HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

WRIT PETITION No.14712 of 2009

ORDER :

Heard learned counsel for the petitioner and learned Standing Counsel for the 1st respondent Corporation.

2. The petitioner was appointed as a conductor and when he was working in Bus No.AP 10 Z 3835 from Vijayawada to Visakhapatnam, on 06.09.2004, a check was conducted at Stage 18/17 and in the bus out of 50 passengers, it was noticed that a woman and a boy were not in possession of tickets. The statement of the conductor and the passenger were recorded by the squad on the spot. The lady passenger stated that she paid a sum of Rs.197/- towards fare for one and half ticket up to Anakapally (Ex-stage No.3) while boarding the bus at Vijayawada, but the conductor did not issue tickets. The petitioner accepted the same in his statement and explained that the tickets were not issued by oversight. Thereafter, the petitioner submitted a representation on 14.09.2004 to the Depot Manager stating that the lady passenger was issued with proper tickets and she could not find out the tickets at the time of check and she stated falsely to the squad. The petitioner further stated that after the squad left the bus he along with the driver traced the tickets in front of the lady passenger except a ticket of Rs.6/- denomination and that those tickets were sold at Vijayawada, and, therefore, he did not commit any mistake. However, having not satisfied with the explanation, the following charges were framed against the petitioner.

<u>Charge No.1:</u>

"For Having failed to issue ticket to a lady passenger and once chargeable child (ex-stage No.18 to 3) i.e., from Vijayawada to Anakapalle even after collecting fare of Rs.197/- towards fare of 1 ½ tickets, while you were conducting the vehicle No.3954 on route Vijayawada to Visakhapatnam on 06.09.2004, which amounts to misconduct under Reg.28(ix)_(a)&(x) of APSRTC Employee's (conduct) Reg 1963."

<u>Charge No.2:</u>

"For having remitted short of Rs.197/- willfully, on return to depot though you have committed that you have not issued tickets even after collecting requisite fare as per your spot explanation which is a misconduct under Reg.28(x) of APSRTC Employee's (conduct) Reg.1963".

3. A regular departmental enquiry was conducted, wherein the evidence of Travelling Ticket Inspector and Assistant Depot Clerk were recorded. The petitioner did not cross-examine those witnesses. The Assistant Depot Clerk categorically stated that the petitioner deposited Rs.7,602/- instead of Rs.7,799/- i.e., short of Rs.197/-. The lady passenger gave evidence stating that for the fare paid by her, the conductor issued tickets at boarding point and she lost the tickets, but she did not state the said fact to the squad. The Enquiry Officer recorded a finding that the charges were proved. The Depot Manager issued order of termination, by proceedings, dated 29.01.2005. Challenging the order of termination, the petitioner filed I.D.No.104 of 2007 and the Labour Court dismissed the said dispute by its award, dated 21.05.2009. Against the said award, the above writ petition is filed.

4. Learned counsel for the petitioner submits that the Labour Court erred in not taking into consideration the evidence given by the lady passenger before the Enquiry Officer and hence urged to quash the award passed by the Labour Court.

5. The Labour Court in support of its award, dated 21.05.2009, dismissed the dispute and gave the following observation:

> "As the domestic enquiry is legal and valid even according to the petitioner, the court cannot upset the finding of fact (vide ***M/s.Tata Engineering and Locomotive Co.Ltd. Vs. N.K.Singh, 2006 (111) FLR 1187).*** However, a reference to the Enquiry Officer's report would reveal that he ignored the evidence of lady passenger for a sound reason because she had stated earlier that she paid the fare of Rs.197/- but conductor did not issue tickets to her. There is no perversity in the appreciation of the evidence. So far as theory of tracing of tickets subsequent to the check by the Squad is concerned, the petitioner had forwarded the copies of those tickets only on 14.9.2004 along with Ex.M8 to the Depot Manager, whereas the check was held on 6.9.2004. Why he kept quite for all these days is unknown. The fallacy in the petitioner's contention is to be demonstrated from the fact that in spite of his tracing tickets soon after the check he had remitted cash short of Rs.197/- in the Depot. Tracing tickets would mean, he must have collected the cash of Rs.197/- which must be available in his bag and in such a case he must have remitted full cash at the depot. It otherwise goes to show that the tickets are not traced by him, before the cash is remitted as propounded by him in his evidence and in Ex.M8. The tickets secured by him must have been issued to some other passenger, from whom the petitioner must have collected some time later, to save his skin. This probability as submitted by the Law Officer, in the course of arguments, cannot be ruled out.

For the afore said reasons I find that there is no force in the contention of the petitioner, in order to upset the finding of fact regarding his misconduct. This point is answered against the petitioner.

It is a case where the conductor had collected money but did not issue tickets. Had there been no check the petitioner would have pocketed that money which is the legitimate income of the Corporation. A conductor occupies in the Corporation a place of trust. That is the reason why the Judicial precedents in ***UPSRTC Dehradun Vs. Suresh Paul 2006 LLR 1267 and Uttaranchal Transport Corporation Vs.Sanjay Kumar Nautiyal 2008 LLR 673,*** the Supreme Court held that, showing misplaced sympathy to a dishonest conductor who has misappropriated the money by receiving fare from the passengers but not issuing tickets is unsustainable and that dismissal is proper punishment. The principles of law and facts in those cases are almost similar to the fact on record."

6. The petitioner filed a memo on 09.04.2009 before the Labour Court reporting no objection to the domestic enquiry proceedings. As stated above, the petitioner did not avail the opportunity of cross-examining the witnesses before the Enquiry Officer. Thus, the evidence before the Enquiry Officer remained un-rebutted. Even though the petitioner at belated stage stated that the tickets issued were found, but from the fact that he did not deposit the amount of Rs.197/-, clearly shows that he did not issue the tickets. These facts were taken into consideration by the Labour Court while dismissing the I.D. The petitioner was aged about 49 years when he filed the present writ petition in 2009 and eight years have elapsed since then.

The Enquiry Officer's report is found to be proper by the Labour Court and accordingly dismissed the I.D. I am in agreement with all the reasons recorded by the Labour Court.

7. Accordingly, the writ petition is dismissed.

8. Miscellaneous Petitions pending, if any, shall stand closed. No costs.

A. RAMALINGESWARA RAO, J

28th June 2017.

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