

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

WRIT PETITION No.14516 of 2007

ORDER:

This writ petition, under Article 226 of the Constitution of India, by the petitioner/ Ex-Driver, is directed against the Award, dated 08.03.2006, of the learned Chairman, Labour Court-III, at Hyderabad, passed in I.D.No.103 of 2004.

2. I have heard the submissions of *Sri A.K.Jaya Prakash Rao*, learned counsel for the writ petitioner, and of *Sri B.Mayur Reddy*, learned Standing Counsel for APSRTC representing the 2nd respondent. I have perused the material record.

3. The facts and the chronology of events, which emerge from the pleadings and the submissions made before this Court, in brief, are as follows:

The petitioner joined the service of the 2nd respondent Corporation as a Driver in the year 1992. It was reported by a security guard that on 11.11.2000, the petitioner, while discharging his duty as a Driver, had stolen diesel twin filter assemble by keeping the same in his handbag. The 2nd respondent conducted a preliminary enquiry. Basing on the same a charge sheet was issued to the petitioner. The charge formulated verbatim is as under:

“For having stolen the Diesel Twin Filter Assemble keeping in your hand bag and found in the vehicle No.AP9Z 1477 at about 6.40 hours on 11-11-2000 at the time of check by the on duty SG, which constitutes misconduct under Reg. 28(x) of APSRTC Employees (Conduct) Regulations 1963.”

The petitioner submitted an explanation denying the said allegation and explaining the circumstances. Thereafter, an enquiry was ordered and an enquiry officer was appointed to conduct the enquiry. After duly conducting the enquiry, he gave a report that the charge formulated is proved.

Eventually the petitioner was removed from service by an order dated 29.05.2001. His appeal was dismissed and his review petition was rejected confirming the findings of the enquiry officer and penalty imposed by the disciplinary authority. Aggrieved thereby, the petitioner raised an industrial dispute and filed a claim petition. The same was resisted by the Corporation. On merits, the learned Presiding Officer of the Labour Court having concurred with the findings of the officers of the Corporation dismissed the claim petition of the petitioner. Aggrieved thereby, the petitioner filed this writ petition.

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

It was falsely alleged that the petitioner had stolen diesel twin filter assemble, by keeping it in his handbag. The petitioner submitted an explanation denying the said allegations. On 11.11.2000, his weekly off was cancelled; and, for the purpose of special operation of police, the petitioner's services were booked. The petitioner took the vehicle to the main gate. At the main gate, the Security Guard pointed out to the petitioner one bag behind the Driver's seat and questioned him as to its contents. The petitioner stated that the said bag does not belong to him. The Security Guard, without hearing the petitioner, reported the matter as if the petitioner committed theft. A false allegation was levelled against the petitioner and his spot explanation was obtained forcibly. The 2nd respondent conducted a preliminary enquiry and recorded the statements behind his back. Basing on such material, charge sheet was issued. The petitioner explained the circumstances and denied the allegation. The petitioner was denied reasonable opportunity to participate in the enquiry and was also denied a reasonable opportunity to cross-examine the witnesses. The Enquiry Officer obtained his signature without explaining the contents of the records and

recorded as if the petitioner cross-examined the witnesses. The Enquiry Officer did not act independently; but acted with partiality. The Enquiry Officer failed to assign any reason for giving preference to the interested testimonies of the witnesses of the Corporation than the statement of the petitioner. The entire procedure adopted by the Enquiry Officer is contrary to law. The enquiry officer violated principles of natural justice. The findings of the Enquiry Officer are perverse and one-sided. His findings are based on mere assumptions and presumptions. The petitioner did not commit any acts of misconduct. He has no *mala fide* intention. The bag which was found in the bus does not belong to the petitioner. During his long service from 1992 to the date of removal, 29.05.2001, the petitioner's record is clean. The award passed by the 1st respondent is vitiated by material irregularities. The reasons assigned by the 1st respondent are neither sound nor valid in law. The penalty imposed is grossly disproportionate to the gravity of misconduct. The Enquiry Officer did not appreciate the facts correctly and the evidence & the explanation of the petitioner in proper perspective. The appellate and the reviewing authorities mechanically confirmed the orders of the Enquiry Officer. The spot explanation of the petitioner was not produced before the Tribunal. In any view of the matter, the quantum of punishment is shockingly disproportionate to the alleged acts. Hence, the Award may be set aside and the petitioner may be reinstated into service with all consequential benefits including back wages.

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

The charges formulated reflect that the petitioner indulged in theft of the property of the Corporation. On the basis of the preliminary enquiry, a charge sheet was issued and a detailed enquiry was duly conducted. The enquiry officer, after due enquiry, held that the charge levelled against the petitioner is proved. After serving a show cause notice along with the copy of

the enquiry report, his explanation was called for. As his explanation was unconvincing and unsatisfactory, he was further served with a show cause notice informing him about the proposed penalty. Eventually, he was removed from service by proceedings, dated 29.05.2001. His appeal and petition for review were rejected by the appellate and reviewing authorities as they concurred with the findings of the Enquiry Officer that the charges are proved. The Tribunal while holding that the charges are proved dismissed the claim petition of the petitioner. When once the charge of theft is proved, there is a breach of trust and loss of faith. Hence, the Corporation is justified in imposing the penalty of removal from service. The learned Chairman of the Tribunal rightly held that the Corporation lost faith and trust in the petitioner-Driver and, accordingly, and rightly upheld the punishment of removal from service, which is justified. 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 earnest consideration to the facts and submissions.

7. The material record reflects the following facts: 'By cancelling the petitioner's weakly off, he was booked to perform special service for police, on 11.11.2000. When the petitioner brought the vehicle bearing no.AP 9 Z 1477 to the main gate at about 06.40 hours, the Security Guard stopped the vehicle and questioned him as to what was in the bag kept in the seat by his side. The petitioner replied stating that there is a bed sheet in the bag. The Security Guard suspected the correctness of the said statement. The bag was then brought to the security office and was opened and checked in the presence of one D.Bhavvanthu, Controller, and D.Raju, Helper. Then it was found that the diesel twin filter assemble was inside the said bag. After

taking the spot explanation of the petitioner and of the witnesses, a preliminary enquiry was conducted. During the preliminary enquiry, it was found that the petitioner intentionally committed theft of the said article. Basing on the preliminary enquiry report, a charge sheet was issued with the charge referred to supra. At the time of check, the petitioner stated that the bag contained a bed sheet only. Later, on opening the bag, diesel twin filter assemble was found inside the bag. During the course of domestic enquiry, the Security Guard, Shadnagar Depot, in his deposition stated as follows: 'That, on 11.11.2000 at about 06.40 hours, the petitioner brought the vehicle bearing No.AP 9 Z 1477, along with the log sheet, for the special operation of the police personnel to the main outgoing gate of the security branch. He has entered the service particulars in the security register and thoroughly checked the bus. At the time of check, he found a night-out bag of service driver in the driver's cabin, besides the driver's seat. On questioning, the petitioner replied that the bag contained blanket and bed sheets only. On suspicion, he asked the petitioner to bring the said bag to the security room and opened the same in the presence of one Bhagavanthu, Controller, and V.Raju, Helper, and found Diesel twin filter Assemble in the bag. The same was witnessed by the witnesses present there. He obtained the spot explanation of the petitioner and the signatures of the witnesses and submitted a report accordingly.' The other witnesses in whose presence the bag was opened were also examined; and they supported the version of the Security Guard. The petitioner has not cross examined the said witnesses. On consideration of the facts and circumstances and appreciation of the evidence brought on record, the Enquiry Officer held that the charge framed against the petitioner is proved. The Labour Court also held that the enquiry was conducted according to law and procedure. In fact the petitioner filed a memo before the Tribunal under section 11-A of the Industrial Disputes Act, 1947, stating that he does not dispute the validity of the enquiry. A

careful perusal of the material record including the Award of the Tribunal would show that after careful and detailed examination of the facts and relevant evidence & circumstances, the learned Presiding Officer of the Labour Court arrived at the conclusion that the charge is proved and accordingly, confirmed the findings of the Enquiry Officer.

8. 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 learned 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.

9. In the decision in *Union of India v. P. Gunasekaran*¹, 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;

¹ (2015) 2 SCC 610

- (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;
- (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."

Therefore, having regard to the facts and the legal position, this Court holds that the contentions of the petitioner/ Driver that the finding of the Labour Court that the charge levelled against the petitioner is proved is incorrect and that the said finding deserves to be set aside are devoid of merit. Hence, the contentions of the petitioner need no countenance in the facts and circumstances of the case.

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. Coming now to the quantum of punishment, learned counsel for the petitioner would submit that the penalty of removal from service is grossly disproportionate the proved misconduct and that the learned Presiding Officer of the Labour Court ought to have taken the past long unblemished record of the petitioner into consideration and ought to have at least ordered petitioner's reinstatement into service without granting back wages and attendant benefits and continuity of service. The learned Presiding Officer of the Labour Court having examined proportionality of the penalty held that in a case of this nature the penalty of removal from service is justified and shall not be interfered with. In a case of this nature where the employee is found guilty of commission of theft of the property of the Corporation there is nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of removal. In such cases, there is no place for generosity or misplaced sympathy. Accordingly, the submissions made on behalf of the petitioner with regard to reduction of penalty are rejected, since the same are having no acceptable merit.

12. On the above analysis, this Court finds that the award of the Labour Court does not call for interference and that the writ petition, which is devoid of merit is liable to be dismissed.

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

Pending miscellaneous petitions, if any, shall stand closed.

There shall be no order as to costs.

25th April, 2017
RAR

M. SEETHARAMA MURTI, J