

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.494 of 2008

ORDER:

This writ petition, under Article 226 of the Constitution of India, by the petitioner, former Conductor of the Corporation is directed against the Award, dated 06.04.2006, of the learned Presiding Officer, Additional Labour Court, Hyderabad, passed in I.D.No.32 of 2004.

2. I have heard the submissions of Sri A. Thirupathi Reddy, learned counsel for the petitioner, and of Sri N. Vasudeva Reddy, learned standing counsel for TSRTC representing the 2nd respondent. I have perused the material record.

3. The facts borne out by the record and the chronological events, which emerge from the pleadings of the parties and submissions made before this Court, in brief, are as follows:

The petitioner joined as Conductor in the services of the Corporation in the year 1992. On 17.02.2002, while he was conducting the bus bearing registration no.9967 on route no.16A plying from Secunderabad station to ECIL a check was exercised by the checking officials of the Corporation at stage no.6/7 at about 17.45 hours. According to the checking officials of the Corporation they have noticed certain cash and ticketing irregularities during the said check and, therefore, a charge memo was prepared and sought to be served on the petitioner; but, he not only refused to receive the same & give a spot statement but also ran away leaving the bus, cash bag and tickets tray and that, therefore, the bus was taken upto the destination with the help of the driver and then to the Depot. The further case of the Corporation is that the petitioner did not turn up at the Depot till 20.02.2002 and that the

checking officials submitted a special report. Therefore, the petitioner was placed under suspension by order, dated 21.02.2002, and was served with a charge memo on the said date. A charge sheet was also served on him. The charges formulated verbatim read as under:

1. you have failed to issue tickets to three chargeable children who were found alighting without ticket at Sainikpuri having boarded your bus at Mirjalaguda ex stages 3/ 4 to 6/ 7 who belong to a batch of 5 adults despite collecting an amount of Rs.30/- from them at their boarding point itself which constitutes misconduct under Reg.28(vi)(a) & (x) of APSRTC Employees (Conduct) Reg.1963.
2. You have ran away from the spot leaving the cash bag during the course of check which constitutes misconduct under Reg.28(xxxi) of APSRTC Employees (Conduct) Reg.1963.
3. you have failed to acknowledge the charge memo No.A6/ 307437, dated 17.02.2002 and failed to submit your spot explanation on 17.02.2002 which constitutes misconduct under Reg.28(xxxii) of APSRTC Employees (Conduct), 1963.

As the officer of the Corporation is not satisfied with the petitioner's explanation, an enquiry was ordered and an enquiry officer was nominated. The enquiry officer, after conducting an enquiry, submitted a report, dated 02.05.2002, holding that the charges are proved. As the petitioner's explanation, dated 03.06.2002, with comments and objections to the enquiry report was found unsatisfactory and unconvincing, a further show cause notice, dated 03.06.2002, proposing the penalty of removal from service was served on the petitioner. As the further explanation of the petitioner, dated 13.06.2002, to the said show cause notice was also found unsatisfactory, the disciplinary authority/depot manager by his proceedings, dated 15.06.2002, ordered for petitioner's removal from service of the Corporation with immediate effect and further ordered that the suspension period be treated as 'not on duty' for all purposes. The appeal of the petitioner was rejected

by the appellate authority by order, dated 18.07.2002. His review petition was rejected by the Regional Manager, Hyderabad City region, who is the reviewing authority, by proceedings, dated 19.12.2003. Aggrieved thereby the petitioner raised an industrial dispute and filed a claim petition. The same was resisted by the Corporation. On merits, the Labour Court dismissed the claim petition of the petitioner. Aggrieved thereby, the petitioner is before this Court.

4. Learned counsel for the petitioner would submit as follows:

The petitioner did not indulge in any irregularities much less cash and ticketing irregularities. Even though the petitioner gave a detailed explanation, the same was not considered by the officer of the Corporation. When a detailed explanation was offered to the charges, the same ought to have been considered in proper perspective considering the fact that there was heavy rush in the bus on that day. The petitioner was un-necessarily placed under suspension. The enquiry was not conducted in a fair manner and in accordance with established procedure and principles of natural justice. While recording the statements of checking officials and the lady passenger, the petitioner was made to wait outside. The statements were recorded by the enquiry officer in the absence of the petitioner; but, he obtained the signature of the petitioner indicating that the statement is obtained in his presence. The service driver supported the version of the petitioner by stating that he had put his signature on the alleged statements but he did not know the contents of the same. The enquiry officer ignored the statement of the service driver. Even though the petitioner requested for examination of the point controller who was said to have been present while counting the bus cash, the said officer was not examined. No evidence, much less substantial evidence, was adduced to prove the charges. Even the spot explanation and explanation to the charge sheet were not considered in a

proper manner. The findings are recorded by the enquiry officer in a one sided and a mechanical manner. The appellate authority and reviewing authority being officers of the Corporation mechanically confirmed the findings of the enquiry officer and the disciplinary authority. The bus was carrying an abnormal load of 100 passengers at the time of check. No independent evidence was collected at the time of check. The checking officials failed to tally the bus cash with the sale of tickets as per procedure. The names of the passengers concerned and their full addresses were not collected by the checking officials while recording their alleged statements. The petitioner issued five tickets of Rs.4/- denomination to the batch of five passengers. The passengers were not examined during the course of enquiry. The learned Presiding Officer of the Labour Court without properly appreciating the facts, circumstances and evidence erroneously confirmed the findings of the enquiry officer and the other officers of the Corporation. He did not independently consider the facts and evidence but simply endorsed the findings of the officers of the Corporation. The petitioner always discharged his duties to the utmost satisfaction of his superiors and has got an unblemished past record. In any view of the matter, the punishment of removal from service is grossly disproportionate to the charge allegedly proved.

4.1 It is apt to note that the learned counsel for the petitioner argued that in a case where the allegation against the petitioner is that he collected fare from a batch of passengers and did not issue tickets, the best persons to speak about the same would be the passengers and that the non examination of passengers is fatal to the case of the Corporation and that in the absence of examination of passengers, the only evidence that remains is that of the checking officials and that their evidence is self serving and, therefore, there is no legal evidence to hold that the charge is proved. He placed reliance on the following decisions: (i) S.L.NARSAIAH V. ADDITIONAL INDUSTRIAL

TRIBUNAL-CUM-ADDITIONAL LABOUR COURT, HYDERABAD¹. The facts of the cited case show that the allegation against the petitioner is that he collected fare from a batch of 4 passengers but failed to issue tickets; during the enquiry neither the passengers nor the checking officials were examined, but a Controller and Typist were examined though they were not members of the checking team. In that factual background, this Court held that there is no evidence worth its name to prove the charges. (ii) In MD.RASHEED V. MANAGING DIRECTOR, APSRTC, MUSHEERABAD, AND OTHERS², the facts of the case disclose that the graveman of the charge is issuance of used tickets; the enquiry officer after detailed enquiry found that the charges are proved; having regard to the facts and circumstances of the cited case, this Court while setting aside the order of removal directed reinstatement, but, denied back wages and attendant benefits and held that the past service shall be counted only for the limited purpose of retirement benefits. In the considered view of this Court, the cited decisions which turned on the facts of those cases are of no assistance to the petitioner.

5. Learned standing counsel would submit as follows:

The petitioner had a very bad past service record. Punishments of censure on nine occasions; deferment of increments for ten times; and, removal from service on 6.11.1995 and 20.07.2001 were earlier awarded to him. However, he was reinstated on 24.12.2001. Within three months thereafter, he was involved in serious cash and ticketing irregularities in the present case. There were only 30 passengers in the bus. There was no necessity for the five passengers to give any false statement against the petitioner. The petitioner not only refused to attest the passenger's statement but also to give his spot statement and ran away from the spot. The statement of the passenger was attested by the service driver and a co-

¹ 2011 (1) ALD 713

² 2015 (6) ALD 157 (DB)

passenger. Therefore, the charges were formulated. As his explanations given from time to time were found unsatisfactory and unconvincing, eventually, he was removed from service after following the due procedure. The management sufficiently proved the charges by adducing necessary evidence during the course of enquiry. The appellate and reviewing authorities having examined the explanations of the petitioner rightly dismissed the appeal and rejected the review petition having agreed with the findings of the enquiry officer and the penalty imposed by the disciplinary authority. 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 imposing the penalty of removal from service. After due enquiry, when once it was found that the petitioner 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 Labour Court examined the facts, the explanation of the petitioner and also evidence, in detail, and recorded reasoned independent findings while confirming the findings of the enquiry officer and the officers of the department. The Labour Court even examined the proportionality of punishment and came to a conclusion that considering the nature of the charges proved, the punishment of removal from service is appropriate and needed no interference. The Supreme Court time and again observed in various decisions that when once the charges are proved, the punishment of removal from service imposed by the disciplinary authority shall have primacy and shall not be interfered with. The writ petition is devoid of merit and is liable for dismissal.

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

7. Dealing with the charges in seriatim, it is to be noted that the first charge relates to failure to issue tickets to three chargeable children who belonged to a batch of five adults despite collecting an amount of Rs.30/- from them at their boarding point itself; they were found alighting the bus without tickets at Sainikpuri having boarded the bus at Mirjalaguda, ex stages 3/4 to 6/7; the second charge relates to running away from the spot leaving the cash bag during the course of check; and, the third charge relates to failure to acknowledge the charge memo and failure to submit spot explanation. The explanation of the petitioner is to the following effect: "The bus was carrying more than 100 passengers; the batch of five passengers along with three children who were said to have boarded the bus at stage no.3/4 paid only Rs.20/- for their journey but not Rs.30/- as alleged; the requisite ticket fare is Rs.4/- per passenger; therefore, five tickets of Rs.4/- denomination were issued to the five adult passengers; they did not disclose about the three children who are with them by taking advantage of heavy rush in the bus; the checking officials boarded the bus before the stage 6/7, that is, before Sainikpuri stage has reached; even by the time the checking officials entered the bus, the petitioner was suffering from ill health and loose motions; he brought the said fact to the notice of the checking officials; when the checking officials were preparing the charge memo, the petitioner was preparing his spot explanation; they have struck down the spot explanation; they did not issue charge memo on the spot; when there was an emergency because of ill health, the petitioner requested the checking officials to stop the bus for five minutes; while getting down from the bus the petitioner's equipment was taken by the checking officials; when the petitioner returned to the place where he alighted the bus, the bus was not found; on enquiry some passengers revealed that the checking officials took away the bus; being upset with the attitude of the checking officials and in view of his ill health, he went to Tarnaka hospital for treatment; he was

discharged, on 20.02.2002, from the hospital; when he reported at the depot along with fit certificate, he was served with the charge memo.' Per contra, the version of the checking officials is that when the charge memo was prepared and sought to be served on the petitioner at the spot, he refused to receive the same and give a spot statement and ran away leaving the bus, cash bag and tickets tray; the bus was taken up to the destination with the help of the driver and then to the Depot. One Padma, a passenger who boarded the bus at Mirjalaguda was one among the batch of five adults with three children. According to her statement she paid Rs.30/- towards charge but the Conductor issued Rs.4/- denomination tickets to five members of her batch but did not return the balance amount. The driver of the bus gave a spot statement that the Conductor quarrelled with the TTIs and kept the cash bag and ran away from the spot and that the bus cash was counted at ECIL cross roads and it was found to be Rs.101.50 ps and the said statement was attested by the point controller at KG depot. Another passenger submitted spot statement that he boarded the bus at Neredmet cross roads and was bound for ECIL and he has paid Rs.3/- to the conductor and the conductor issued a ticket of Rs.3/- denomination and that at the time when the TTIs exercised the check, the service conductor quarrelled with them and kept the cash bag and ticket tray in the bus and left the spot and that the cash was checked in the ECIL cross roads in his presence and it was found to be Rs.101.50 ps and that the statement was attested by the service driver and point controller. During the enquiry one V.K.Rao, TTI was examined and deposed, in detail, about the check exercised by them and various events.

8. A careful perusal of the material record including the Award of the Labour Court would show that after examination of the facts, relevant evidence and circumstances, the learned Presiding Officer of the Labour Court arrived at the conclusion that the charges are proved and accordingly, confirmed the findings of the Enquiry Officer. This Court, in the facts and

circumstances, does not find any grounds much less valid grounds calling for interference with the concurrent findings of the Enquiry Officer and the learned Presiding Officer of the Labour Court. When once conclusions arrived at by the enquiry officer and the Presiding Officer of the Labour Court are found to be sustainable on facts and the 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 concurrently arrived at by the said officers. In that view of the matter this Court does not find any reason to accept the contentions that the charges are not proved.

9. In the decision in *Union of India v. P. Gunasekaran*³, 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.

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;

³ (2015) 2 SCC 610

- (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.

10. In Divisional Controller, N.E.K.R.T.C. Vs. H.Amaresh, 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 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.

11. On the quantum of punishment, the Supreme Court, in Divisional Controller, KSRTC (NWKRTC) Vs. A.T.Mane⁴, 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.

12. Again in U.P. State Road Transport Corporation, Dehradun Vs. Suresh Pal⁵, 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

⁴ (2005) 3 SC 254

⁵ (2006 (3) LLJ 967(SC) = (2006) 8 SCC 108

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.

13. In Karnataka State Road Transport Corporation Vs. B.S.Hullikatti⁶, the Supreme Court 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.

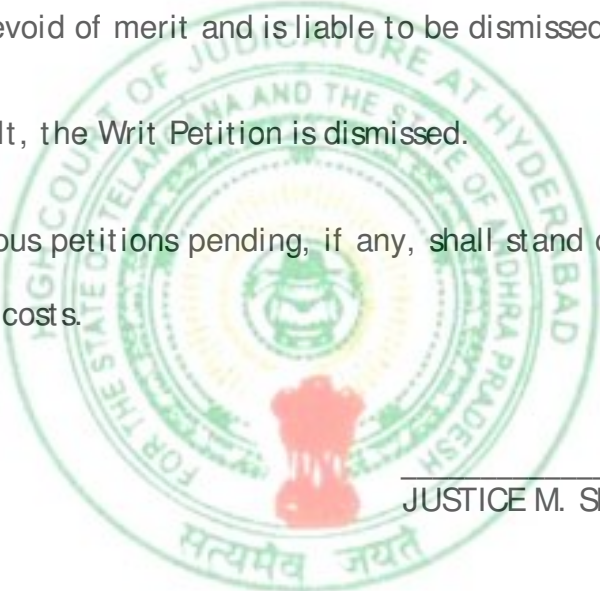
In our opinion, the order of dismissal should not have been set aside, but we are informed that in the meantime the respondent has already superannuated. We, therefore, on the special facts of this case, do not set aside the order of reinstatement, but direct that the respondent would not be entitled to any back wages at all but he would be entitled to the retrial benefits.

⁶ AIR 2001 SC 930

14. This Court already held supra that the finding that the charges are proved does not call for interference. Coming to the quantum of punishment in the case on hand, the learned Presiding Officer of the Labour Court having considered the proportionality of penalty to the gravity of the charges proved confirmed the penalty of removal from service. Considering the graveman of the charges proved, it is manifest that the petitioner-workman has not acted *bona fide* and that his acts of misconduct are of such nature warranting the penalty imposed by the disciplinary authority and confirmed by the Labour Court. On the above analysis, this Court finds that the penalty imposed is not disproportionate to the acts of misconduct held proved and that therefore the writ petition is devoid of merit and is liable to be dismissed.

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

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



JUSTICE M. SEETHARAMA MURTI

25.04.2017
Vjl