

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.14751 of 2006

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed by the unsuccessful petitioner, formerly Conductor of the 2nd respondent-Corporation, assailing the Award, dated 06.02.1995, of the learned Presiding Officer, Labour Court, Hyderabad, passed in I.D.No.602 of 1992.

2. I have heard the submissions of *Sri G.Ravi Mohan*, learned counsel appearing for the petitioner and of *Sri A.Ravi Babu*, learned Standing Counsel for the 2nd respondent-RTC (hereinafter referred to as 'the Corporation'). I have perused the material record.

3. The facts of the case, in a nutshell, are as follows:

On 20.01.1991, while the petitioner was conducting the bus service on route Suryapet to Thorur via Thungathurthy, a check was exercised at Balemula village, stage No.2/3, at about 10.45 hours. As certain cash and ticketing irregularities were noticed during the said check, he was placed under suspension and was issued a charge sheet with the following charges:

Charge No.1:

Act of failure to issue luggage tickets for 27 units unaccompanied luggage on the top of the bus which was loaded by a licenced porter at old bus stand Suryapet to Thungathurthy ex-stages 1 to 9 even after accepting the bills indicating to whom the luggage has to be handed over at Thungathurthy, which constitutes misconduct in terms of Reg.28, clause VI(a) of APSRTC Employees' (Conduct) Regulations, 1963.

Charge No.2:

Act of closing the SR of all denominations upto stage No.2 without completing the above unaccompanied luggage ticket issue which constitutes misconduct in terms of Reg.28 clause XXXI of APSRTC Employees' (Conduct) Regulations, 1963.

Charge No.3:

Failure to observe the rule 'issue and start' on route Suryapet-Thungathurthy-Thorur on 20-1-91 which constitutes misconduct in terms of Reg.28 clause (XXXII) of APSRTC Employees' (conduct) Regulations, 1963."

As the explanation, dated 01.02.1991, given by the petitioner was found unsatisfactory, a domestic enquiry was ordered and an enquiry Officer was appointed to conduct an enquiry and submit a report. The said Officer duly conducted an enquiry into the charges formulated against the petitioner and furnished his report, dated 27.03.1991, holding that the charges are proved. The Disciplinary Authority, while agreeing with the findings of the Enquiry Officer, served on the petitioner, a show-cause notice, dated 13.05.1991. The petitioner acknowledged receipt of the said show-cause notice, vide acknowledgment, dated 29.06.1991. The petitioner, however, failed to submit any explanation. Therefore, the petitioner was removed from service *vide* proceedings, dated 08.07.1991, and the period of suspension was treated as 'not on duty' for all purposes and his security deposit was forfeited to the Corporation funds. Later, the petitioner raised an Industrial Dispute by filing a claim petition before the Labour Court. The same was resisted by the Corporation. On merits and by the order impugned in this writ petition, the learned Presiding Officer of the Labour Court concurred with the findings of the Enquiry Officer and the Disciplinary Authority that the charges formulated against the petitioner are proved, but, however, felt that it is desirable in the interests of justice to modify the punishment and to provide the petitioner an opportunity to mend himself and be sincere in future. Accordingly, the punishment of removal from service was set aside and the Corporation was directed to reinstate the petitioner in the same post, which he was holding at the time of removal from service, with continuity of service, but, without back wages and without any liability to pay attendant benefits for the interregnum

period. Though the Corporation did not assail the said Award modifying the punishment, the petitioner who is aggrieved thereof, filed this writ petition.

4. The learned counsel for the petitioner would contend as follows: "There are no irregularities on the part of the petitioner. However, a charge sheet was issued alleging that he indulged in cash and ticketing irregularities and that he has not followed the rule 'issue and start'. The explanation given by the petitioner to the charge sheet was not considered in proper perspective. While conducting the enquiry, principles of natural justice were not followed. The appellate authority rejected the appeal of the petitioner without assigning any reasons. The unaccompanied luggage was loaded on the top of the bus and therefore, the petitioner could not issue tickets for the luggage. Had the authorities considered the explanation properly, they would have come to the conclusion that the charges are not proved. The learned Presiding Officer of the Labour Court having come to the conclusion that the penalty awarded by the Disciplinary Authority is shockingly disproportionate to the charges proved, failed to award back wages and grant the benefit of notional increments; but only granted reinstatement with continuity of service. The said penalty imposed by the Labour Court is harsh and disproportionate to the gravity of the misconduct. There are no reasons for denying the back wages, notional increments and attendant monetary benefits to the petitioner. The order of reinstatement ought to have been granted with back wages, consequential and attendant benefits. From the date of termination till the date of reinstatement, i.e., from 08.09.1991 to 15.06.1995, the petitioner was granted continuity of service, but not monetary benefits. There is no misappropriation of funds of the Corporation, that too, with a fraudulent intention. A minor punishment would only meet the ends of justice. When the learned Presiding Officer of the Labour Court came to the conclusion that the explanation offered and reasons stated are valid for imposing a lesser punishment, he ought not to have imposed a major penalty." Reliance was placed on the decision in

Mahabir Prasad v. Delhi Transport Corporation¹ on the interpretative aspect of the relief of continuity service and the intent of restitution.

5. Per contra, the learned Standing Counsel for the Corporation while supporting the Award would submit as follows: “The Enquiry Officer and the Disciplinary Authority examined the facts correctly and the evidence in proper perspective and came to the conclusion that the charges formulated against the petitioner are proved and that the petitioner indulged in cash and ticketing irregularities. The conductor herein is holding a post of trust and faith and is in a fiduciary relationship with the Corporation. When the Conductor was found to have indulged in cash and ticketing irregularities, it resulted in loss of trust and faith. In view of the fact that the charges proved resulted in loss of trust and faith in the employee of the Corporation, the Disciplinary Authority is justified the imposing penalty of removal from service. Though the learned Presiding Officer of the Labour Court agreed with the findings that the charges are proved, he unnecessarily interfered with the quantum of punishment. The Supreme Court time and again held that when once the charges are proved, the Labour Court is not entitled to interfere with the punishment and that the view of the Disciplinary Authority on the issue of measure of punishment has primacy and shall be given due weight. Though the learned Presiding Officer of the Labour Court out of mercy and generosity reduced the punishment, the Corporation did not assail the said aspect of the Award even though the said punishment is not adequate in terms of the acts of misconduct held proved during the course of enquiry. Since the punishment imposed is a lesser punishment than the petitioner deserved, the question of the petitioner seeking further reduction of the punishment to a minor penalty does not arise for consideration. The petitioner filed a memo before the Labour Court stating *inter alia* that he is not disputing the validity of the domestic enquiry and that therefore, the dispute may be decided on merits as to the sufficiency of the

¹ 2014 Law Suit (Del) 2614

evidence adduced in proof of charges and also as to the proportionality of the punishment. As per the settled law, while exercising jurisdiction under Article 226 of the Constitution of India, this Court is not required to re-appreciate the evidence and examine the adequacy or otherwise of the evidence adduced at the time of the enquiry. The contentions of the petitioner do not merit consideration. The writ petition is liable to be dismissed.” In support of his contentions, reliance was placed on the following decisions: (i) Chennai Metropolitan Water Supply and Sewerage Board v. T.T.Murali Babu²; (ii) Union of India v. P.Gunasekaran³.

6. I have bestowed my attention to the facts. I have given earnest consideration to the submissions.

7. Be it noted that the first charge formulated against the petitioner relates to failure to issue luggage tickets for 27 units of unaccompanied luggage loaded on the top of the bus by a licensed porter at old bus-station, Suryapet, intended to be carried upto the stage Thugathurthy (ex-stages 1 to 9) even after accepting the bills from the porter indicating as to whom the luggage is to be handed over at Thungathurthy. In the explanation given on spot to the charge memo, the petitioner stated that the check was exercised at Balemula stage No.2/ 3 at about 10.45 hours and that the checking officials detected 20 plantain gelas and seven grape boxes loaded on the top of the bus without luggage ticket and that the same were loaded by a licenced porter on the top of the bus at old bus-station and that the said porter gave three bills (chits) to the petitioner wherein it is indicated as to whom the same have to be delivered at Thungathurthy, but he has forgotten to issue the luggage tickets due to heavy rush of passengers. Thus, his only explanation is forgetfulness. He does not deny that he did not issue luggage tickets though he was handed over the bills (chits) by the licenced porter who loaded the luggage over the top of the

² (2014) 4 Supreme Court Cases 108

³ (2015) 2 Supreme Court Cases 610

bus. In fact, the petitioner handed over the said chits/ bills to the checking officials who exercised the check. During the course of the enquiry, the petitioner did not cross-examine the witnesses examined and also did not adduce any evidence.

7.1 Turning to charge no.2, it is to be noted that the petitioner closed the SR of all the denominations up to stage No.2 without completing the issue of luggage tickets. He closed the SR of all the denominations at Stage No.2 without completing issue of tickets to the unaccompanied luggage loaded on the top of the bus is undisputed. Thus, having failed to issue luggage tickets, the petitioner closed the tray of all denominations up to stage No.2. Had the check been not conducted, the Corporation would have been put to legitimate loss of revenue. Thus, the petitioner also violated the rule 'issue and start' having proceeded with the journey without completing issuance of luggage tickets even after allowing the luggage to be loaded by a licenced porter and after accepting the chits/ bills indicating to whom the luggage is to be handed over at Thungathurthy.

8. A careful perusal of the entire material including the award of the Labour Court, which is impugned in this writ petition, would reflect that after examination of the facts correctly and the evidence in proper perspective, the Enquiry Officer, the appellate authority and the Labour Court arrived at concurrent conclusions and findings that the charges are proved. In the facts and circumstances and on the analysis, this Court does not find any grounds much less valid grounds calling for interference with the said concurrent findings of facts. When the conclusions and findings arrived at by the Enquiry Officer and the Presiding Officer of the Labour Court are found to be sustainable on facts and when there is no illegality or irregularity or impropriety in the said findings, this Court will not substitute its opinion in place of such findings.

9. In the decision in Union of India (3rd supra) 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.”

Having regard to the facts and the legal position, this Court holds that the contentions of the petitioner that the charges are not proved need no countenance.

10. Coming to the quantum of punishment, in the case on hand, the Presiding Officer of the Labour Court after taking a lenient view purely on grounds of mercy and generosity had set aside the punishment of removal from service and imposed a reduced penalty, which is already stated supra. When the charge proved related to cash & ticketing irregularities and loss of revenue to the Corporation and resultantly there is loss of trust and faith, the

punishment of removal from service would have been appropriate. However, the Labour Court had set aside the order, dated 08.7.1991, issued by the Corporation and while imposing a lesser penalty directed reinstatement of the petitioner; and, the Corporation did not assail the said portion of the Award before this Court. Considering the gravity of the charges proved it is manifest that the petitioner has not acted *bona fide* and therefore, the punishment imposed by the Labour Court, in the facts and circumstances of the case, is not disproportionate to the misconduct held proved. On the above analysis this Court holds that the penalty imposed needs no interference.

11. The decision in Chennai Metropolitan Water Supply and Sewerage Board v. T.T.Murali Babu (2nd supra) is relied upon on the aspect of delay and laches. In the cited decision having referred to Stae of MP v. Nandalal Jaiswal [(1986) 4 SCC 566] the Supreme Court reiterated the following proposition:

Now, it is well settled that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent of the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. The evolution of this rule of laches or delay is premised upon a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy under the writ jurisdiction because it is likely to cause confusion and public inconvenience and bring in its train new injustices.

Reverting to the facts of the case, it is to be noted that the present writ petition is filed in the year 2006 assailing an award of the year 1992; and to explain the long delay, no reasons, much less valid reasons are pleaded. Hence, this Court finds that the petition is liable to be dismissed on the grounds of long delay and laches, which cannot be brushed aside, in the facts and circumstances of the case.

12. In the result, the Writ Petition is dismissed.

No costs.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

22nd March, 2017

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