THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.21360 of 2006

ORDER:

The petitioner-workman filed this writ petition, under Article 226 of the Constitution of India, having been aggrieved of the proceedings, dated 10.11.2005, of the Divisional Manager, APSRTC, Suryapet Division/2nd respondent. By the said proceedings, the said authority confirmed the findings of the Depot Manager, APSRTC Bus Depot, Suryapet-3rd respondent, *vide* proceedings, dated 01.07.2005, and held that the charge formulated against the workman-petitioner is proved and partly allowed the appeal of the workman and modified the punishment of removal from service to reduction of pay by two incremental stages for a period of two years which shall have cumulative effect on his future increments.

2. I have heard the submissions of Sri V. Narasimha Goud, learned counsel appearing for the petitioner-workman and of Ms.Vladimeer Khatoon, learned counsel representing Sri A. Ravi Babu, learned Standing Counsel appearing for the respondents. I have perused the material record.

3. The facts, in brief, are as follows:

The petitioner-workman worked as a Conductor of Suryapet Depot at the relevant time. On 22.01.2005, while he was conducting a Bus bearing registration No.AP 10Z/4714, on route, Bheemaram-Miryalguda, a check was exercised by the TTIs of HES/NLG. During the course of the said check, it was found that the petitioner-workman issued tickets bearing nos.826/980056 & 567 of Rs.4/- deno.E.2 to two passengers who boarded the Bus at Bheemaram and bound for Suryapet ex-stages 3 to 1 by collecting Rs.4/- each from each of them; but he had not accounted the said tickets as sold out in the STAR no.023/882391. The TTIs had issued a charge memo for the detected cash and ticket irregularities. The petitioner-workman submitted an explanation to the said charge memo. The petitioner-workman was placed under suspension and the following charge was framed against him and his explanation was sought:

> Charge:
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> "For having failed to account the two tickets bearing No.826/980056 & 826/980057 of Rs.4/- deno., in the STAR DOCUMENT bearing No.023/882391, dt.22.03.05 which were issued to the passengers who boarded the bus at stage No.03 i.e., Bheemaram and bound for stage No.01 i.e., Suryapet duly collecting the requisite fare from them and also punched the tickets on stage No.01 to 03 instead of 03 to 01 for giving a scope for reissue of said tickets in UP journey which is a serious misconduct in terms of Reg.28(xxiii) of APSRTC Employees (conduct) Reg.1963."

Thereafter, the Chief Inspector (Enquiries), RM's Office, Nalgonda, conducted enquiry and submitted a report, dated 03.06.2005, with his findings. The petitioner-workman submitted his objections and comments to the said report *vide* his explanation dated 27.06.2005. The 3rd respondent-Depot Manager by his proceedings, dated 01.07.2005, issued orders of removal of the petitioner-workman from service with immediate effect. Aggrieved thereof, the petitioner preferred an appeal to the Divisional Manager-2nd respondent herein. As already noted, while allowing the appeal in part the punishment of removal from service was set aside and a reduced punishment of reduction of pay by two incremental stages for a period of two years which shall have cumulative effect on his future increments was imposed. Aggrieved thereof, the present writ petition is filed by the writ petitioner-workman. Nevertheless it is to be noted that the writ petitioner-workman's review petition was rejected by the Regional Manager, Nalgonda, by his proceedings dated 21.03.2006.

4. The case of the writ petitioner and the submissions made on his behalf, in brief, are as follows:

Though the enquiry officer recorded a finding that the charge formulated against the petitioner-workman was proved and the Depot Manager passed orders of removal from service, the appeal preferred before the 2nd respondent was allowed on 10.11.2005 and the said authority while setting aside the orders of punishment of removal from service directed reinstatement of the petitioner-workman into service and imposed a punishment of reduction of pay by two incremental stages for a period of two years with cumulative effect by duly treating the removal period as not on duty. By virtue of the said punishment, the petitioner suffered not only reduction of pay by two incremental stages permanently but also loss of incremental benefit for the punishment period as well as the loss of service for the removal period and there was consequently loss of more increments. Therefore, the punishment imposed was too harsh when compared to the gravity of the misconduct alleged against the petitioner. Review petition filed before the 1st respondent was dismissed confirming the orders of the 2nd respondent. As per the charge formulated two passengers were found travelling with tickets of Rs.4/- denomination from stage 3 to 1 and those tickets were punched in the reverse at stage nos.1 to 3 instead of at stage nos.3 to 1. The petitioner offered an explanation that the said wrong punching was due to inadvertent mistake and that he did not notice the said mistake till the checking officials pointed out the same. However, a charge was framed against the petitioner. In response to the charge framed against the petitioner, he submitted an explanation to the said charge stating that Reg.28 (xxiii) of the APSRTC Employees (conduct) Reg.1963 is not attracted. All the passengers in the Bus were travelling with valid tickets is not in dispute. The Depot Manager in his proceedings dated 01.07.2005 categorically found that the explanation is supporting the version of the delinquent, that is, the writ petitioner. The petitioner having issued tickets of Rs.4/- denomination to two passengers could not account in the SR upto stage no.1 though a ticket of Rs.4/- denomination issued to another passenger at stage no.3 was accounted for before closing the SR and therefore it reveals that the said two passengers whose tickets were not accounted for have boarded the bus after closing the SR. There was no re-issuance of the tickets by the petitioner and two tickets are only unaccounted. There is no scope at all to reissue the tickets in question if the on duty controller at Suryapet bus station closes the SR as per circular instructions. Merely because two tickets were not accounted for in the SR and that the same were punched in the reverse and that on the Controller at Suryapet bus station not closing the SR, there is a scope for reissue of the said tickets in the next trip from Suryapet to Bheemaram, ex-stages 01 to 03, no charge can be framed on mere conjectures more particularly when the two passengers concerned have not stated that the petitioner instructed them to return the tickets at the completion of their journey. On mere assumptions that there is a possibility to reissue the unaccounted tickets in the next trip, the petitioner-workman cannot be held guilty on pure conjectures and hypothesis. There would be no possibility to reissue the tickets unless there is an arrangement with the ticket holders for return of the tickets; and even in such a case there would be no possibility to reissue the said tickets provided the controller at Suryapet bus station closes the STAR. Therefore, the charge levelled is far fetched. Even according to the findings of the appellate authority in his proceedings, dated 10.11.2005, the workman by that time has put in more than ten years of service and during his said entire service there is no stigma or complaint from any quarter and the alleged incident is the first incident. Further, the petitioner was appointed under Bread Winner Scheme and was maintaining a clean record through out his service. Unless the authority is of the view that 'there is no loss of trust or faith in the employee' he would not have ordered reinstatement by setting aside the penalty of removal from service. Therefore, it is not the case of the department that the management lost trust or faith in the petitioner. When the explanation insofar as the two tickets unaccounted for, is accepted by the Depot Manager, the petitioner ought to have been acquitted of the charge. Therefore, the impugned proceedings are liable to be quashed.

5. Per contra, learned Standing Counsel would contend as follows:

The charge was duly proved and the enquiry officer having accepted the evidence adduced by the management recorded a finding that the charge formulated is proved and submitted a report; and on that the Depot Manager issued proceedings for removal of workman from service as the charge proved and the misconduct of the conductor-workman justified removal from service. In cases of this nature, where employee is found guilty of misappropriating the corporation funds there is nothing wrong in the appellate authority imposing the modified punishment. The workman gave inconsistent versions in his explanation to the charge memo and in the review petition filed before the reviewing authority. In his explanation he stated that the third ticket issued to a third passenger was accounted for properly before closing the

SR but he did not account for the other two tickets issued to the two other passengers who boarded the bus at the same stage as the said two passengers boarded the bus after closing of the SR whereas in his review petition he stated that after passing Bheemaram stage two passengers raised their hands to stop the vehicle and that the service driver stopped the vehicle as per rules in force and that after boarding the vehicle he has issued tickets to the said passengers after prolonged discussion as one of the passengers gave Rs.500/- rupee note for the requisite fare of Rs.4/- and that in the meanwhile the checking officials have stopped the vehicle and that no irregularity other than not accounting for two tickets was detected. He has not only not accounted for the two tickets, but, also reverse punched the two tickets with a view to reissue the tickets in the return journey. Therefore, the charge is un-accounting of the fare collected from the two passengers, which involved financial embezzlement. When the disciplinary authority based on the evidence came to a particular conclusion and the appellate authority confirmed the said orders, the writ petition seeking to quash the said orders is not maintainable. In-fact before the appellate authority who passed the impugned proceedings only a plea to consider his case on humanitarian grounds was raised on the ground that he was the sole bread earner of the family, but, he did not challenge the findings recorded by the enquiry officer. When once the charge proved is one involving misappropriation of money, then the loss of confidence becomes the primary factor to be taken into consideration; since the petitioner is found guilty of charge involving financial embezzlement/ misappropriation of Corporation funds, he is not entitled to any sympathy or mercy. Hence, the writ petition may be dismissed.

5.1 In support of the said contentions, she placed reliance on the following two decisions: (1) UPSRTC v. Mahendra Nath Tiwari and another[1]; and (2) Divisional Controller, KSRTC (NWKRTC) v. A.T. Mane[2].

6. From the facts & submissions and the graveman of the charge, it emerges that the misconduct as stated in the charge has two parts.

6.1.1 The first part relates to issuance of tickets of Rs.4/- denomination to two passengers from Bheemaram to Suryapet, ex-stages 3 to 1 but not accounting in the SR upto stage no.1; and issuance of a ticket of Rs.4/- denomination at stage no.3 before closing the SR and accounting it properly. On this aspect, the proceedings dated 01.07.2005 of the Depot Manager, who passed the orders of removal of the workman from service are verbatim as follows:

> 'On verification of the STAR No.023/882391, it is found that the delinquent had closed the Rs.4/- den., ticket number as 056 against stage no.2 duly showing one ticket issue and same number was closed against stage no.1 also. But, as per the closing of TTIs, it is 058 at stage no.2/1.
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> From the above it is clear that the delinquent had issued tickets of Rs.4/- den., to two passengers from Bheemaram to Suryapet, ex-stages 3 to 1, but not accounted in the SR upto stage no.1. It is also clear that the delinquent had issued a ticket no.826/980055 of Rs.4/- den., at stage no.3 before closing the SR and accounted it properly which reveals that the said two passengers have boarded the bus after closing the SR and it is supporting the version of the delinquent.'

6.1.2 Thus, insofar as this part of the charge, the Depot Manager himself stated that the two passengers to whom the tickets were issued after collecting Rs.4/- each have boarded the Bus after closing the SR

[1] AIR 2006 SC 405
[2] (2005) 3 SCC 254

and the facts support the version of the delinquent/workman. Therefore, when the explanation on the said aspect of the graveman of the charge is acceptable and is plausible, the accusation in the said part of the charge cannot be termed as a misconduct. Having held so, the Depot Manager ought not to have discarded the version of the delinquent which was accepted as one supporting the delinquent and ought not to have further accepted the accusation in that part of the charge.

7. Coming to the other part namely reverse punching of the tickets, which was noticed at the time of check, be it noted that the delinquent did not indulge in any further acts except reverse punching and not account for the tickets. However, the version of the delinquent for not accounting for the tickets is found acceptable by the Depot Manager as already noted. Therefore, what remains for consideration is the reverse punching of the tickets. It is not the case of the Corporation and it is also not established that the workman entered into an arrangement with such passengers whose tickets are reverse punched to collect the same from them at the time of the said passengers alighting the Bus, for the purpose of re-issuance of the said tickets in a future trip to cause financial loss to the Corporation and gain for himself. Further, the charge of misconduct appears to be dealing with a future situation whereby the use of reverse punched tickets in a future trip by the workman/conductor is likely to result in financial loss to the Corporation. Thus, mere reverse punching of tickets did not result in loss to the Corporation. Financial loss would ensue to the Corporation if only the reverse punched tickets, which were issued to the passengers, are collected back by the Conductor at the time of the said passengers alighting the bus and are issued to some other passengers in a future

trip. Further, mere collection of the reverse punched tickets from the passengers at the time of the passengers alighting the bus itself does not facilitate the re-issuance of the said tickets in future trip by the workman conductor as such re-issuance of reverse punched tickets would be impossible provided the Controller at Suryapet Bus station closes the SR. Therefore, the possibility of the workman/conductor re-issuing the tickets in the next trip from Suryapet to Bheemaram, ex-stages 1 to 3 is dependant upon certain contingencies namely, (1) collection of the reverse punched tickets from the passengers at the time of the said passengers alighting the bus; and (2) the Controller at Suryapet Bus station not closing the SR. In the case on hand, only the act of reverse punching of the tickets was only noticed at the time of check. Therefore, the Conductor/workman did not indulge in any further act of re-issuing the reverse punched tickets. Thus, this part of the graveman of charge is dealing with the first stage of preparation namely reverse punching of tickets, which has a probability or likelihood of the conductor committing further acts in future which may amount to misconduct and which may result in financial loss to the Corporation. Mere reverse punching of the tickets without the commission of any further acts and mere likelihood of commission of further acts depending upon the contingencies associated with such acts, in the considered view of this Court, is not a crystallised misconduct. Whenever tickets are reverse punched, the further acts can be committed if only on the happening of the events, that is, the contingencies stated supra, which may or may not happen. Further, the Controller, Suryapet Bus station not closing the SR is not an event within the control of the workman/conductor. Hence, even if the conductor/workman collects the reverse punched tickets from the passengers at the time of the passengers alighting the bus, the conductor would not be in a position to re-issue such tickets provided the Controller at Suryapet Bus station closes the SR. Therefore, there is a scope for re-issuance of the reverse punched tickets in the next trip on the happening of certain contingencies including a future event which is not in the control of the workman/conductor cannot be termed as misconduct without the happening of the contingent events. Therefore, mere reverse punching of the tickets, which are unaccounted for in the SR, may at best amount to the first stage of preparation for committing further acts of misconduct and hence, on mere conjectures or the assumptions that this act of preparation is committed with a view to reissue tickets on the happening of the contingent events does not amount to misconduct per se for framing a charge and finding the workman guilty. Mere planning and preparation for performing acts of misconduct, which are possible, cannot be a misconduct as acts which constitute misconduct have not yet been performed and as such acts which constitute misconduct are contingent in nature. Therefore, in the considered view of this Court, the findings of the enquiry officer which were confirmed by the appellate authority and review authority are unsustainable and are, therefore, liable to be set aside being arbitrary and capricious since influenced by irrelevant and extraneous considerations and being based on surmises and conjectures.

8. Before proceeding further, it is apt to note that in the decision in UPSRTC (1st supra), the conductor was found in possession of 12 used tickets and that no ticket was issued to a passenger who was also in possession of a used ticket. In the decision in Divisional Controller, KSRTC (2nd supra), the delinquent employee was found having possession

of Rs.93/- which was in excess of the sale of tickets, which is only possible if only he collected fare of tickets without issuing tickets or having collected correct fare issued tickets of lesser denomination to the passengers. Therefore, both the decisions, on facts, are distinguishable and are not helpful to the Corporation more particularly in the light of the fact that in the case on hand there is valid explanation for the first part of the charge and the accusation in the second part of the charge is not with regard to a crystallised misconduct but is in regard to certain acts of preparation and planning, which may amount to misconduct on the happening of certain contingent events. Further, a responsible officer of the Corporation has set aside the punishment of removal from service; the same indicates that the Corporation has not lost its trust and faith in the writ petitioner-workman.

9. It is apposite to note that the learned counsel for the workman relied upon a decision in Rajastan State Road Transport Corporation and another v. Bhik Nath[3] wherein the facts would indicate that the workman has not issued tickets to 3/2 passengers and the explanation given by the workman sufficiently proved that he has given reasons for not having issued tickets by the time the checking staff came for checking and that the workman had no intention to defraud the Corporation. That finding of fact based on material on record was accepted by the enquiry officer, the labour Court and the Division Bench of the High Court. Therefore, the Supreme Court confirmed the said finding.

10. Dealing further with the second part of the charge related to reverse punching of the ticket and not accounting for the same, it is apt

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[3] (2005) SCC (LS) 273

to refer to the decision in G. Chandrakanth v. Guntur Dist.Milk Producers' Union Ltd.,[4] wherein the facts show that a charge framed did not constitute misconduct within the meaning of the bye-laws. Therefore, this Court held that planning to do a thing is different from doing that thing and that what was alleged against the workman in that case is only a plan to deliver certain goods to a contractor expecting some bribes and that such acts do not constitute misconduct. The principle in the decision squarely applies to the facts of the case though it is dealing with a case of bribe. In the case on hand, the mere reverse punching of tickets and not accounting for the same can at best be termed as an act which is in the nature of preparation and planning for committing future acts, which on the happening of future events, if committed, may amount to misconduct. Therefore, as rightly contended, mere such preparation and planning to do a thing dependant upon certain contingencies cannot be termed as a misconduct.

11. This Court is conscious of the fact that this Court is not a second court of first appeal and also the fact that the scope of interference in exercise of powers under Article 226 and 227 of the Constitution is limited. However, in the case on hand, this Court already found that the findings of the enquiry officer and the Labour Court are arbitrary and capricious and are influenced by extraneous and not relevant considerations. Hence, this Court is of the considered view that interference in a case of this nature is called for in view of the precedential guidance in the decision of the Supreme Court in Union of India v. P. Gunasekaran[5].

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[4] 1994 (2) ALT 253
[5] (2015) 2 SCC 610

12. On the above analysis, this Court finds that the Corporation failed to prove any misconduct, which warrants imposition of penalty that was imposed by the appellate authority.

13. In the result, the writ petition is allowed. As a sequel, the orders of the appellate authority and the disciplinary authority are set aside and the petitioner is found not guilty of the charge formulated against him and is exonerated of the said charge. However, this Court finds that this is a fit case to deny back wages on the principle of no work and no pay. The Corporation is accordingly directed to reinstate the petitioner; however, without any back wages from the date of termination till the date of reinstatement but, with continuity of service and other monetary and attendant benefits.

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

M.SEETHARAMA MURTI, J

27.02.2017
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