

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

WRIT PETITION Nos.7493 of 2006 and 4647 of 2008

COMMON ORDER:

The genesis of these two writ petitions is the Award, dated 24.02.2005, in ID.No.137 of 2003 on the file of the Labour Court-II, Hyderabad.

1.1 Being aggrieved of the Award insofar as it related to imposition of lesser punishment after setting aside the order of removal from service, the Corporation represented by its Officers filed W.P.No.7493 of 2006; being aggrieved of the Award insofar as denial of back wages and attendant benefits, the workman-Conductor filed W.P.No.4647 of 2008.

2. The parties shall hereinafter be referred to as the Corporation and the workman-conductor for convenience and clarity.

3. I have heard the submissions of *Sri N. Vasudeva Reddy*, learned Standing Counsel for the Corporation, and of *Sri V. Narasimha Goud*, learned counsel for the workman-Conductor. I have perused the material record.

4. The facts and chronology of events that surface from the pleadings and submissions made before this Court, in brief, are as follows:

The workman joined the services of the Corporation, on 28.10.1997, on regular basis. On 09.06.2002, while he was conducting the bus bearing registration No.AP 9 Z 9128 on route Bodhan-Hyderabad, a check was exercised by the checking officials of the Corporation at stage No.23, Tupran, at 09:45 AM. According to the Corporation certain cash and ticketing irregularities were noticed during the said check.

Basing on the material available on record, the Conductor was placed under suspension, on 15.06.2002, and a charge sheet was issued to him with verbatim the following charges.

1. For having collected an amount of Rs.77/- from four (4) passengers who boarded the bus at Bodhan bound for Hyderabad ex-stages 01 to 27 and issued ticket bearing Nos.017/239932 to 935 of Rs.70/- deno. With combination ticket bearing Nos.298/632232 to 235 of Rs.7/- deno. And advance punched on the tickets bearing Nos.017/2399932 to 935 of Rs.70/- deno. On stage No.27 to 01 i.e., Hyderabad to Bodhan instead of Stage No.01 to 27 i.e. Bodhan to Hyderabad, even after punching correctly stages on combination tickets bearing Nos.298/632232 to 235 of Rs.7/- denomination.
2. For having collected an amount of Rs.73/- from a passenger who boarded the bus at Bodhan, bound for J.B.S. ex-stages 01 to 25 and issued tickets bearing Nos.017/239936 of Rs.70/- deno. With combination ticket bearing No.167/636301 of Rs.3/- deno and advance punched on the ticket bearing No.017/2399936 of Rs.70/- deno on stage Nos.27 to 01 i.e., Hyderabad to Bodhan instead of stage No.s01 to 25 i.e., Bodhan to JBS even after punching correctly on stages on combination ticket bearing NO.167/636301 of Rs.3/- deno. While you were performing duty on 9-6-2002 on route, Bodhan-Nizamabad-Hyderabad.

The workman-Conductor submitted his explanation, dated 21.06.2002. Not being satisfied with the said explanation, an enquiry officer was appointed. After due enquiry, the enquiry officer submitted a report, dated 29.08.2002, holding that the charges are proved. The Corporation served a copy of the enquiry report on the Conductor along with a letter, dated 16.09.2002, and called for his comments/ objections. The Conductor submitted his comments/ objections, on 11.09.2002. As his comments/ objections were found unsatisfactory and unconvincing, a notice, dated 13.09.2002, was issued calling upon him to show cause as

to why a penalty of removal from service shall not be imposed. He submitted explanation, dated 20.09.2002. As his explanation was unsatisfactory and as no new submissions were made in the explanation, the orders, dated 21.09.2002, removing him from service were passed by the disciplinary authority. His appeal was rejected by the orders, dated 09.09.2003, of the appellate authority. Aggrieved thereof, the workman raised an industrial dispute and filed a claim petition. The same was resisted by the Corporation. On merits and by the Award impugned in these writ petitions, the learned Presiding officer of the Labour Court while holding that the charges are proved set aside the order of removal from service and imposed a lesser punishment by taking a lenient view and accordingly directed reinstatement of the workman-Conductor into service with continuity of service but without back wages and attendant benefits for the break period.

5. Learned counsel appearing for the workman-Conductor would submit as follows: -

When the check was exercised all 43 passengers in the bus were holding valid tickets; however without accepting the explanation of the Conductor, the charge sheet was issued. The Conductor explained by stating that the passengers boarded the bus at Bodhan and that the tickets issued to them were accounted for in the SR right from Bodhan stage towards Hyderabad at every stage and that improper punching of tickets had occasioned due to inadvertence and that he did not notice the same till the checking officials pointed out the said improper punching of the tickets. The Conductor was attending to duties continuously since 3 days without any rest and, therefore, the inadvertent mistake has crept in while discharging his duties. The facts

and circumstances of the case never warranted initiation of disciplinary enquiry. Initiation of enquiry for such inadvertent mistake amounts to unfair labour practice on the part of the Corporation. The checking officials simply supported the charge memo during enquiry but did not state anything in their depositions in support of the charges formulated against the workman. The charges are not proved. Without any evidence, the enquiry officer, on untenable grounds, held that the charges are proved. The findings of the enquiry officer are perverse. The learned Presiding Officer of the Labour court came to a conclusion that the irregularities noticed at the time of check had occasioned only due to inadvertent mistake and that the Conductor has also admitted his mistake honestly and yet failed to completely exonerate the Conductor from charges. In any view of the matter, in view of the findings recorded, the learned Presiding Officer of the Labour Court ought not to have denied the attendant benefits which give the benefit of notional increments to the workman during the period of removal from service; and, further ought not to have denied back wages completely. Even the punishment imposed in the Award of the Labour Court is shockingly disproportionate to the findings recorded in the Award. Denial of attendant benefits and back wages is contrary to the findings recorded in the Award of the Labour Court. From the date of removal from service till reinstatement into service, on 30.04.2005, the workman remained unemployed without any alternative employment inspite of his best efforts and the denial of back wages and attendant benefits caused great hardship and financial loss to the workman-Conductor. Hence, the writ petition of the Conductor may be allowed and the writ petition of the Corporation may be dismissed.

5.1 He placed reliance on the decision of this Court in *APSRTC v. N.V. Subbaiah*¹ in support of the contention that the Labour Court is having jurisdiction to re-appreciate the evidence and upset the factual finding given by the enquiry officer and even alter the punishment. This decision is also relied upon in support of the further proposition that the workman is entitled not only for reinstatement with continuity of service but also full back wages and other consequential benefits when the workman was found not guilty of the charges levelled against him and when he was not gainfully employed elsewhere during the period of his removal.

6. Learned Standing Counsel for the Corporation while reiterating the chronology of events upto the date of the passing of the Award by the Labour Court, *inter alia*, contended as follows:

The learned Presiding Officer of the Labour Court having examined the facts and the evidence came to a conclusion that the charges are proved. Therefore, he imposed penalty, though it is a lesser penalty. When once the Presiding Officer of the Labour Court came to the conclusion that the charges are proved and that the misconduct which is established warranted imposition of penalty, he ought not to have interfered with the punishment of removal from service that was imposed by the disciplinary authority and confirmed by the appellate authority. The learned Presiding Officer of the Labour Court ought to have seen that the graveman of the charges relate to cash and ticketing irregularities. The workman-conductor holds a post of trust and faith and his relationship with the employer is fiduciary in nature. When once there is a breach of trust and loss of faith, the Corporation is justified in

¹ 2016 (3) ALD 517

imposing the penalty of removal from service. In view of the fact that the charges involved financial embezzlement, the learned Presiding Officer of the Labour Court ought to have seen that the Corporation/employer lost faith and trust in the workman-conductor and, therefore, the punishment of removal from service is justified. Therefore, there is no justification in the Labour Court directing reinstatement of the workman into service. After due enquiry, when once it was found that the workman-Conductor indulged in cash and ticketing irregularities, which resulted in loss of revenue to the Corporation, the Corporation is justified in passing an order of removal from service. The Supreme Court time and again observed in various decisions that when once the charges are proved, the penalty imposed by the disciplinary authority shall have primacy and shall not be interfered with by the Labour Court or the High Court. Hence, the writ petition of the Corporation may be allowed and the writ petition of the workman may be dismissed.

6.1 He placed reliance on a decision in UP. State Road Transport Corporation v. Vinod Kumar² in support of the following proposition: 'It is well settled that the punishment or dismissal is the appropriate punishment for an employee found guilty of misappropriation of funds and the courts should be reluctant to reduce the punishment on misplaced sympathy for a workman and that there is nothing wrong in the employer losing confidence or faith in such an employee and awarding punishment of dismissal and that in such cases there is no place for generosity or misplaced sympathy on the part of the judicial fora and interfering with the quantum of punishment.'

² (2008) 1 SCC 115

7. I have given earnest consideration to the facts and submissions.

8. The first charge relates to collection of amount of Rs.77/- by the conductor from four passengers who boarded the bus at Bodhan and bound for Hyderabad and issuance of tickets of Rs.70/- denomination with combination tickets of Rs.7/- denomination and advance punching the tickets of Rs.70/- denomination on stage nos.27 to 1, that is, Hyderabad to Bodhan, instead of stage nos.1 to 27, that is, Bodhan to Hyderabad, despite correctly punching the stages on combination tickets of Rs.7/- denomination. The 2nd charge relates to collection of Rs.73/- from a passenger who boarded the bus at Bodhan and bound for JBS and issuance of ticket of Rs.70/- denomination with combination ticket of Rs.3/- denomination and advance punching on the Rs.70/- denomination ticket on stages 27 to 1, that is, Hyderabad to Bodhan, instead of stages 1 to 25, that is, Bodhan to JBS even after punching the stages correctly on combination ticket of Rs.3/- denomination. Be it noted that the conductor himself admitted that there is mistake in punching the afore-stated tickets of Rs.70/- denomination. According to him, he performed duties for three days continuously without rest and, therefore, the said mistake has crept in inadvertently and that he did not notice the mistake till the incorrect punching was detected during the check. It is also his case that he is a diabetic and is suffering from Hypertension and that the mistake had occasioned due to over sight due to lack of rest and lack of spectacles, while entering the ticket details in the statistical return.

8.1 The learned counsel for the workman while reiterating the explanation of the workman would submit that since the mistake in

regard to wrong punching of the tickets has occasioned for the reasons explained by the workman, he is entitled to be exonerated and that the Award insofar as it related to denial of back wages and attendant benefits is liable to be set aside and he is entitled to be reinstated with continuity of service, back wages and all consequential/ attendant benefits.

8.2 However, learned standing counsel for the Corporation would point out that the vital aspect of the matter, which the proved charges 1 and 2 would reveal, is that the conductor wrong punched tickets of higher denominations of Rs.70/- only but correctly punched the tickets of lesser denominations of Rs.7/- and Rs.3/- which are the combination tickets. He, therefore, emphasised that the wrong punching of tickets of higher denomination and correct punching of the tickets of lesser denomination would reveal the *mala fide* and illegal intentions as well as the guilty mind of the conductor and that the conductor did so only to enable him to misuse the intentionally wrong punched tickets in the return trip from Hyderabad to Bodhan. He, therefore, prayed for setting aside the Award insofar as modifying the punishment and requested to restore the punishment of removal from service as the said misconduct is a serious misconduct. He would also forcefully contend that the Conductor would have indulged in further malpractice, had the check been not exercised and that it would have resulted in loss of revenue to the Corporation. Having regard to the facts and the evidence, the enquiry officer having not accepted the explanation of the Conductor held that the charges formulated against the Conductor are proved.

8.3 What is to be noted is that the learned counsel for the workman-Conductor would contend that mere wrong punching of tickets does not

make it possible to misuse the tickets; and, that for misuse and reissue of wrong punched tickets, it is necessary that the conductor should collect the said tickets from the passengers and then reissue the said tickets in the return trip and, therefore, the inference that the tickets are likely to be misused for making a wrongful gain for himself and causing wrongful loss of revenue to the Corporation are far fetched and too remote and that the charges framed on such likely misuse of tickets which are wrongly punched are misconceived. He placed reliance on a decision in *G. Chandrakanth v. Guntur Dist.Milk Producers' Union Ltd.*,³ and contended that on mere remote possibility of misuse of tickets which are wrongly punched in the down journey without establishing commission of any actual acts of misconduct it cannot be said that the conductor is guilty of charges formulated against him. Therefore, he contended that the conductor is entitled to the relief claimed in the writ petition filed by him. He would reiterate that in the case on hand the mere wrong punching of tickets can at best be termed as an act, which is in the nature of preparation and planning for committing future acts, which, if committed, may amount to misconduct and that mere wrong punching of the tickets without commission of any further acts is no misconduct at all.

8.4 In the case on hand, the same contentions were advanced before the Labour Court, but, the learned Presiding Officer of the Labour Court did not consider the said contentions for the obvious reason that the wrong punching of tickets was only in regard to tickets of higher denomination but not in regard to tickets of lesser denomination which are combination tickets. Had the combination tickets of lesser

³ 1994 (2) ALT 253

denomination are also wrongly punched, there would have been some justification for accepting the explanation of the Conductor. Wrong punching of tickets of higher denomination only is certainly an act reflecting mala fides and moral turpitude and the said act which lays bare the guilty mind is *prima facie* detrimental to the interests of the Corporation besides being a deliberate act of gross disregard to duty and an act of gross negligence committed while discharging duties. When the charge is crystal clear and when the acts constituting the charge are admitted the mere non mention of some regulations in the charge is of no help to the conductor that no act of misconduct is proved. The Regulations of the Corporation clearly spell out that acts of the conductor like the present acts, which are held proved and which are *mala fide* and are tainted with moral turpitude and which are allied to dereliction of duty and gross negligence are synonymous to misconduct and therefore, the findings that the conductor indulged in acts of misconduct warranting imposition of some penalty are justified in the facts and circumstances of the case.

9. When once conclusions arrived at by the Enquiry Officer and the learned Presiding Officer of the Labour Court are found to be sustainable on facts and evidence and when such findings are based on some legal evidence, this Court will not normally substitute its subjective opinion in the place of the one arrived at by the said officers.

10. Further, in the decision in Union of India v. P. Gunasekaran⁴ 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:

⁴ (2015) 2 SCC 610

“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.

Under Article 226/ 227 of the Constitution of India, the High Court shall not:

- (i). re-appreciate the evidence;
- (ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
- (iii). go into the adequacy of the evidence;
- (iv). go into the reliability of the evidence;
- (v). interfere, if there be some legal evidence on which findings can be based.
- (vi). correct the error of fact however grave it may appear to be;
- (vii). go into the proportionality of punishment unless it shocks its conscience.”

12. Having regard to the findings supra and the legal position, this Court holds that the contention of the conductor that the finding of the

Labour Court that the charges are proved is incorrect and that his further contention that the said finding deserves to be set aside is devoid of merit and hence, needs no countenance, in the facts and circumstances of the case. For all the reasons this Court finds no merit in the contentions of both the parties and holds that the penalty imposed by the learned Presiding Officer of the Labour Court does not call for either enhancement or reduction of penalty.

13. In the result, both the writ petitions are dismissed.

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

20.04.2017
VJI



M. SEETHARAMA MURTI, J