>4</sup>, *U.P.SRTC vs. Basudeo Chaudhary*<sup>5</sup>, *Janatha Bazar (South Kanara Central Coop. Wholesale Stores Ltd.) vs. Sahakari*

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<sup>2</sup> (2010) 6 Supreme Court Cases 555

<sup>3</sup> (1996) 2 SCC 714

<sup>4</sup> (1976) 3 SCC 71

<sup>5</sup> (1997) 11 SCC 370

*Noukarara Sangha*<sup>6</sup>, *Karnataka SRTC vs. B.S.Hullikatti*<sup>7</sup> and *Rajasthan SRTC vs. Ghanshyam Sharma*<sup>8</sup>.

In *NEKRTC vs. H.Amaresh*<sup>9</sup> and *U.P.SRTC vs. Vinod Kumar*<sup>10</sup> this Court held that the punishment should always be proportionate to the gravity of the misconduct. However, in a case of corruption/misappropriation, the only punishment is dismissal.

Thus, in view of the above, the contention raised on behalf of the employee that punishment of dismissal from service was disproportionate to the proved delinquency of the employee, is not worth acceptance.....”

In the present case also the charges held established against the appellant is of misappropriation of the funds of the Corporation. While the amount involved may not be large, it is for the misconduct of misappropriation that the punishment of removal was imposed. In an intra-court appeal, under Clause 15 of the Letters Patent, no interference is called for, with the order of the Learned Single Judge, save in cases where the order under appeal suffers from a patent illegality. We find no such infirmity in the order under appeal.

The Writ Appeal fails and is, accordingly, dismissed. Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

**(RAMESH RANGANATHAN, ACJ)**

**(DR. SHAMEEM AKTHER, J)**

10<sup>th</sup> April, 2017  
JSU

<sup>6</sup> (2000) 7 SCC 517

<sup>7</sup> (2001) 2 SCC 574

<sup>8</sup> (2002) 10 SCC 330

<sup>9</sup> (2006) 6 SCC 187

<sup>10</sup> (2008) 1 SCC 115

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**Date: 10.04.2017**

**JSU**