

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

WRIT PETITION No.5234 of 2007

ORDER:

This writ petition, under Article 226 of the Constitution of India, by the writ petitioners-unsuccessful respondents-Corporation (hereinafter, 'the Corporation') is directed against the Award, dated 26.07.2006, in I.D.No.282 of 2002 passed by the learned Chairman-cum-Presiding Officer, Industrial Tribunal-cum-Labour Court, Anantapur.

2. I have heard the submissions of Sri A. Rama Rao, learned standing counsel appearing for the petitioners-Corporation and of Sri G. Ravi Mohan, learned counsel appearing for the 1st respondent-workman. I have perused the material record.

3. From the facts pleaded and the submissions made, it emerges that the following are the chronological events upto the date of filing of this writ petition by the Corporation.

The 1st respondent was appointed as a Conductor in the Corporation, on 12.05.1978. While so, on 14.01.1996 while he was conducting the bus bearing registration no.AP 9 Z 5927, on route Adoni-Tirupati, a check was exercised by the checking officials at 12.20 hrs., at stage no.11/ 12. At the time of exercising the said check, certain cash and ticketing irregularities were detected. The said officers submitted a preliminary report. Based on the material available, the Depot Manager of Adoni Depot placed the 1st respondent-Conductor under suspension from 29.01.1996 and issued a charge sheet. The charges formulated verbatim read as under:

- i) for having collected the requisite ticket fare Rs.17/- from six (6) passengers (3 passengers travelling as a batch and 3 passengers as individuals) towards their journey fare from Bathulapalli to Kadiri Ex.stages 10 to 12 and issued unconnected tickets bearing No.088/433695 to 699 and 089/430805 of Rs.9/- denm. In combination

with tickets bearing No.118/739871 to 876 of Rs.8/- den. E.6 to them which were actually issued and accounted in the SR No.A3/4152915, Dt.12-1-1996 at stage No.7 on route Kurnool to Adoni while conducting the service of 12.00 hrs. Kurnool on 12-1-2006 and thereby reissued the said tickets of Rs.9/- denm. Amounts to misappropriation of legitimate revenues of the Corporation which constitutes misconduct in terms of clause (xxiii) of Regulations 28 of APSRTC Employees (Conduct) Regulations 1963.

- ii) For having collected the requisite ticket fare @ Rs.9/- from a batch of two (2) passengers towards their journey from Mudigubba to Kadiri, Ex.stages 11 to 12 and issued tickets bearing No.089/430800 to 801 of Rs.9/- E.2 which were actually issued and accounted in the S No.A3/4152915, Dt.12-1-1996 against stage No.7 while conducting the service of 12-00 hrs., Kurnool on 12-1-95. Thus you have reissued 2 tickets bearing No.089/430800 to 801 of Rs.9/- den E.2 to the above said passengers which amounts to misappropriation of the revenues of the Corporation and constitutes to misconduct in terms of clause (xxiii) of Regulations 28 of APSRTC Employees (Conduct) Regulations 1963.
- iii) For having issued tickets bearing No.019/942200 to 204 of Rs.3/- Den. E.5 from fresh ticket block in combination of Rs.20/- tickets E.5 to 5 passengers travelling in 2 batches (3+2) who boarded the bus at Anantapur and bound for Kadiri Ex.stages 8 to 12 instead of issuing from running block of Rs.3/- denm. Available in hand tray as per closing No. of said denm. Shown as 019/941971 and also failed to account the sale of tickets of RS.3/- demn. In SR which constitutes misconduct in terms of clause (xxxi) of Regulation 28 of APSRTC Employees (Conduct) Regulations, 1963.
- iv) For having closed the tray numbers of Rs.50/- denm., as 494 instead of closed as 499 in the SR No.4173113, Dt.14-1-1996 against stages 9 to 10 as per tickets available in your hand tray which constitutes misconduct in terms of clause (xxxi) of Regulation.
- v) For having violated the rule of "issue of correct tickets close and start which constitutes misconduct in terms of clause (vi) (a) of Regulations, 28 of APSRTC Employees (Conduct) Reg.1963.

The 1st respondent submitted an explanation, dated 12.02.1996, to the said charge sheet. Not being satisfied with the explanation, the disciplinary authority appointed an enquiry officer. After due enquiry, the enquiry officer submitted a report, dated 03.05.1996, holding that the charges are proved. The disciplinary authority served a show cause notice, dated 14.05.1996, on the 1st respondent intimating the proposal to impose a penalty of removal from service. Since the explanation, dated 20.05.1996, submitted by the 1st respondent was found unconvincing and unsatisfactory, the disciplinary authority issued proceedings, dated 22.05.1996, for removal of the 1st respondent from service and the 1st respondent was thus removed from service. His appeal was rejected by the appellate authority by an order, dated 04.06.1996. However, his review petition was partly allowed and the

order of removal from service was modified and he was reinstated into service as a fresh conductor Grade II; however, his annual increments for five years were ordered to be deferred with cumulative effect. Aggrieved thereby the 1st respondent raised an industrial dispute and filed a claim petition. The same was resisted by the Corporation. The learned Chairman of the Tribunal while agreeing with the findings of the enquiry officer that the charges are proved however partly allowed the claim petition of the 1st respondent-conductor and set aside the penalty imposed by the reviewing authority and consequently while confirming reinstatement into service held that the 1st respondent is entitled to continuity of service and attendant benefits but without back wages for the period of suspension from 29.01.1996 till the date he reported to duty. Aggrieved of the said Award, the Corporation is before this Court.

4. Learned Standing Counsel for the Corporation would submit as follows: - 'The charges formulated would reflect that the 1st respondent indulged in serious acts of misconduct, namely, cash and ticketing irregularities. As the explanation submitted by the 1st respondent was unconvincing, the Corporation ordered a domestic enquiry. In support of the Corporation's case, checking officials were examined. No important points are gained by the 1st respondent in their cross examinations. The enquiry officer having considered the facts and the testimonies of the witnesses held that the charges levelled against the 1st respondent are proved. Though an order of removal from service was initially passed, the reviewing authority has taken a lenient view and modified the punishment to a lesser punishment. The learned Chairman of the Tribunal failed to properly appreciate the facts and the evidence and erred in interfering with the findings of the enquiry officer and the punishment eventually imposed by the reviewing authority. The findings

of the enquiry officer are based on cogent legal evidence. The workman-conductor holds a post of trust and faith and his relationship is a fiduciary relationship with the employer. When once there is a breach of trust and loss of faith, the Corporation is justified in imposing the penalty of removal from service. In any view of the matter, when the charges levelled relate to grave misconduct and misappropriation of corporation money, the punishment imposed by the concerned officer of the Corporation by taking a lenient view ought not to have been interfered with by the Tribunal. The Supreme Court time and again observed in various decisions that when once the charges are proved, the punishment imposed by the disciplinary authority or the Officer concerned of the Management shall have primacy and shall not be interfered with.

4.1 Having so urged, he prayed for allowing the writ petition and restoring the punishment imposed by the reviewing authority as the said punishment is commensurate with the gravity of the charges proved. He would further submit that since a lenient view has already been taken by the reviewing authority and as no grounds are made out, the learned Chairman of the Tribunal ought not to have reduced the punishment; such interference with the punishment is uncalled for in the facts and circumstances of the case. In support of all the afore-stated submissions, the learned counsel for the Corporation relied upon the following decisions:

(i) UPSRTC v. Ramkishan Arora¹. The facts of the cited case show that in a departmental enquiry the bus conductor was found guilty of misconduct of a serious nature, namely, carrying of several passengers without tickets and obstructing the inspection team from

¹ (2007) 2 SCC 627

checking process; therefore, the disciplinary authority awarded punishment of removal from service; the High Court without recording a finding that the punishment is disproportionate to the gravity of the misconduct reduced the said punishment to stoppage of two increments even without assigning any reasons therefor. In the said setting of facts, the Supreme Court held that even in a case of finding the punishment to be disproportionate, the course ordinarily open to the High Court was to remit the matter to the employer for reconsidering the quantum of punishment and that the High Court's order reducing the said punishment is wholly unjustified.

(ii) Davalsab Husainsab Mulla v. North West Karnataka Road Transport Corporation². The facts of the cited case show that a driver of the Corporation travelled in the Corporation bus without a ticket; the same was detected by checking squad; enraged by the action of the checking squad, the driver abused the checking inspector by using filthy language and also threatened to do away with his life; and, he was further stated to have attempted to assault the checking inspector and later approached the Co-ordinator in the Divisional Office, Belgaum, and behaved in an arrogant manner with the said officer. In the said setting of facts, the Labour Court held that the order of dismissal from service was fully justified. Learned single Judge while observing that the Labour Court was not justified in not invoking Section 11-A of the Industrial Districts Act, 1947, held that the punishment was disproportionate and had set aside the said punishment and modified the punishment to one of withholding of two increments with cumulative effect and without back wages and consequential benefits. A Division bench of the High Court restored the punishment of dismissal. The

² (2013) 10 SCC 185

Supreme Court dismissed the appeal of the workman giving liberty to the appellant or his dependants to approach the authorities concerned for settlement of any benefits payable under the provisions of Act 19 of 1952 as well as under the Employees' Pension Scheme, 1995. Ex facie, it appears that the findings in the decisions turned on facts peculiar to the cited cases.

5. On the contrary, the learned counsel for the 1st respondent-workman would submit as follows:

The 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 14.01.1996, 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 and the alleged irregularities were detected. The learned Chairman of the Tribunal rightly considered the facts of the case and the plight of the workman; further, the learned Chairman while confirming the orders of reinstatement further modified the punishment imposed by the reviewing authority having found that the punishment that was imposed by the said authority was highly disproportionate to the gravity of the charge held proved. When the Chairman of the Tribunal exercised judicious discretion and reduced the penalty having regard to the facts and circumstances, this Court generally will not interfere with such judicial discretion while exercising the jurisdiction under Article 226 of the Constitution of India and will not substitute its subjective opinion in the place of the opinion of the said officer. Even a

responsible officer of the Corporation was of the view that the gravity of the charges held proved did not result in loss of faith and trust and therefore, came to a conclusion that the 1st respondent can be continued in service and accordingly, imposed a lesser punishment after ordering reinstatement into service and therefore, the Corporation cannot now contend that there is loss of faith and trust. The writ petition is devoid of merit and is liable to be dismissed.

6. I have bestowed my attention to the facts and given earnest consideration to the submissions. The learned Chairman of the Tribunal initially examined the validity of the procedure followed while conducting the domestic enquiry and held that the procedure followed was valid. Before the Tribunal, exhibits M1 to M19 were marked on behalf of the Corporation. The only explanation offered to the charges formulated against the 1st respondent is that he performed 12.00 hrs., service from Adoni-Kurnool, on 12.01.1996, and in return trip from Kurnool, he lost tickets bearing nos.088/ 433695 to 699 and 089/ 430800, 089/ 430805 of Rs.9/- denomination, which were tied in loose condition in the tray, and that he endorsed the same on the SR and remitted the value at the Depot by adjusting his private cash and that later he traced the lost tickets in the bus at the garage and that as value of the tickets is already remitted in advance, he issued the traced tickets, on 14.01.1996, in Adoni-Tirupati service so as to recover the amount, which he had already accounted for, and that out of fear he had endorsed the lost tickets as missed in the SR, which related to Adoni-Kurnool service, on 12.01.1996. Insofar as the graveman of the charge relating to issuing Rs.3/- denomination tickets from fresh ticket block instead of from running block, he stated in his explanation that he had not observed the

correctness of the said aspect while closing the SR. The enquiry officer in the enquiry report, exhibit M14, dated 03.05.1996, noted that the 1st respondent endorsed about the missing of tickets on the SR, dated 12.01.1996, and that after spell of duty, on 13.01.1996, he remitted the cash in the Depot even in respect of missing tickets by showing them as sold out tickets and that, on 14.01.1996, he performed Adoni-Tirupati service and issued to the passengers, the old tickets, which were kept in the tray, with a view to recoup his personal amount which he remitted to the depot towards sale of tickets which were found missing, on 13.01.1996, and which were later traced in the bus at the garage. The Enquiry Officer had, therefore, observed that having traced out the missed tickets he had again sold the said tickets to adjust his personal cash. Learned Chairman of the Tribunal also agreed with the said observations of the enquiry officer. Insofar as issuance of Rs.3/- denomination tickets, the learned Chairman of the Tribunal, accepting the explanation of the 1st respondent, found that the issuance of the said tickets from a fresh block and not from the running block though is a mistake, it is not a mistake committed with an intention to defraud the Corporation. Insofar as the closing of tray numbers of Rs.50/- denomination as 494 instead of as 499, the explanation of the 1st respondent-Conductor is that the said mistake occurred due to writing the number while the bus was in motion. On this aspect, the learned Chairman of the Tribunal noted that though the enquiry officer observed that the 1st respondent had done so with a *mala fide* intention, the enquiry officer has not stated as to the nature of *mala fide* intention. Thus, the learned Chairman of the Tribunal agreed with the findings of the enquiry officer on some of the charges and *inter alia* observed that the modified punishment imposed by the reviewing authority is not

proportionate to the gravity of the charges held proved and accordingly modified the penalty as already stated supra in paragraph no.3.

7. On a 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 correct 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 reviewing authority. The 1st respondent-Conductor, after his reinstatement into service served the Corporation without giving scope for complaint and retired from service in the year 2012 on attaining the age of superannuation. Be that as it may.

8. In the decision in Union of India v. P. Gunasekaran³ 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;

³ (2015) 2 SCC 610

(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.”

9. In Divisional Controller, N.E.K.R.T.C. Vs. H.Amaresh⁴, 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

⁴ (2006) 6 SCC 187

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.

10. On the quantum of punishment, the Supreme Court, in Divisional Controller, KSRTC (NWKRTC) Vs. A.T.Mane⁵, 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.

11. Again in U.P. State Road Transport Corporation, Dehradun Vs. Suresh Pal⁶, 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.

⁵ (2005) 3 SC 254

⁶ (2006 (3) LLJ 967(SC) = (2006) 8 SCC 108

12. In *Managing Director, North-East Karnataka Road Transport Corporation v. K. Murti*⁷, 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.

13. In *Karnataka State Road Transport Corporation Vs. B.S.Hullikatti*⁸, 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 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

⁷ (2006) 12 SCC 570

⁸ AIR 2001 SC 930

respondent would not be entitled to any back wages at all but he would be entitled to the retrial benefits.

14. Be it noted that, by the date, the claim was made before the Industrial Tribunal-cum-Labour Court, the 1st respondent/workman was of advanced age in terms of the age of superannuation. Nonetheless, the learned standing Counsel for the Corporation brought to the notice of this Court that on 15.03.2007, 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, monetary benefits are not yet released to the 1st respondent-conductor and that the 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 1st respondent-workman would submit that the Tribunal rightly modified the quantum of punishment and that even the modified punishment is excessive considering the graveman of the charges held proved and that in any view of the matter the contentions of the Corporation in regard to inadequacy of the quantum of punishment are devoid of merit. As already noted, at the hearing it is submitted by the learned standing counsel for the Corporation that the 1st respondent- workman retired from service in the year 2012. The learned counsel for the 1st respondent-workman also submitted that the 1st respondent retired from service a few years back after having been reinstated into service pursuant to the orders of the reviewing authority and that after reinstatement and till his retirement, he rendered unblemished service and hence, at this distance of time the penalty need not be interfered with. 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.

15. 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.

16. 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.

17.04.2017
VJI



M. SEETHARAMA MURTI, J