

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

WRIT PETITION No.4593 of 2006

ORDER:

The unsuccessful respondent Corporation filed this writ petition, under Article 226 of the Constitution of India, assailing the Award dated 03.08.2005 of the learned Chairman-cum-Presiding Officer, Industrial Tribunal-cum-Labour Court, Anantapur, ('the Labour Court', for short) passed in I.D.No.94 of 2002.

2. I have heard the submissions of the learned Standing Counsel appearing for the writ petitioner. The 1st respondent is the Labour Court. The 2nd respondent-workman though served with the notice has not entered appearance and none appears for him. I have perused the material record.

3. The admitted facts are as follows:

The 2nd respondent-workman was conducting the bus of the Corporation on 09.02.2000 on route Adoni-Chennai. While so, a check was conducted by the checking officials at stage no.7, Yadiki. During the check the checking officials were said to have detected certain cash and ticket irregularities. In view of the said misconduct the following charges were framed against the 2nd respondent-workman:

“(i) For having reissued one ticket bearing No.419/552836 of Rs.6/- denomination in combination ticket of Rs.4/- denomination to a passenger towards his journey from Gooty to Yadiki, Ex-stages 6 to 7 which was actually Rs.6/- denomination at stage No.3 in the SR.No.A5/8840677 dt.09.02.2000 maintained by you which constitutes misconduct in terms of the clause (xxiii) of Regulations 28 of APSRTC Employees (conduct) Regulation, 1963; and

(ii) For having reissued one ticket bearing No;866/802236 of Rs.10/- denomination in combination ticket of Rs.100/- to a passenger towards his journey from Gooty to Tirupathi, Ex.stages 6 to 17 which was actually and accounted the sale of ticket of Rs.10/- denomination at stage no.3 in the SR.No.A5/8840677 Dt.9.2.2000 maintained by you which constitutes misconduct in terms of Clause (xxiii) of Reg.28, APSRTC Employees (conduct) Regulations, 1963.”

An enquiry was conducted. The 2nd respondent/workman was found guilty by the Enquiry Officer and he was eventually directed to be removed from service. On a reference of the dispute, the subject ID was taken on file by the learned Presiding Officer of the Labour Court and by the Award impugned in this writ petition, the order of removal of petitioner from service was set aside and the 2nd respondent-workman was directed to be reinstated into service by the Corporation. However, it was further held that the workman shall be entitled for continuity of service and attendant benefits but without back wages. Aggrieved thereof, the Corporation filed this writ petition.

4. Learned Standing Counsel for the Corporation would contend that the Enquiry Officer after due enquiry found that the charges levelled against the workman are proved and that the learned Presiding Officer of the Labour Court also found that the domestic enquiry is valid and that the charges are also proved by bringing on record the necessary standard of evidence but un-necessarily interfered with the punishment of removal which was rightly imposed as the Corporation lost the trust and confidence in the workman and that therefore the Award insofar as modifying the punishment is liable to be set aside. He would further submit that the workman-conductor held the post of trust and that when once there is a breach of trust such workman is not entitled to any sympathy or mercy and that the learned Presiding Officer failed to see that in a catena of decisions, this Court and the Supreme Court time and again held that when once the charges are proved and a punishment is awarded keeping in view the proportionality of the charges, the same is not liable for interference. He therefore prayed for allowing the writ

petition and restoring the order of removal of the workman from service.

5. At the hearing, reliance was placed on a decision of the Supreme Court in *Union of India v. P. Gunasekaran*¹ wherein 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.”

There is no dispute with the legal proposition.

5.1 In *Divisional Controller, N.E.K.R.T.C v. H. Amaresh*,² the Supreme Court while holding that where the charge was proved in domestic enquiry, the punishment of dismissal from service awarded by disciplinary authority, does not call for interference by the Labour Court

¹ (2015) 2 SCC 610

² (2006) 6 SCC 187

or the High Court had accordingly set aside the order of reinstatement passed by High Court.

6. In the decision in K.V.S. Ram v. Bangalore Metropolitan Transport Corporation³, the Supreme Court held that when the Labour Court exercises its discretion keeping in view the facts of a case and cases of similarly situated workmen, the High Court ought not to have interfered with the exercise of discretion by the Labour Court more particularly when the Award of the Labour Court does not suffer from any flaws. It is also held that it is settled proposition of law that while considering the management's decision to dismiss or terminate services of a workman, the Labour Court can interfere with the decision of the management only when it is satisfied that the punishment imposed by the management is highly disproportionate to the degree of guilt of the workman concerned and that once the Labour Court has exercised the discretion judiciously the High Court can interfere with the Award only if it is satisfied that the Award of the Labour Court is vitiated by any fundamental flaws and that while interfering with the Award of the Labour Court, the High Court has to keep in view the parameters laid down by the Supreme Court for exercise of jurisdiction by the High Court under Article 226 and/or 227 of the Constitution of India. As already noted, the facts borne out by the material record reflect that in the domestic enquiry as well as in the enquiry before the Labour Court, the charges were held proved; however, the Labour Court exercising its discretion modified the punishment and directed reinstatement of the 2nd respondent-workman into service, *inter alia*, holding that the workman would be entitled to continuity of service and attendant

³ ARI 2015 SC 998

benefits but without back wages. The learned Presiding Officer of the Labour Court while exercising his discretion interfered with the measure of punishment and modified the punishment imposed by the management. Be that as it may. The employee was of 51 years of age as on the date the dispute was referred to the Industrial Tribunal-cum-Labour Court. From the said age stated therein it is clear that by now he is retired from service having been reinstated pursuant to the orders of the Labour Court. Further, on 09.03.2006, this Court while dismissing the suspension petition observed that 'it is needless to state that the order of reinstatement shall be subject to the result of the writ petition and any other benefits he may be entitled to will also be subject to the result of the writ petition.' It is not in dispute that after reinstatement, the petitioner discharged his duties satisfactorily and without any complaints from any quarter.

7. Having regard to the peculiar facts and the legal position stated, this Court at this distance of time does not find any strong reason to interfere with the measure of punishment imposed in the Award of the Labour Court.

8. Viewed thus, this Court finds that the Award does not call for any interference at this stage and that the writ petition is liable to be dismissed.

9. 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.

M. SEETHARAMA MURTI, J

24-01-2017
Vjl