

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.4974 of 2006

ORDER:

This writ petition, under Article 226 of the Constitution of India, by the petitioner/conductor, is directed against the Award, dated 31.07.2003, of the learned Presiding Officer, Labour Court, Guntur, passed in I.D.No.261 of 2001.

2. I have heard the submissions of Sri P.Govindarajulu, learned counsel for the writ petitioner and of Sri P. Durga Prasad, learned Standing Counsel for APSRTC representing the respondents. I have perused the material record.

3. The chronology of events upto the stage of the award, as borne out by the record, in brief, is as follows:

'The petitioner was appointed as a conductor in the respondents-Corporation in October, 1985, and his services were regularised with effect from 01.07.1986. At the relevant time he was working as Conductor in Machilipatnam Depot. On 13.09.1992, while he was conducting the bus belonging to the respondent Corporation on the route Machilipatnam – Illuru, a check was exercised by the checking officials at the alighting point of the bus. During the course of check, the checking officials found that the petitioner punched all the tickets issued by him at two places instead of at four places. On that, the checking officials have instructed the petitioner to follow the circular instructions and punch the tickets at four places. The checking officials have also made an

endorsement to that effect on the backside of the S.R., of the petitioner. When the checking officials have again exercised a check on the same bus in the second trip, it was again observed that the petitioner has punched the tickets at two places instead of at four places. When the checking officials questioned the petitioner about the same, the petitioner gave an evasive reply. Further, in the third trip, the Depot Manager, Vuyyuru Depot, travelled in the bus and advised the petitioner to punch the tickets at four places; but, the petitioner did not oblige and follow the said advice and replied in an arrogant manner. Therefore, a charge memo was issued to the petitioner by the checking officials and spot explanation was obtained from the petitioner. On that, the petitioner provoked the passengers in the bus against the checking officials. The Checking officials submitted their report to the second respondent/Depot Manager, who, upon satisfying himself that there is a *prima facie* case against the petitioner, issued orders, dated 23.09.1992, placing the petitioner under suspension and issued charge sheet to the petitioner with the following charges:

- “1. For having punched two places, i.e., 4 and 6 instead of four punches, i.e., 04 and 06 on the tickets issued to the passengers, who boarded the bus at Kuchipudi and bound for illuru, i.e., Ex.stages 4 & 6 on 13.09.1992, which is contravention to the instructions contained in the Circular No.42/ 87-OPD (T) dated 16.09.1987.
2. For having failed to comply with the instructions of the TTIs which were endorsed on the relevant S.R.
3. For having behaved un-ruly with the TTIs in presence of the passengers while they were performing their duties.
4. For having provoked the passengers against the TTIs on 13.09.1992 which constitutes misconduct under Reg.28 (xxxii).

(Reproduced verbatim)

The petitioner challenged the suspension order by filing O.S.No.225 of 1992 before the Principal District Munisif, Machilipatnam. Along with the said suit, the petitioner also filed IA.no.1806 of 2002 for consequential interim injunction praying for suspension of the operation of the charge sheet and the orders of suspension, dated 23.09.1992. The said petition was dismissed. CMA.No.101 of 1993 preferred against the said orders before the District Judge, Machilipatnam, is pending. Meanwhile, the petitioner was advised to report before the Enquiry Officer, on 24.06.1993 at 10:00 AM for enquiry. As the petitioner failed to attend the enquiry, the Enquiry Officer, duly appointed, conducted an *ex parte* enquiry and submitted his report to the second respondent/Depot Manager. Having satisfied with the enquiry report, the Depot Manager issued a show cause notice, dated 10.12.1993, to the petitioner directing him to show cause as to why he shall not be removed from service. To the said show cause notice, the petitioner submitted his explanation, on 23.12.1993. Not being satisfied with the explanation offered by the petitioner, the second respondent/Depot Manager passed order, dated 31.12.1993, removing the petitioner from service. Thereafter, the petitioner raised an Industrial Dispute by filing a claim petition. The said claim petition was resisted by the Corporation. On merits and by the Award impugned in this writ petition, the learned Presiding Officer of the Labour Court, by setting aside the order of removal of the petitioner from service directed his reinstatement with continuity of service, but without back wages, increments and all other attendant benefits and further modified the punishment to that of withholding of two annual increments with cumulative effect. Aggrieved of the deferment of two annual

increments with cumulative effect, stoppage of back wages and denial of all other attendant benefits, the petitioner is before this Court.'

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

After exercising a check on 13.09.1992, the checking officials issued a charge memo dated 13.09.1992 with two charges alleging that the petitioner did not properly punch the tickets. Later, the petitioner was placed under suspension and a charge sheet was issued on 23.09.1992 with four charges. However, an *ex parte* enquiry was conducted. After issuance of a show-cause notice for removal from service, the final orders, dated 31.12.1993, were passed removing the petitioner from service. The petitioner filed W.P.No.19621 of 1993 challenging the same. This Court, by its order, dated 21.09.2001, directed the petitioner to approach the Labour Court. The Labour Court without granting the relief sought for in the claim petition, only modified the penalty of removal from service to one of reinstatement with continuity of service but did not grant back wages, attendant benefits, and imposed a penalty of deferment of two annual increments with cumulative effect. The Labour Court was in error in not granting all the reliefs. The Labour Court did not appreciate the facts correctly and the legal position in proper perspective. The Labour Court ought to have seen that there are no instructions given to the petitioner to punch the tickets at four places. The Labour Court ought to have seen that the Corporation could not produce any record to show that the petitioner was required to punch the tickets at four places. The Labour Court

erroneously held that the petitioner admitted his misconduct. The charges are not proved. In any view of the matter, the denial of back wages and attendant benefits and penalty of deferment of two annual increments with cumulative effect is highly disproportionate to the allegedly proved misconduct. The petitioner was victimised by the management. Though several other workmen were charge sheeted along with the petitioner, the petitioner alone was found guilty of the charges and was removed from service.

5. The case of the respondent Corporation and the submissions made on its behalf, in brief, are as follows:

The removal orders were passed on 31.12.1993. The petitioner raised an industrial dispute and filed the claim petition before the Labour Court in the year 2001, i.e., after lapse of seven years. The Presiding Officer of the Labour Court while setting aside the removal orders modified the punishment to one of withholding of two annual increments with cumulative effect and directed reinstatement of the petitioner into service with continuity of service but without back wages and other attendant benefits. During the service of the petitioner, he was awarded with the following punishments (i) censure 2 times; (ii) deferment of annual increments 2 times; and, (iii) removal order one time. The Presiding Officer of the Labour Court has taken a lenient view and modified the capital punishment of removal from service and awarded a lesser punishment out of mercy and generosity. When once the charges are held proved, the Labour Court is not justified in setting aside the order of removal from service and imposing a lesser penalty. The

Conductor holds a post of trust and when once there is a breach of trust, such workman is not entitled to sympathy or mercy. 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 either by the Labour Court or this Court. However, the Corporation did not assail the award of the Labour Court though the punishment was modified. In any view of the matter, the penalty imposed by the Labour Court is not disproportionate to the gravity of charges held proved. The misconduct is of grave nature. The petitioner was repeating the same conduct despite advice and fore warning. He even exhibited violent behaviour towards the checking officials and provoked the passengers against the checking officials and resorted to acts of indiscipline. Hence, the writ petition, which is devoid of merit, may be dismissed.

6. At the hearing, the learned counsel for the petitioner while reiterating the pleaded case of the petitioner relied upon the decision of this Court in J.Durgappa v. Industrial Tribunal-cum-Labour Court, Ananthapur¹, in support of the proposition that despite the fact that the findings of the Enquiry Officer that the charges are held proved are accepted by the Labour Court, this Court can examine the merits of the case and find out whether the findings are based on evidence available on record or are vitiated by perversity.

¹ 1996 (1) ALT 18

7. Turning to the facts of the case, it is to be noted that two charges are formulated against the petitioner for punching the tickets issued to the passengers at two places instead of four places in contravention of the instructions contained in the circular No.42/87-OPD (T) dated 16.09.1987 and for his failure to comply with the instructions of the TTIs, which were endorsed on the SR. Two other charges framed relate to indiscipline and misconduct, namely, unruly behaviour towards TTIs in the presence of the passengers, while they were performing their duties and provoking the passengers against them. When the checking official finally noted the repeated misconduct with regard to not punching the tickets at four places, the petitioner was served with a charge memo and later a charge sheet, as there was a *prima facie* case to initiate an enquiry. The Enquiry Officer nominated to conduct the enquiry sent two notices to the petitioner, but they were returned un-served with the endorsement 'no such addressee'. The notice finally sent was received by the wife of the petitioner; but the petitioner failed to attend the enquiry. The petitioner filed a civil suit in the Court of the Junior Civil Judge, and took a stand that he would attend the enquiry after disposal of the suit. In the circumstances, an *ex parte* enquiry was conducted. On the report of the Enquiry Officer that the charges are held proved, a show-cause notice was issued; and, as the explanation was found not satisfactory and convincing, the order of removal was passed. It is to be first noted that the learned Presiding Officer of the Labour Court after examining the material on record held that there is no irregularity or illegality in conducting the enquiry and that the *ex parte* enquiry is valid. Further, on evaluation of the facts and the appreciation of evidence, the

learned Presiding Officer of the Labour Court found that the petitioner did not deny the existence of the circular, dated 16.09.1987, and that he only stated that the said circular was not implemented and that in his explanation to the charge sheet, he admitted that he did not make four punches on the tickets and that at that time, he was not feeling well; but further stated in his explanation that the checking officers did not disclose the relevant rule clearly to him and that there is no rule saying that four punches should be made. The learned Presiding Officer of the Labour Court also held that the petitioner did not make four punches and that he refused to do so is clearly proved and that he refused to follow the instructions of the checking officials and that he replied in a careless way to them while not following their instructions. After going through the statement of the driver and explanation of the petitioner, it was held by the learned Presiding Officer of the Labour Court that the petitioner did not follow the instructions given to him by his superiors and that he exhibited unruly behaviour. However, as the Corporation did not examine any independent witness with regard to the charge that the petitioner instigated the passengers, and as the Driver also did not say anything on the said aspect, the learned Presiding Officer of the Labour Court held that the relevant charge is not proved. The learned Presiding Officer then noted that the documents filed by the petitioner revealed that two other Conductors, who were charged with the same acts of misconduct, namely, 'non-making of four punches on the tickets', were awarded with the penalty of deferment of annual increments for a period of three months without cumulative effect; and hence, he came to a conclusion that the penalty of removal awarded to the petitioner is

disproportionate to the gravity of the charges proved and that the said punishment is too severe and harsh. He, therefore, directed reinstatement of the petitioner with continuity of service, but without back wages, increments and all other attendant benefits and also modified the punishment to one of withholding of two annual increments with cumulative effect. In the case on hand, the learned Presiding Officer also agreed with the finding of the Enquiry Officer that the petitioner indulged in unruly behaviour towards the checking officials.

8. The above analysis reflects that after necessary examination of facts and appreciation of evidence in proper perspective, the learned Presiding Officer of the Labour Court arrived at a finding that charges 1 to 3 are proved and accordingly, confirmed the findings of the Enquiry officer related to the said charges. This Court, in the facts and circumstances of the case, does not find any grounds, much less valid grounds calling for interference with the said concurrent findings of facts recorded by the Enquiry Officer and the learned Presiding Officer of the Labour Court. 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 the evidence brought on record, this Court will not normally substitute its subjective opinion in the place of one arrived at by the said officers.

9. In *Union of India v. P.Gunasekaran*², 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:

² (2015) 2 Supreme Court Cases 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.”

Having regard to the facts and the legal position, this Court holds that the first contention of the petitioner that the finding of the Labour Court that the charges, except the charge relating to provoking the passengers, are proved, is not correct needs no countenance.

10. Coming to the quantum of punishment, as already noted, the learned Presiding Officer of the Labour Court having set aside the order of removal of the petitioner from service directed his reinstatement with continuity of service, but without back wages, increments and all other attendant benefits and further modified the punishment to that of withholding of two annual increments with cumulative effect. It is undisputed that the petitioner has already retired from service. On

consideration of the graveman of the charges proved, it is manifest that the petitioner's proved misconduct is of such nature warranting the penalty imposed by the learned Presiding Officer of the Labour Court. Viewed thus, this Court holds that the penalty imposed is not disproportionate to the gravity of misconduct and the charges held proved, in the facts and circumstances of case.

11. Resultantly, the Writ Petition is dismissed. No costs.

Pending miscellaneous petitions, if any, shall stand closed.

07th April, 2017
BVV



M. SEETHARAMA MURTI, J