THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.25216 of 2008

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, by the petitioner is filed requesting to quash the proceedings No.PA/20(35)/2008-SR, dated 23.04.2008, of the 2nd respondent and the proceedings No.PA/19(184)/005:DVM:SD, dated 27.04.2006, of the 3rd respondent whereby while denying the consequential benefit of continuity of service a penalty of deferment of annual increment for a period of two years was imposed upon the petitioner by treating the period of removal from service as on 'not on duty'.

2. I have heard the submissions of *Sri V.Narasimha Goud*, learned counsel for the petitioner and of *Sri N.Vasudeva Reddy*, learned Standing Counsel, appearing for the respondents-APSRTC.

3. From the pleadings and the submissions made, the following facts surface for consideration:

The petitioner/conductor joined the service of the Corporation, on 15.10.1996. He was selected for the said post through due process of selection. His services were regularised, on 01.08.1997. Till he was removed with effect from 17.11.2005, he continuously worked in the Corporation. On 03.06.2005, while the petitioner was conducting the bus of the Corporation on route No.16-A from ECIL to Secunderabad Station, a check was exercised at Stage No.8/7, i.e., at Radhika Theater. As according to the Corporation, certain cash and ticketing irregularities have been detected during the course of the said check, a charge memo was issued. According to the petitioner, he endorsed on the charge memo itself that there is no truth in the allegations in the charge memo and that there were no irregularities in conducting the service. According to the petitioner, the relevant documents were also not furnished to him in spite of a request made by him. Finally, a charge sheet was served on the petitioner. The charge formulated verbatim reads as follows:

> "For having collected an amount of Rs.2/- from a passenger who boarded your bus at ECIL and bound for Radhika Theater failed to issue ticket found alighting ex-stages 8 to 8/7 which constitutes misconduct."

As the officer of the Corporation is of the view that the explanation to the charges was unsatisfactory, an enquiry was ordered by appointing an Enquiry Officer. After conducting an enquiry, the Enquiry officer submitted a report, dated 30.08.2005, holding that the charges are proved. After serving a notice along with the copy of the report of the Enquiry Officer, the explanation of the petitioner was called for by letter dated 12.09.2005. As the petitioner's explanation, dated 29.09.2005, with objections and comments to the enquiry report was not to the satisfaction of the officer of the Corporation, the Disciplinary Authority passed orders, dated 17.11.2005, ordering for removal of the petitioner from service. The petitioner preferred an appeal. The appellate authority partly allowed the appeal of the petitioner by order dated, 27.04.2006. The said authority having considered the past clean record of the petitioner took a lenient view and accordingly set aside the punishment of removal from service and ordered reinstatement into service without continuity of service and further imposed a penalty of deferment of his increment for a period of two years with cumulative effect. The said authority further directed that the period of removal from service, that is, from the date of removal till the date of reinstatement, shall be treated as 'not on duty' for all purposes. Aggrieved thereby, the petitioner preferred a review petition. The review petition was dismissed, on 23.04.2008, on the ground that it is time barred. Aggrieved of the said orders, the petitioner filed this writ petition.

4. Learned counsel for the petitioner while reiterating the chronological events would submit as follows: 'When the checking officials exercised the

check and issued a charge memo, the petitioner stated that he did not indulge in any irregular acts and endorsed on the charge memo that there is no truth in the allegations. His request to furnish relevant documents was not considered by the officers of the Corporation. He was unnecessarily suspended from service, on 14.06.2005, and a charge sheet was issued for no valid reason. His representation, dated 17.06.2005, was considered and a document was served on 20.06.2005. His explanation, dated 21.06.2005, was not considered in proper perspective. Ignoring the valid explanation, an enquiry was unnecessarily ordered and conducted. No valid and legal evidence was adduced by the management during the course of enquiry. The petitioner gave evidence and explained the circumstances by giving a detailed explanation. However, the Enquiry Officer gave a report with an incorrect finding that the charge is proved. The whole action is based on a colourable exercise of powers. From the date of removal till reinstatement was ordered by the appellate authority, i.e., upto 16.05.2006, the petitioner did not work anywhere as he could not get alternative employment. Till the date of removal, he rendered unblemished service. He lost increments during the period from 14.06.2005 to 16.05.2006 as the period of removal was treated as 'not on duty'. Further, as the penalty of deferment of increment for a period of two years with cumulative effect was ordered, the petitioner lost number of increments and suffered consequential loss of monetary benefits. The statement of the passenger concerned is a manipulated statement. It was obtained in the absence of the passenger who allegedly travelled without a ticket. The material record reflects that the thumb impression of the passenger was obtained on a blank paper and later, in his absence, his alleged statement was incorporated on the said blank paper with the assistance of another passenger; thus, the TTI violated the instructions contained in the checking procedure. For that reason alone, the enquiry officer ought to have exonerated the petitioner from the charge. Having considered the relevant finding in the enquiry report, the appellate authority, instead of modifying the punishment, ought to have allowed the appeal and held that the charge is not proved. The reviewing authority mechanically dismissed the review petition. Hence, the writ petition may be allowed and the orders impugned may be set aside by holding that the charge formulated against the petitioner is not proved and the relief of reinstatement with back wages, continuity of service and all consequential benefits may be granted in the interests of justice.

5. Learned standing counsel for the Corporation while adverting to the chronological events which are not in dispute would submit as follows:

The petitioner collected an amount of Rs.2/- from a passenger who boarded the bus at ECIL and bound for Radhika Theater and failed to issue a ticket. That passenger was found alighting at ex-stages 8 to 8/7. Therefore, the petitioner by failing to issue a ticket to the passenger after collecting the requisite fare caused loss of revenue to the Corporation. For the said misconduct, first a charge memo and later a charge sheet were issued. An enquiry as ordered was duly conducted. The Enquiry Officer, after considering the facts and evidence, rightly held that the charge is proved. However, the appellate authority, having considered the past clean record of the petitioner, took a lenient view and imposed a lesser punishment after modifying the punishment of removal from service imposed by the Disciplinary Authority. As no valid grounds are urged, the review petition was dismissed by the reviewing authority. The explanations given by the petitioner from time to time were considered in proper perspective. Necessary documents were supplied to him. The passenger, in his statement, has clearly stated that he has paid Rs.2/- towards requisite fare of the ticket at the Boarding point itself. Therefore, there is no need to examine the passenger during the course of enquiry. The petitioner's contention that the TTI during the course of enquiry accepted that the distance from stage no.8 to 8/7 will be covered within few minutes cannot be accepted as the fare was collected at the boarding point itself and a ticket was not issued. The petitioner has not issued the ticket with a view to pocketing the legitimate revenue of the Corporation. In view of the passenger's statement that he paid the requisite fare at the boarding point itself, i.e., at ECIL, and that the petitioner failed to issue a ticket, there is sufficient evidence to come to a safe conclusion that the charge is proved. As the appellate authority took a lenient view and modified the punishment, the Corporation, out of generosity and mercy, reinstated the petitioner into service and implemented the orders of the appellate authority. There is no merit in the writ petition and the writ petition is liable to be dismissed.

6. I have given detailed and thoughtful consideration to the facts. I have given earnest consideration to the submissions.

7. The gravamen of the charge is that the petitioner having collected the requisite fare of Rs.2/- from a passenger who boarded the bus at ECIL and bound for Radhika Theater failed to issue a ticket to him and that the passenger was found alighting at ex-stages 8 to 8/7. The said act of the conductor, if proved, has to be accepted as an act amounting to serious misconduct. The specific case of the Corporation is that the petitioner failed to issue ticket after collecting the fare, with a view to pocketing the said money and cause loss of revenue to the Corporation. However, according to the petitioner, the passenger has not paid the fare to him and that the distance between the boarding point-ECIL and the alighting point-Radhika Theater is a very short distance and that the petitioner endorsed on the charge memo itself that there is no truth in the allegations. His further explanation, in brief, is as follows: 'The passenger concerned boarded the bus at ECIL X roads along with other passengers. The petitioner was in the process of issuing the tickets. Meanwhile, the check was exercised and it was alleged that he collected the fare at the boarding point itself from the said passenger and failed to issue a ticket and that the same was noticed while the said passenger was alighting at

Radhika Cinema Theater. In fact, the petitioner did not collect the fare and did not issue a ticket. While the petitioner was approaching the passenger from the front, the check took place between the two stages, which are within a short distance, and that his ticket tray was seized without allowing to issue a ticket to the said passenger. The petitioner issued 35 tickets and checked more than 25 passes within that short distance. Taking advantage of the illiteracy of the passenger, the checking officials forcibly obtained that passenger's thumb impression on a blank paper and obtained the signature of the petitioner on the said paper without recording any statement of the passenger. Attestation was also obtained in the charge memo, after it is partly written. The distance between ECIL X roads and Radhika Theater is not more than half a kilometre. Despite the said fact, the petitioner attended to 60 passengers in the bus.' Apart from the other contentions, the main contention of the petitioner, which is of significance is that the passenger concerned did not give any statement to the effect that the petitioner collected the fare and failed to issue a ticket and that the illiterate passenger's thumb impression was obtained on a blank paper and that the statement of the said passenger was manipulated on that paper in the absence of the passenger. This contention requires careful examination in view of the observations in the report of the Enquiry Officer.

8. A perusal of the material record shows that in the cross-examination done by the petitioner, the TTI stated to the following effect: 'The ticket-less passenger is an illiterate person. His statement was obtained by getting it scribed through a co-passenger. The statement of the ticket-less passenger was scribed by a co-passenger while the bus was running from Radhika Theater to Neredmetta X road. The ticket-less passenger has not travelled upto stage no.4. After the charge was framed, they got down at stage no.4.' Thus, the evidence brought on record discloses that the ticket-less passenger was found alighting the bus at ex. stages 8 to 8/7 and did not travel upto stage no.4. The

Enquiry Officer, having regard to these undisputed facts, recorded a finding in his enquiry report that the ticket-less passenger has not travelled beyond Radhika Theater and that the said passenger's statement was got recorded through a co-passenger in the running bus upto Neredmetta X roads, i.e., upto stage no.6 and that from the said facts, it is clear that the passenger, who was ticket-less was not present at the time of obtaining the passenger's statement through a co-passenger in the running bus upto stage no.6, i.e., Neredmetta X roads. The Enquiry Officer also recorded a finding to the effect that the facts clearly speak that the checking officials obtained the thumb impression of the passenger on a blank paper and then they obtained the passengers statement in the absence of ticket-less passenger through another passenger of the bus as stated by the petitioner in his explanation to the charge memo and charge sheet. The Enquiry Officer went on to record a further finding that obtaining the ticket-less passenger's statement in his absence is against the checking procedure and that the checking officers violated the instructions in the checking procedure. Considering the significance and importance of this aspect of the matter, it is necessary to reproduce verbatim the relevant observations and findings of the Enquiry Officer from his report, which are verbatim as under:

> "...To another question, Sri A.S.Rao, E.42161, replied that they have obtained statement of the passenger by another passenger in the running bus from Radhika theatre to Naredmet X roads. To another question, Sri A.S.Rao E 42161 stated that the ticketless passenger not travelled up to stage No.4, but they have framed the charges up to stage no.4 and got down the bus at stage no.4.
>
> From which it is clear that the ticketless passenger has not travelled, but they are obtained passenger statement by the co-passenger in running up to stage Neredmet X roads, i.e., stage No.6 and it is clearly evident that passenger who was ticketless is not present at the time of obtaining passengers statement with co-passenger in running up to stage no.6, Neredmet X roads, which clearly speaks that the checking officials obtained thumb impression of the ticketless passenger in blank paper, then they are obtained

> passenger statement in the absence of ticketless passenger by another passenger of the bus as stated by the delinquent in his explanation to the charge memo and charge sheet. Passenger statement not obtaining in the presence of ticketless passenger if he is illiterate is against the checking procedure. Hence, the TTIs are violated the instructions of checking procedure."

The tell-tale facts clearly manifest that the ticket-less passenger's statement was got scribed through a co-passenger on a blank paper containing his thumb impression, that is, after the ticket-less passenger alighted the bus, that is, in the absence of the ticket-less passenger and while the bus was running from Radhika Theater to Neredmet X roads. Therefore, the whole exercise of check and the resultant charge memo, which is based on such manipulated statement of the ticket-less passenger, lay bare that there is no truth in the version of the Corporation that the ticket-less passenger paid the requisite fare at the boarding point itself, which is the basis for the charge as well as the finding that the petitioner having collected the requisite fare failed to issue a ticket to the said passenger. In fact, the petitioner gave a spot explanation that there is no truth in the allegations and further stated that he will give his explanation to the DM. When the very statement of the passenger, which is the basis for the charge, is tainted with illegality and procedural irregularity, in the well considered view of this Court, the benefit must go to the petitioner/Conductor as the said vital aspect of the matter clinches the issue in favour of the petitioner/workman.

9. The law is fairly well settled that when the departmental authorities failed to reach a fair conclusion and when their conclusions are wholly arbitrary and capricious and it appears from the facts and circumstances of the case that no ordinary prudent man could have arrived at such conclusions and when such conclusions are based on no legal evidence but on considerations extraneous to the evidence on record and merits of the case, then such conclusions being perverse are amenable for correction to remedy the injustice. The above view

of this Court draws support from the ratio in the decision in Union of India v. P. Gunasekaran[1], wherein, the Supreme Court while dealing with the scope of interference of this Court under Articles 226 or 227 of the Constitution of India 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:
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> (a) the enquiry is held by a competent authority;
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> (b) the enquiry is held according to the procedure prescribed in that behalf;
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> (c) there is violation of the principles of natural justice in conducting the proceedings;
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> (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
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> (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.
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> Under Article 226/227 of the Constitution of India, the High Court shall not:
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> (i). re-appreciate the evidence;
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> (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;
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> (v). interfere, if there be some legal evidence on which findings can be based.
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> (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."

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[1] (2015) 2 SCC 610

10. On the above analysis, this Court finds that the findings of the Enquiry Officer that the charge is proved being perverse are liable to be set aside. As a sequel to the said finding, the findings of the appellate and the reviewing authorities are also liable to be set aside.

11. In the result, the Writ Petition is allowed as prayed for and the orders impugned are accordingly quashed directing reinstatement of the petitioner into service with continuity of service, full back wages and all attendant and consequential benefits.

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

M. SEETHARAMA MURTI, J

28.04.2017
Note:- LR copy to be marked
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