

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

WRIT PETITION No. 19517 of 2007

ORDER:

This writ petition by the unsuccessful respondent-Corporation is directed against the Award, dated 27.09.2006, in I.D.No.89 of 2004 passed by the learned Chairman-cum-Presiding Officer, Industrial Tribunal-cum-Labour Court, Visakhapatnam.

2. I have heard the submissions of Sri S.V. Ramana, learned standing counsel appearing for the writ petitioner-Corporation and of learned Government Pleader for Labour appearing for the 2nd respondent and of Sri G.V.L. Murthy, learned counsel for the 1st respondent-workman. I have perused the material record.

3. The parties hereinafter shall be referred to as arrayed in the ID.

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

On 21.01.2003, while the petitioner-workman was conducting the bus of the Corporation on the route Anakapalli-Konam, the enforcement squad conducted a check and found certain cash and ticketing irregularities. Basing on the report of the checking officials, a charge sheet was issued to the petitioner. As the petitioner's explanation was unsatisfactory, a detailed enquiry was ordered by appointing an Enquiry Officer. After due enquiry, the Enquiry Officer submitted a report holding that all the charges were proved. Thereafter, a show cause notice proposing the penalty of removal from service was served on the petitioner. Thereafter, the petitioner was removed from service by proceedings dated 31.05.2003. Aggrieved thereof, the petitioner raised an Industrial Dispute in I.D.No.89 of 2004 before the Tribunal. The

learned Chairman of the Tribunal, having found that the major charge of reissue of ticket by the conductor is unsustainable and that the workman was not diligent in his duty while conducting the bus and caused financial loss to the Corporation by his failure to issue ticket, held that the proper punishment to be imposed on the workman for the misconduct proved against him is to defer one annual increment with cumulative effect and directed the Corporation to reinstate the workman with back wages and with continuity of service. Aggrieved thereby, the Corporation preferred this writ petition.

5. In this setting of facts, the learned standing counsel for the Corporation would contend as follows:

The Award of the learned Chairman of the Tribunal reducing the penalty by setting aside the penalty of removal from service is contrary to facts and law. The learned Chairman of the Tribunal failed to see the gravity of the charges. In view of the fact that the charges involved financial embezzlement, the learned Chairman of the Tribunal ought to have seen that the Corporation/employer lost faith and trust in the petitioner-conductor and, therefore, the punishment of removal from service is justified and there is no justification in directing reinstatement of the workman into service. The learned Chairman of the Tribunal ought to have seen that when the charges levelled and proved related to the pilferage and misappropriation of the funds of the Corporation, there is nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of removal from service. The learned Chairman of the Tribunal, purely on sympathetic grounds interfered with the measure of punishment, though there are no grounds whatsoever to do so. The learned Chairman of the Tribunal

ought to have seen that it is not the amount of money misappropriated that is relevant and on the contrary, it is the loss of confidence, which has primacy. The learned Chairman of the Tribunal exceeded his jurisdiction and passed the impugned Award ignoring the rulings of the Supreme Court.

6. On the contrary, the learned counsel for the workman would submit as follows:

The petitioner-workman was appointed as a conductor in the Corporation. Till he was allegedly found to have indulged in certain cash and ticketing irregularities while conducting the bus of the Corporation, on 21.01.2003, there are no complaints on any count whatsoever from any quarter against him and he was discharging his duties sincerely, honestly and to the satisfaction of all concerned. He has put in long years of service in the Corporation without a blemish till the alleged check was exercised on 21.01.2003 and alleged irregularities were detected. The learned Chairman of the Tribunal found that one charge is not proved and then found that the charge proved relates to failure to issue ticket of Rs.5/- denomination and accordingly imposed penalty, which is proportionate to the gravity of the charge. Thus, the learned Chairman of the Tribunal rightly considered the facts of the case and the plight of the workman and modified the punishment by setting aside the penalty of removal from service, which is highly disproportionate to the gravity of the charges. When the Chairman of the Tribunal exercised judicial discretion and reduced the penalty having regard to the facts and circumstances, this Court need not interfere with such judicial discretion while exercising the jurisdiction under Article 226 of the Constitution of India.

7. In reply, the learned Standing Counsel for the Corporation representing the writ petitioner forcefully contended that the Supreme Court had time and again deprecated the practice of interfering with the penalty imposed on a conductor of the bus who acts in fiduciary capacity.

8. I have given detailed and thoughtful consideration to the facts and submissions.

9. The admitted facts are that, on 21.01.2003, while the petitioner-workman was conducting the bus of the Corporation on the route Anakapalli - Konam, the Enforcement squad conducted a check and found certain cash and ticket irregularities and that on their report charges were formulated and, thereafter, after following the due procedure, enquiry was held and in the enquiry report, the Enquiry Officer held that the charges are proved. The petitioner-workman-conductor was thus held to have committed the following cash and ticketing irregularities which amounted to misconduct.

Issued used ticket of Rs.5/- instead of proper ticket after duly collecting the fare amount of Rs.5/- from the passenger;

And,

Closed the ticket numbers of all denominations in SR up to stage No.7, without issuing proper ticket to the passenger.

10. A perusal of the material record reflects that the learned Chairman of the Tribunal having, *inter alia*, found that the major charge is not proved had further held to the effect that there are only five passengers in the bus; in that view of the matter, the Conductor could have easily located the passenger without a ticket and that the petitioner-conductor was not diligent and was negligent in discharging

his duties and that by his said conduct he allowed a passenger to travel in the bus without a ticket and that the charge to the extent that the petitioner-conductor had not collected fare and had not issued the ticket to a passenger is established and that on failure of the petitioner-Conductor to issue the ticket of Rs.5/- denomination to one passenger, financial loss occasioned to the Corporation. On careful analysis of the facts and evidence on record, this Court finds no reason warranting interference with the said findings of the learned Chairman of the Tribunal. There is no dispute in regard to the fact that the bus conductors act in a fiduciary capacity and it is their duty to collect correct fare from the passengers and issue tickets of correct denomination to the passengers and punch them in the correct order and account for the cash by depositing the same with the Corporation. The conductors are not supposed to collect fares and not issue tickets or collect fares and re-issue the tickets, which were already issued, or collect correct fare and issue the tickets of lesser denomination and the like acts. The learned Chairman of the Tribunal while exercising his discretion interfered with the measure of punishment and modified the punishment imposed by the disciplinary authority. Be that as it may.

11. In Divisional Controller, N.E.K.R.T.C. Vs. H.Amaresh¹, 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

¹ (2006) 6 SCC 187

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.

12. On the quantum of punishment, the Supreme Court, in Divisional Controller, KSRTC (NWKRTC) Vs. A.T.Mane², 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 faith in such a person and awarding a punishment of dismissal.

13. Again in U.P. State Road Transport Corporation, Dehradun Vs. Suresh Pal³, 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

² (2005) 3 SC 254

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

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.

14. In *Managing Director, North-East Karnataka Road Transport Corporation v. K. Murti*⁴, the Supreme Court held that the position held by an employee (conductor) is one of faith and trust and that a conductor holds the post of trust and that a person guilty of breach of trust should be imposed punishment of removal from service.

15. In *Karnataka State Road Transport Corporation Vs. B.S.Hullikatti*⁵, the Supreme Court, having referred to the relevant facts of the case 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.

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

⁴ (2006) 12 SCC 570

⁵ AIR 2001 SC 930

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 retrial benefits.

16. Reverting to the facts of the case on hand, it is to be noted that, by the date, the claim was made before the Industrial Tribunal-cum-Labour Court, the petitioner/workman was of advanced age in terms of the age of superannuation. At the hearing it is submitted by the learned standing counsel for the Corporation that the petitioner-workman retired from service. The learned counsel for the petitioner-workman also submitted that the petitioner retired from service a few years back after having been reinstated into service pursuant to the orders of the Tribunal and hence, at this distance of time the penalty need not be interfered with. It is not in dispute that after reinstatement, the petitioner discharged his duties as conductor satisfactorily and without any complaints from any quarter. Nonetheless, the learned standing Counsel for the Corporation brought to the notice of this Court that, on 14.09.2007, this Court stayed the Award of the Tribunal in all other respects except with regard to reinstatement of the workman into service and submitted that in view of the said orders of this Court, monetary benefits are not yet released to the petitioner-conductor and that the petitioner-Conductor holds a post of trust and faith and has a fiduciary relationship with the employer and that in the facts and circumstances of the case, the Tribunal ought not to have interfered with the quantum of punishment when it also held that the charges are

partly proved. In reply, learned counsel for the petitioner-workman would submit that the Tribunal held that the major charge is not proved and therefore rightly modified the quantum of punishment and that even the modified punishment is excessive considering the graveman of the charge held proved and that in any view of the matter the contention of the Corporation in regard to inadequacy of the quantum of punishment is devoid of merit. It is not in dispute that after reinstatement, the petitioner discharged his duties as Conductor satisfactorily and without any complaints from any quarter. Further, this court is informed that the petitioner has already superannuated and discharged his duties till such time without any remark or complaint. Having regard to the facts of the case, this Court is of the opinion that the punishment imposed by the Tribunal need not be interfered with at this distance of time more particularly as this Court does not find any strong reason to do so.

17. Viewed thus, this Court finds that the Award does not call for interference at this stage and that the writ petition is liable to be dismissed.

18. 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

07.04.2017
Vjl