

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.25790 of 2006

ORDER:

This writ petition, under Article 226 of the Constitution of India, by the petitioner/conductor, is directed against the Award, dated 02.02.2006, of the learned Chairman, Industrial Tribunal – cum – Labour Court at Warangal ('the Tribunal', for brevity) passed in I.D.No.1 of 2003.

2. I have heard the submissions of Sri P.Govindarajulu, learned counsel for the writ petitioner, and of Sri B.Mayur Reddy, learned Standing Counsel for TSRTC representing the sole respondent. I have perused the material record.

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

The petitioner was working as a conductor in the respondent corporation. On 15.02.1999, when he was conducting the bus bearing registration no. AP 9 Z 1748 on the route Warangal – Mahabubadab, a check was exercised at stage No.16-15, i.e., at Nakkalapally at 05:50 hours. During the course of check, it was observed that the petitioner collected money from a batch of 10 passengers at the rate of Rs.2-50 ps each and failed to issue tickets to them and also failed to collect fare and issue tickets to a batch of two passengers. Therefore, a charge memo was issued to the petitioner and later, a charge sheet was issued with verbatim the following charges:

“1. For having violated the rule 'issue and start', which is misconduct under Reg.28 (vi) (a) of APSRTC Employees (Conduct) Reg. 1963.

2. For having failed to issue tickets to a batch of ten passengers despite collecting the requisite fare @ Rs.2-50 each amounting to Rs.25/- at the boarding point itself, who boarded the bus at Rangasaipet stage No.16 and found alighting without tickets at Nakkalapally stage No.16/15, which is misconduct under Reg.28 (vi) (a) of APSRTC Employees (Conduct) Reg.1963.

3. For having failed to collect the fare and issue tickets to a batch of two passengers who boarded the bus at Rangasaipet and bound to Kanaparthi, ex-stages 16 to 14, which is misconduct under Reg.28 (vi) (a) of APSRTC Employees (Conduct) Reg.1963.

3.1 As the petitioner's reply to the charges levelled against him was not found satisfactory, domestic enquiry was ordered. The Enquiry Officer, duly appointed, conducted an *ex parte* enquiry, as the petitioner failed to attend before the Enquiry Officer. After such *ex parte* enquiry, the Enquiry Officer recorded a finding that the charges levelled against the petitioner are proved. Enquiry report was communicated to the petitioner; and, he was called upon to submit his objections. The petitioner sent his comments. As the objections and comments were not found satisfactory and convincing, a show cause notice was issued to the petitioner directing him to show cause as to why the petitioner shall not be removed from service. The petitioner did not submit any reply to the said show cause notice. Therefore, orders of removal from service were passed. Thereafter, the petitioner raised an Industrial Dispute by filing a claim petition. The said claim petition was resisted by the Corporation. On merits and by the orders impugned in this writ petition, the Tribunal confirmed the findings of the Enquiry Officer as well as the punishment of removal from service imposed by the authorities and dismissed the claim petition of the petitioner. Aggrieved thereof, the petitioner is before this Court.

4. At the hearing, the learned counsel for the petitioner contended as follows:

'The domestic enquiry said to have been held by the Enquiry Officer is vitiated for not giving an opportunity to the petitioner to participate in the enquiry. The Enquiry Officer and the learned Chairman of the Tribunal ought to have considered the reasons put forward by the petitioner/workman for his inability to issue tickets. On the day when the check was exercised, there was heavy rush in the bus, as that day happened to be the next day of Sivaratri festival. Several passengers boarded the bus at Shambunipeta. One amongst a batch of ten passengers gave Rs.100/- to the petitioner asking him to give ten tickets. When the petitioner was counting the passengers in the bus, the checking officials came and exercised the check. In fact, the passengers in the bus requested not to stop the bus for issuing tickets, as they were eager to go to their respective destinations after Sivaratri festival and as most of them had no sleep on the day of Sivaratri. At the request of the passengers of the bus, the bus was not stopped at the stage for the purpose of issuing the tickets and the bus was allowed to be proceeded. Thus, the petitioner could not issue tickets to the said ten passengers and the other two passengers from whom charges were not collected. The findings of the Enquiry Officer and the learned Presiding Officer of the Tribunal, therefore, are not correct, as the version of the petitioner was not taken into account and the petitioner was not given an opportunity to put forward his defence. No reasons are recorded for not believing the version of the petitioner. The checking officials and the management did

not consider the explanation of the workman; and even the claim was adjudicated by the Tribunal without considering the facts and evidence in proper perspective.'

5. Per contra, the learned Standing Counsel for the respondent-Corporation, while supporting the findings of the Enquiry Officer as well as the Tribunal, would submit as follows:-

'Even though an opportunity was provided for the petitioner by serving a notice, the petitioner did not appear before the Enquiry Officer and give reply to the charges. Even in the objections and comments submitted to the Enquiry report, which is served upon the petitioner, the petitioner did not give any satisfactory and convincing explanation. Therefore, the disciplinary authority passed orders removing the petitioner from service. Before such order was passed, a show cause notice was issued; and, to the show cause notice, no reply was given by the petitioner. Even the explanation offered by the petitioner would go to show that he collected Rs.100/- from one batch of ten passengers, who demanded to issue tickets, and did not issue tickets to the said batch of ten passengers and also failed to collect fare from two passengers and issue tickets to them. Even according to the petitioner, he did not stop the bus at the stage till the issuance of tickets and allowed the bus to proceed without issuing tickets to the passengers. His explanation that he allowed the bus to proceed on the request of the passengers in the bus as that day happened to be the next day of Sivaratri festival was not countenanced, as he was not supposed to allow the bus to proceed until

completion of issuance of the tickets to all the passengers in the bus. The writ petition is devoid of merit and is liable to be dismissed.'

6. I have bestowed my attention to the facts and submissions.

7. A careful perusal of the material record would show that the petitioner did not dispute the fact that he collected the fare for issuing the tickets to a batch of ten passengers and failed to issue tickets and also failed to collect fare from two passengers and issue tickets to them. His explanation is that as that day happened to be the next day of Sivaratri festival, he obliged the request of the passengers in the bus and allowed the bus to proceed and that on account of heavy rush in the bus, he could not complete the issuance of tickets by the time when the check was exercised by the checking officials. On the face of it, the explanation cannot be countenanced being unacceptable in the facts and circumstances of the case.

8. A careful perusal of the material record including the Award of the Tribunal would show that after necessary examination of the facts and evidence, the learned Chairman of the Tribunal arrived at a conclusion that charges 1 and 3 are proved and accordingly confirmed the findings of the Enquiry Officer related to the said charges. This Court, in the facts and circumstances of the case, does not find any grounds much less valid grounds calling for interference with the said concurrent findings of fact recorded by the Enquiry Officer and the learned Chairman of the Tribunal. When once conclusions arrived at by the Enquiry Officer and the learned Chairman of the Tribunal are found to be sustainable on facts

and evidence, this Court will not normally substitute its subjective opinion in the place of the one arrived at by the said officers.

9. 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;
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
- (i) the finding of fact is based on no evidence.”

10. In *Divisional Controller, N.E.K.R.T.C v. H. Amaresh*² the Supreme Court while holding that where the charge was proved in domestic enquiry, the punishment of dismissal from service awarded by

¹ (2015) 2 SCC 610

² (2006) 6 SCC 187

disciplinary authority, does not call for interference by the Labour Court or the High Court had accordingly set aside the order of reinstatement passed by the High Court.

11. Therefore, having regard to the facts and the legal position, this Court holds that the finding of the Tribunal that the charges 1 and 3 are proved, needs no countenance.

12. Coming to the quantum of punishment, in the case on hand, considering the fact that the acts of misconduct resulted in financial loss to the corporation, this Court finds that the penalty of removal from service awarded by the respondent authorities and confirmed by the learned Chairman of the Tribunal does not call for interference, as the respondent-Corporation was justified in coming to the conclusion that there is breach of trust and the penalty of removal of service is justified.

13. On the above analysis, this Court finds that the Award of the Tribunal does not suffer from any flaw and does not, therefore, call for interference by this Court and that the writ petition, which is devoid of merit, is liable to be dismissed.

14. In the result, the writ petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

20th March, 2017
Bvv

M.Seetharama Murti, J