

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

WRIT PETITION No.4551 of 2006

ORDER:

This writ petition, under Article 226 of the Constitution of India, by the petitioner-Conductor (since retired) is directed against the orders, dated 26.07.2004, of the 3rd respondent-Depot Manager, HCU Depot of the Corporation ordering removal of the petitioner from service; the orders, dated 14.10.2004 of the appellate authority/ Divisional Manager, 2nd respondent, whereby the said appellate authority confirmed the orders first mentioned of the Depot Manager; and, the orders, dated 11.07.2005, of the Regional Manager of the Corporation, whereby the orders of the Depot Manager were set aside and the petitioner was directed to be reinstated into service as Conductor duly reducing his pay by two incremental stages for a period of two years which shall have the effect of postponement of his future increments with further terms and conditions.

2. I have heard the submissions of Sri S.A.K. Mynoddin, learned counsel appearing for the writ petitioner, and of Sri A. Rama Rao, learned Standing Counsel representing the respondents. I have perused the material record.

3. The facts, which are necessary to be stated as a preface to this order, in brief, are as follows:

The petitioner was appointed as a Conductor in the Corporation, on 16.02.1978. On 06.11.2003, while the petitioner was conducting the bus of the Corporation, bearing registration No.9416, on route 216 H, a check was exercised at about 07:20 hours at stage no.12/ 11. During the said check certain cash and ticketing irregularities were noticed. The

checking officials accordingly reported to the Officials concerned of the Corporation. Based on the said report, the petitioner was placed under suspension and a charge sheet was issued with verbatim the following charge:

‘You have failed to issue tickets to a batch of 3 passengers found alighting without tickets at stage no.12/11 having boarded your bus at Hafeezpet Rlystn. i.e., stage no.14, from whom you have already collected the requisite fare of Rs.12/- at the time of boarding point itself. Hence, confronted and obtained TPT.539/305433 to 539/305435 of deno.4/- each:3 which constitutes misconduct under Regulation-28(x) of APSRTC conduct Regulations, 1963.’

As the explanation offered by the petitioner to the said charge was found unsatisfactory, a domestic enquiry was ordered. The enquiry officer duly conducted the enquiry and gave a report, on 25.05.2004, holding that the charge framed against the petitioner is proved. Thereafter, a show cause notice, dated 26.05.2004, was issued to the petitioner. As he failed to submit any explanation, the Depot Manager by his proceedings, dated 26.07.2004, which are impugned in this writ petition, ordered removal of the petitioner from service with immediate effect. The petitioner’s appeal, dated 01.08.2004, was rejected by the appellate authority *vide* proceedings, dated 14.10.2004. The said proceedings are also impugned in this writ petition. The reviewing authority while partly allowing the review petition of the petitioner set aside partly the proceedings of the Depot Manager and the order of the appellate authority and directed his reinstatement into service duly reducing his pay by two incremental stages for a period of two years, which shall have the effect of postponement of his future increment

with further directions. Aggrieved of the said punishment the petitioner is before this Court.

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

On the issuance of a charge memo and suspension order, the petitioner submitted a detailed explanation, dated 09.01.2004. He also sought for supply of certain material documents. The same were not supplied to him. Though a request was made to drop the charges in view of the explanation offered, the explanation was not considered properly and in a correct perspective. There is an order of the Managing Director to the Regional Manager and the Depot Manager to utilise the services of the petitioner on out of designation duty for a period of six months on medical ground and the said order, dated 09.07.2003, is violated and the petitioner was compelled to go on traffic line duty; and, thereafter, the false case was foisted. The enquiry conducted is a stage managed enquiry. The explanation to the show cause notice was also not considered by the depot manager before passing the order of removal from service. The said order is illegal and arbitrary. Without giving an opportunity of hearing and without considering the grounds of appeal, the appeal was rejected erroneously by the appellate authority. The said order is illegal and arbitrary. The principles of natural justice are not followed during the course of domestic enquiry. In any view of the matter, the punishment imposed by the reviewing authority is shockingly disproportionate to the alleged misconduct. The reviewing authority imposed number of punishments contrary to service jurisprudence. Therefore, the orders impugned in the writ petition may be set aside and the respondents may be directed to reinstate the petitioner with back wages and continuity of service and attendant benefits.

5. Learned counsel for the Corporation while supporting the concurrent findings in the orders of the enquiry officer, appellate authority and the reviewing authority reiterated the contentions in the counter, which are as follows:

When a check was exercised, it was noticed that the petitioner indulged in cash and ticketing irregularities. Hence, an enquiry was duly ordered and was conducted. The enquiry officer gave a report with a finding that the charge is proved. The appeal of the petitioner was rejected. Either in the explanation to the charge sheet or in the explanation offered to the show cause notice no valid reasons or grounds are stated. As the objections and comments in the explanations are found unsatisfactory and unconvincing, the order of removal was passed by the disciplinary authority. The same was confirmed by the appellate authority. Ticketless passengers gave statements at the spot. The enquiry officer on legal evidence held that the charge is proved. The allegation that the petitioner was sent to traffic line duty violating the orders of the Managing Director issued to the Regional Director is false. The petitioner performed duties for 29 days in August, 2003; 27 days in September, 2003 and for 25 days in October, 2003. As he was involved in cash and ticketing irregularities and his misconduct came to light he is claiming that he was sent on line forcibly. Considering his 26 years of past service, a lenient view was taken by the reviewing authority. The reviewing authority set aside the punishment of removal from service and directed reinstatement into service as conductor duly reducing his pay by two incremental stages for a period of two years by observing that the same shall have effect of postponement of future increments and that the period from the date of removal till the date of his

reporting for duty at the Unit to which he may be reinstated after reinstatement shall be treated as 'not on duty' for all purposes.

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

7. A plain perusal of the charge formulated would reflect that the graveman of the charge is that he failed to issue tickets to a batch of three passengers having collected requisite total fare of Rs.12/- at the boarding point itself and they were found alighting the bus without tickets at stage no.12/ 11 having boarded the bus at Hafeezpet railway station at stage no.14. Hence, the travelling ticket inspectors obtained TPT.Nos.539/ 305433 to 539/ 305435 of Rs.4/- denomination each and also the passengers' statements which were given in Tamil language and also co-passengers' statements under their signatures and made necessary endorsements on the back side of SR and prepared 43/R bearing no.2059908 and obtained the conductor's signature on the same. In the report, the TTIs also stated that the Conductor refused to co-operate and did not allow them to frame a charge memo on the spot and that the conductor stated that he was recently hospitalised and discharged and that he is a heart patient and that if a memo is served upon him he cannot bear the impact and that, therefore, the charge memo was framed later on. The petitioner's explanation is that the passengers boarded the bus just before the check took place and before he could approach them from front side to back side. However, in the light of the passengers' statements the enquiry officer found that the version of the conductor is unbelievable. Thus, having collected the requisite fare from the passengers he failed to issue tickets to the said passengers. On a careful consideration of the facts and evidence borne out by the material record, this Court is of the considered view that the concurrent findings of fact recorded by the enquiry officer and appellate

authority and the reviewing authority do not call for any interference in the facts and circumstances of the case. When once conclusions arrived at by the officers of the Corporation 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 them. In the facts and circumstances of the case, this Court does not find any grounds much less valid grounds calling for interference with the well considered findings recorded by the officers of the Corporation.

8. Further, 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.”

¹ (2015) 2 SCC 610

Therefore, having regard to the facts and the settled legal position, this Court holds that the contention that the charge is not proved needs no countenance.

9. Turning to the quantum of punishment, the reduced penalty imposed by the reviewing authority is verbatim as follows: 'The petitioner shall be reinstated into service as Conductor duly reducing his pay by two incremental stages for a period of two years which shall have the effect of postponement of his future increment; he should pay fresh security deposit and produce valid conductor licence; the period from the date of removal till date of his reporting for duty at the unit posted on reinstatement shall be treated as NOT ON DUTY for all purposes, viz., PF, Gratuity, Leave, Increment, Promotion, Seniority etc; he should pay back all dues viz., festival Advance, short remittance of bus cash if any etc., and produce NO DUE CERTIFICATE from the Depot Manager, HCU depot; he should be taken on duty after paying the SBT, SRBS subscriptions along with interest as decided by the Secretaries- SBT/ SRBS, if he happens to be a member.'

9.1 Before considering the proportionality or otherwise of the punishment it is necessary to state that the learned counsel for the petitioner relied upon the following decisions:

(i) Kottapati Jayachandra Reddy v. Depot Manager, APSRTC².

The facts of the cited case show that an enquiry was conducted and that on the basis of the report submitted by the enquiry officer, the 1st respondent has straight away inflicted punishment of stoppage of annual increment for two years with cumulative effect; however, he has chosen to issue a show cause notice in relation to the period of suspension. In

² 2005 CJ (AP) 522

that background, this Court found that the impugned order deserves to be set aside and the matter needs to be remanded but did not remand the matter as six years time has elapsed and punishment of stoppage of increment with cumulative effect was modified as one without cumulative effect taking into account the totality of the circumstances. This decision was rendered obviously having regard to the facts of the cited case.

(ii) **Swami Saran Saxena v. The State of UP**³. This decision discloses that when the punishing authority had good and sufficient reasons for imposing penalty for the supposed misconduct, it could impose only one of the penalties of censure or stoppage at an efficiency bar and not both. In the cited case, Government chose to impose both the penalties for the same misconduct and the said course was found to be against the provision of Rule 55-B(a) of the Rules which governed the case of the petitioner therein.

(iii) *Purnendu Narayana Chakraborty v. the Hon'ble The Chief Justice, High Court*⁴. In this cited case, the facts show that an employee was denied benefit of higher scale as also promotion on the same complaint. In the case on hand, penalty of withholding of increments with cumulative effect was ordered and penalty of denial of promotion was not imposed.

(iv) In Writ Appeal No.813 of 1995 (between M. Ramesh v. Depot Manager, APSRTC, Warangal), a Division Bench of this Court, by its orders, dated 06.11.1995, directed to pay full back wages to the appellant therein after noticing that two punishments for a charge of

³ 1969 SLR page 787

⁴ 1990 II Labour Law Journal, page 1990.

causing damage to the vehicle to a tune of Rs.500/- were imposed. The decision turned on the facts of the case.

9.2 In Divisional Controller, N.E.K.R.T.C v. H. Amaresh⁵, 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.

On the quantum of punishment, the Supreme Court, in Divisional Controller, KSRTC (NWKRTC) Vs. A.T.Mane⁶, 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

⁵ (2006) 6 SCC 187

⁶ (2005) 3 SC 254

faith in such a person and awarding a punishment of dismissal.

Again in U.P. State Road Transport Corporation, Dehradun Vs. Suresh Pal⁷, 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.

In Karnataka State Road Transport Corporation Vs. B.S.Hullikatti⁸, 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.

⁷ (2006 (3) LLJ 967(SC) = (2006) 8 SCC 108

⁸ AIR 2001 SC 930

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.

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.

9.3 In the case on hand, though the misconduct of the conductor was proved, considering the long service he had put in, the reviewing authority took a lenient view and ordered reinstatement. Further, it cannot be said that number of punishments were imposed as while ordering reinstatement into service, which is not a punishment, pay was reduced by two incremental stages for a period of two years, which shall have the effect of postponement of future increments; and since he is a Conductor necessary further directions as regards payment of security deposit etcetera were issued.

10. Viewed thus, this Court finds that there is no merit in any one of the contentions of the writ petitioner and that the writ petition is liable to be dismissed.

11. The Writ Petition is, accordingly, dismissed.

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

M. SEETHARAMA MURTI, J

20.04.2017
Vjl