

HONOURABLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.23766 OF 2003

ORDER:

Heard Mr.D.Sunil Kumar, counsel for petitioner and Mr.A.Ravi Babu, counsel for second respondent.

The petitioner prays for writ of certiorari to call for the records leading up to and inclusive of order dated 23-8-2001 vide I.D. No.152 of 1999 on the file of Presiding Officer, Labour Court-III, Hyderabad and quash the award insofar as the award declined to grant back wages.

The circumstances relevant for disposal of writ petition are in a very narrow compass.

The petitioner joined second respondent-corporation as conductor and the services of petitioner were regularised with effect from 1-8-1989. On 16-8-1992, the petitioner was conducting AEZ 678 from Adavivedulapally to Miryalaguda. After passing stage No.7 and at a distance of about 100 metres therefrom, the checking staff checked the bus and about 17 passengers were found to be undertaking ticketless travel. The checking official (M.W.1) after interacting with 17 passengers and noticing that these 17 passengers, in fact, have not paid amount to petitioner herein towards fare, issued to these passengers excess fare ticket challan 8/1/39967 dated 16-8-1992. The checking official has endorsed on the challan that travel without tickets and in all, collected a sum of Rs.125-50ps from them. On 16-8-1992, having regard to the

explanation of these passengers, the petitioner requested for recording reasons for not collecting the fare from 17 passengers. The Travelling Ticket Inspector submitted statements of these passengers in MTD 43/R. The statement of petitioner was also recorded by the checking officer.

The second respondent issued charge memo No.02/104 (189)/92-MLG dated 27-8-1992. The charges framed against the petitioner read thus:

Charge No.1:

"For having failed to observe the rule "Issue & Start" while conducting the service individually ® with bus No.678 on 16-8-1992 at Ragadapa, Stage No.7, which constitute misconduct under Reg.28 (xxxii) of A.P.S.R.T.C. Employees (Conduct) Regulations 1963."

Charge No.2:

"For having failed to collect the fares and issue tickets to a batch of 17 passengers, who boarded your bus at Ragadapa and bound for Marammagudi X road, ex.Stages 7 to 7/6, which constitutes misconduct under Reg. 28 (via) of A.P.S.R.T.C. employees (conduct) Regulations 1963."

The explanation of petitioner is that he has unblemished service as conductor in the Corporation and he was never found to be committing the act of negligence or misconduct. He refers to spot statement of passengers dated 16-8-1992 and explains that 17 passengers were in inebriated condition and non-co-operative with the conductor. When the petitioner approached passengers for collecting the fare from them, the passengers delayed payment of fare, by directing him to take fare from one or the another. Further,

these passengers disagreed with the head count and were asserting that only 12 or 14 passengers were travelling but not 17. In view of the disagreement and to make sure that 17 passengers were travelling in the bus, petitioner was undertaking the head count of the 17 passengers. At the time of head count, with the completion of about 100 metres from stage No.7 to 7/6, the check of bus had been undertaken. Further, they boarded bus not at stage No.7 but after completion of stage 7. When the petitioner was about to collect the fare and issue ticket, the check had happened in collecting fare and the delay is due to inebriated condition of passengers and non-cooperation from them. The statement of the passengers further goes to show that the petitioner has not committed mis-conduct, further, there is no financial loss to the corporation and prayed for dropping of charges.

The second respondent ordered domestic enquiry into the charges levelled against the petitioner. The Enquiry Officer found both the charges as proved against the petitioner. As the writ prayer is to the limited extent of disproportionate punishment, I do not propose to refer to the findings recorded by the enquiry officers as accepted by the second respondent and which have been slightly modified by the Labour Court for the present, but at appropriate stage, I will refer to these findings.

The second respondent accepted the findings in its entirety and removed petitioner through proceedings dated 30-12-1992. The petitioner filed appeal/revision against the order of removal but

without success. The petitioner raised dispute under Section 2 A (2) of I.D. Act, 1947 before the 1st respondent and the same was taken on file as I.D.No.152 of 1999.

The first respondent framed the following points for determination.

- 1) *Whether the findings on the charges are erroneous?*
- 2) *If not, whether the punishment of removal is justified?*
- 3) *If not, to what relief the petitioner is entitled?*

After perusing the material available on record, this court is of the view that the first respondent, having regard to the nature of jurisdiction under Section 11 A of the Act, ought to have examined the material available on record. The another infirmity this court notices is that though a memo was filed accepting the validity of domestic enquiry still for the purposes of jurisdiction conferred on the Labour Court, the proceedings before disciplinary authority ought to have been adverted to in deciding the quantum of punishment. Further, the Labour Court considered these points in a brief manner. In the process, the points which ought to have weighed with the first respondent while considering the quantum of punishment have certainly missed the attention.

The first respondent answered the above points as follows:

“The learned counsel during the arguments while fairly conceding that technically the charges are proved, urged that even according to the passenger examined during the domestic enquiry all the 17 passengers boarded at stage No.7 and they were bound to get down at the request stage between stages 7/6 and since the distance expected to be traveled by the passengers

was very very short and since the passengers were in a drunken condition, having attended a party, they refused to pay the fare and purchase the tickets and considering the number of ticket less passengers, the petitioner was thrown in a helpless condition and keeping in view of the long unblemished service of the petitioner (since the previous antecedents, if any have not been referred either in the removal order or in the order of the appellate authority) it may be held that the punishment awarded is not justified. I find force in the contention. In the circumstances where there was much scope for the drunken passengers to over power the petitioner for persistent demand for payment of fare, and since it is nobody's case that the petitioner collected the fare or intend to collect the same and thus his bona fides remained well established, I am satisfied that the punishment of removal is too harsh, severe and disproportionate when compared with the gravity of the misconduct. Hence, the order of removal is liable to be set aside. In the alternative, I feel that it would meet the ends of justice if, I direct the respondent to reinstate the petitioner with continuity of service only for the purpose of terminal benefits and without back-wages. Accordingly, the points are answered.

In the result, an Award is passed confirming the findings; but, setting aside the removal order; and directing the respondent to reinstate the petitioner with continuity of service only for the purpose of terminal benefits and without back-wages."

Mr.D.Sunil Kumar, counsel for petitioner contends that the petitioner challenges award insofar as the award denied back wages to petitioner as illegal and unsustainable. According to him, once a finding is recorded that the petitioner is not completely at fault for the non-payment of ticket fare by 17 passengers, the denial of back wages for a period of nine years is completely disproportionate and he relies upon the decision reported in *DIVISIONAL MANAGER, APSRTC, ADILABAD AND ANOTHER VS. E.RAGA REDDY AND ANOTHER* ⁽¹⁾ on the power of Labour Court/Industrial Tribunal and

¹ 1999 (5) ALT 450

the scope of judicial review under Article 226 of the Constitution of India. Adverting to the facts and circumstances of the cases, he prefaces his submission by contending that he is neither undertaking the exercise of reappreciation of evidence on which the order of removal is passed nor praying this court to record independent finding thereon.

According to him, the check was undertaken between stages 7 to 7/6 at a distance of 100 metres from where 17 passengers have boarded. The contemporaneous statements of passengers admit that the petitioner has not collected fare from them. The petitioner explained by stating that due to inebriated condition of these 17 passengers which is also admitted by the TTI, and that as there was a dispute on head count, the fare from these 17 passengers was not collected. The excess fare ticket issued by TTI clearly shows that penalty amount has been collected from the ticketless travelling passengers. The Corporation has not suffered financial loss and he submits that total denial of back wages to petitioner is unsustainable and firstly prays for awarding full back wages from 1992 till the date of reinstatement or secondly prays for imposing suitable punishment. He relies upon the decision reported in *A.P.S.R.T.C. AND OTHERS VS.N.V.SUBBAIAH AND ORS.* ⁽²⁾ on the power of this court to substitute the punishment with the circumstances of the case warrant.

² 2016 (3) ALD 517

On the other hand, Mr.A.Ravi Babu, counsel for 2nd respondent contends that the charge against the petitioner is that the petitioner failed to follow the requirement of “issue and start” and the number of passengers is 17 and in the total of 32 passengers not collecting fare from 17 passengers is a serious lapse and he further contends that the petitioner is empowered to stop the bus if the passengers do not co-operate in fare collection, having not halted the bus and allowed to conduct the bus without issuing ticket to passengers is a very serious misconduct and firstly, the removal from service is proportionate to the gravity of charges and no exception can be taken assuming first respondent has jurisdiction under Section 11 A of the Industrial Disputes Act. The first respondent has fully exercised discretion conferred on Labour Court and the case on hand does not warrant further consideration by this court. He places strong reliance upon the decision of Apex Court in *UP STATE ROAD TRANSPORT CORP. & ANR. V/S GOPAL SHUKLA & ANR.* (³) and also placed reliance of this court in *DEPOT MANAGER, APSRTC Vs.D.NARAYANA AND ANR.* (⁴). He further contends that the writ petition is liable to be dismissed.

I have perused the material available on record, and noted the submissions of learned counsel appearing for the parties.

Now the point for consideration is whether the denial of back wages to petitioner, in the facts and circumstances of the case, shocks

³ 2015 (4) LLJ 1.

⁴ 2008 (4) ALD 682

the conscience of a court and warrants interference under Article 226 of the Constitution of India.

Before proceeding further, let me first examine the facts distinguishable in the decisions relied upon by the respondent and the case on hand.

The facts in the decision relied upon by the respondent (*UP STATE ROAD TRANSPORT CORP. & ANR. V/S GOPAL SHUKLA & ANR.* 3rd cited) can be summarized by reference to a finding recorded by Labour Court and in spite of recording such a finding, how the punishment has been modified by qualifying a sentence as no element of corruption is involved in the misconduct.

"The Labour Court on the basis of the materials brought on record took note of the report of the Assistant Traffic Inspector who had reported that 25 passengers without ticket were found in the bus and the conductor had recovered fare from them but had not issued the tickets to them, perused the findings in the domestic enquiry and came to hold that the allegation of personal gain and corruption had really not being established. After so holding, the Labour Court observed that it would be appropriate to give a chance to the workman for improvement in future and thereafter recorded the conclusion as follows:

"From the evidence available on record, it is proved that the petitioner workman has committed illegality but fact of corruption is not proved. On the above basis setting aside the punishment of dismissal awarded by employers against the workman, it is directed that from the date of termination of the services of the petitioner workman till he is reinstated only half of the wages would be payable and on reinstatement his two annual increments will be stopped without any cumulative effect. According to aforesaid conditions, the petitioner workman is reinstated with continuity of service and other admissible benefits. The employers are directed to reinstate the workman immediately after the award."

On the other hand, without appreciating the evidence available on record but by chronologically demonstrating the happenings which have been treated as misconduct, the proportionality of punishment is examined. The check was conducted between stages 7 to 7/6. About 17 passengers have boarded the bus. Admittedly, from the statement of TTI, the following circumstances emerge.

“COND to TTI:- It is not fact that the said ticket less passengers were in intoxicated condition and argued with you at the time of check and they delayed to pay their ticket fare etc?”

TTI to COND:- Yes it was fact the said batch of passengers were found with an intoxicated condition and they argued with us to escape from the penalty etc., Any how we tried our best, convinced them, obtained their statement and imposed the penalty duly completing our formalities with difficulty.”

COND to TTI:- Whether the said passengers were found traveling or alighting? Please clarify?

TTI to COND:- During the course of check the said passengers were found traveling without tickets. They have to alight after the distance of the ½ Kms. approximately.

COND to TTI:- It is not fact that there was argument was going on with the said passengers regarding their batch of numbers and paying of ticket fare etc.? While you were entering into my bus?

TTI to COND:- Yes, It was fact some argument was going on in between you and the passengers.”

During the course of check, in the presence of other checking official, Sri V.Jarmaiah, statement of passengers through the petitioner, was recorded.

The explanation of petitioner is that 17 passengers have boarded after completion of stage No.7. The check has happened with a distance of 100 metres from Stage No.7. When the petitioner was undertaking the head count, the checking officials have stopped the bus and have undertaken the check, collected excess fare ticket from 17 passengers and "issue and start" is applicable from starting point to the end destination and the service conducted by the petitioner is a rural service. The totality of circumstances are that the petitioner was, in fact, taking necessary steps for collecting the fare, but on account of the number of passengers and also their inebriated condition, he was not successful in collecting fare from 17 passengers. The tribunal, no doubt, has recorded the finding that the order of removal is liable to be set aside but in the considered view of this court, denial of back wages for a period of nine years certainly shocks a court for the above reasons and keeping in view the decisions referred above.

On 30-12-1992, the petitioner was removed from service. The appeal filed by the petitioner was dismissed on 8-7-1995. The petitioner filed I.D. in the year 1999. On 23-8-2001, I.D. filed by the petitioner was allowed. Though this court is of the view that denial of entire back wages for the entire period is unsustainable and to strike a balance between the claim of petitioner as well as interest

of second respondent, this court is of the view that the punishment can be modified as follows:

The petitioner is reinstated with continuity of service for the purpose of terminal benefits together with 1/3rd back wages from 1992 to 1995; and 1.1.1999 till the date of reinstatement.

The writ petition is allowed in part as indicated above.

As a sequel to the disposal of this petition, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE S.V.BHATT

Dated 23-3-2017.

Dvs.



HONOURABLE SRI JUSTICE S.V.BHATT



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Dated 23-3-2003.

Dvs