

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

WRIT PETITION No.4780 of 2006

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed by the petitioner – Andhra Pradesh State Road Transport Corporation ('Corporation', for brevity) requesting to call for the records relating to Award, dated 23.04.2005, passed in I.D.No.96 of 2002 on the file of the Industrial Tribunal-cum-Labour Court, Anantapur, ('the Tribunal', for brevity) and to set aside and quash the said Award, whereby, the order of removal of the 2nd respondent/workman from service was set aside and the Corporation was directed to reinstate the 2nd respondent/workman into service with continuity of service but without back wages duly withholding annual increment for a period of three years with cumulative effect.

2. I have heard the submissions of Sri A. Rama Rao, the learned Standing Counsel for the Corporation/writ petitioner and Ms.Shakeera Banu, the learned counsel for the 2nd respondent/ workman ('2nd respondent', for brevity). I have perused the material record.

3. The facts which are necessary to be stated as a prelude to this order, in brief, are as follows:

On 08.01.2001, while the 2nd respondent was conducting the bus of the Corporation on the route Chennai to Kuppam, the Travelling Ticket Inspectors exercised a check at stage No.9/ 8 and found certain cash and ticket irregularities. Basing on the report of the checking officials, a charge sheet was issued to the 2nd respondent. As the 2nd respondent's explanation was unsatisfactory, a detailed enquiry was

ordered by appointing an Enquiry Officer. After due enquiry, the Enquiry Officer submitted a report holding that all the charges were proved. Thereafter, a show cause notice proposing the penalty of removal from service was served on the 2nd respondent. Thereafter, the 2nd respondent was removed from service by proceedings dated 09.07.2001. The 2nd respondent's appeal as well as review were rejected by proceedings dated 22.11.2001 and 28.01.2002. Aggrieved thereof, the 2nd respondent raised an Industrial Dispute in I.D.No.96 of 2002. The learned Presiding Officer of the Tribunal, having found that the charges are duly proved and that it is clearly established that the 2nd respondent intentionally issued the used tickets, connected to the way bills and S.R., of the previous service, to the passengers after collecting the requisite fare from them and that his defence is a lame excuse, confirmed the findings of the Enquiry Officer as well as the appellate and review authorities. However, the Presiding Officer of the Tribunal set aside the penalty of removal from service and modified the punishment to the one as already stated in the introductory paragraph of this order. Aggrieved thereby, the Corporation preferred this writ petition.

4. In this settings of facts, the learned counsel for the Corporation would contend as follows: 'The finding in the Award of the Presiding Officer of the Tribunal reducing the penalty by setting aside the penalty of removal from service after confirming the finding that the charges formulated against the 2nd respondent are duly proved, is contrary to facts and law. The learned Presiding Officer of the Tribunal failed to see the gravity of the charges. In view of the fact that the misconduct involved financial embezzlement, the learned Presiding Officer of the

Tribunal ought to have seen that the Corporation/ employer lost faith and trust in the 2nd respondent – conductor and therefore, the punishment of removal from service is justified and there is no justification in directing reinstatement of the 2nd respondent into service. The learned Presiding Officer of the Tribunal ought to have seen that when the charges levelled and proved related to the pilferage and misappropriation of the funds of the Corporation, there is nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of removal from service. The learned Presiding Officer of the Tribunal observed in his Award that the 2nd respondent/ conductor is a poor man having wife, children and old aged parents and that he has no source of livelihood and that his only source is his salary from the employment and that he was appointed as conductor in the year 1988 and discharging duties sincerely and honestly and to the satisfaction of all concerned and that the 2nd respondent craved mercy of the Court to take a lenient view. A perusal of paragraph 11 of the Award would show that the learned Presiding Officer of the Tribunal, purely on the ground of generosity and misplaced sympathy, interfered with the measure of punishment, though there are no grounds whatsoever to do so. Thus, the learned Presiding Officer of the Tribunal misdirected himself in interfering with the quantum of punishment. The learned Presiding Officer of the Tribunal ought to have seen that it is not the amount of money misappropriated that is relevant and on the contrary, it is the loss of confidence which is primary. The learned Presiding Officer of the Tribunal exceeded his jurisdiction and passed the impugned Award ignoring the rulings of the Supreme Court.'

4.1 In support of the contentions, the learned Standing Counsel for the Corporation placed reliance on the following decisions:

1. Karnataka State Road Transport Corporation Vs. B.S.Hullikatti¹

2. Divisional Controller, N.E.K.R.T.C. Vs. H.Amaresh²

5. On the contrary, the learned counsel for the 2nd respondent would submit as follows: 'The 2nd respondent was appointed as a conductor in the year 1988 in the Corporation. Till he was allegedly found to have indulged in certain cash and ticket irregularities while conducting the bus of the Corporation, on 08.01.2001, there are no complaints on any count whatsoever from any quarter against him and he was discharging his duties sincerely, honestly and to the satisfaction of all concerned. He has put in long years of service in the Corporation without a blemish till the alleged check was exercised on 08.01.2001 and alleged irregularities were detected. On that day, the 2nd respondent was unwell. During the course of his duties, he developed high fever coupled with body pains. However, since he was already conducting the bus, he continued to perform his duties. On the way, in fact, he went to a medical shop to purchase medicines and continued his service with a view to have lunch at the lunch halt. He submitted his explanation to the charge memo that two or three passengers boarded the bus at Vellore and that he issued tickets to them and closed the ticket numbers of all denominations in the S R and that after closing the S R, he became unconscious and that some passengers boarded the bus when he was lying unconscious in his seat. Without considering his plight, the officials, who exercised the check, alleged that he had

¹ 2001-1 LLJ 740 SC = (2001) 2 SCC 574

² (2006) 6 SCC 187

reissued the tickets which were already issued in the down journey on 06.01.2001. In fact, he has not collected the amount from the passengers in question and not issued the tickets to them due to his ill health, but false charges were formulated on the statements given by the passengers to the checking officials. The non-checking of the cash bag by the ticket inspectors clearly goes to show that there is no excess private cash with him. In view of the explanation offered, the Enquiry Officer as well as the learned Presiding Officer of the Tribunal ought to have held that the charges are not proved. In any view of the matter, the learned Presiding Officer of the Tribunal rightly considered the plight of the 2nd respondent and modified the punishment by setting aside the penalty of removal from service, which is highly disproportionate to the gravity of the charges. When the presiding officer of the Tribunal exercised the judicial discretion and reduced the penalty having regard to the facts and circumstances, this Court need not interfere with such judicial discretion while exercising the jurisdiction under Article 226 of the Constitution of India.'

6. In reply, the learned Standing Counsel for APSRTC representing the writ petitioner, having relied upon the decision in Divisional Controller, N.E.K.R.T.C. Vs. H. Amaresh (2nd supra), forcefully contended that the Supreme Court had time and again deprecated the practice of interfering with the penalty imposed on a conductor of the bus who acts in fiduciary capacity.

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

8. The admitted facts are that, on 08.01.2001, while the 2nd respondent was conducting the bus of the Corporation on the route Chennai to Kuppam, the Travelling Ticket Inspectors exercised a check at stage No.9/ 8 and found certain cash and ticketing irregularities and that on their report charges were formulated and, thereafter, after following the due procedure, enquiry was held and that in the enquiry, the Enquiry Officer held that the charges are proved; and, the 2nd respondent's appeal as well as the review application were rejected by the competent officers of the Corporation. The 2nd respondent was thus held to have committed the following cash and ticketing irregularities, which amounted to misconduct.

Reissued the tickets of Rs.10/- denomination and of Re.1/- denomination, which were already issued at stage No.1 (Kuppam) in up journey on 03.01.2001 vide S.R. bearing No.3932831 dated 03.01.2001.

Reissued the tickets of Re.1/- denomination, which were already issued at stage No.18 in the down journey on 06.01.2001 vide S.R. bearing No.A6/3932423 dated 05.01.2001 to a batch of four passengers who boarded the bus at Vellore and bound for Vaniambadi Ex. stages 11 to 7 after collecting the fare of Rs.60/- from them.

Reissued the tickets of Rs.10/- denomination and of Re.1/- denomination which were already issued at stage No.1 (Kuppam) in up journey on 03.01.2001 vide S.R. bearing No.3932831 dated 03.01.2001 to a batch of two and two individual passengers who boarded the bus at Vellore and bound to Ambur ex.stage 11 to 8 after collecting the fare of Rs.44/- from them.

Having done so, he closed the S.R. up to stage No.9 without issuing valid tickets to the above said passengers.

The 2nd respondent by not pursuing the legal remedies available to him, had not challenged the findings of the Enquiry Officer, which are eventually confirmed in the Award passed by the Tribunal.

9. There is no dispute in regard to the fact that the bus conductors act in a fiduciary capacity and it is their duty to collect correct fare

from the passengers and issue tickets of correct denomination to the passengers and punch them in the correct order and account for the cash by depositing the same with the Corporation. The conductors are not supposed to collect fares and not issue tickets or collect fares and re-issue the tickets, which were already issued, or collect correct fare and issue the tickets of lesser denomination and the like acts. In the case on hand, it is not in dispute that the learned Presiding Officer of the Tribunal also, after carefully examining the matter, held that the charges levelled against the 2nd respondent are proved and that the explanation offered by the 2nd respondent is a lame excuse to escape from the liability.

10. In Karnataka State Road Transport Corporation Vs. B.S.Hullikatti (1st supra), the Supreme Court held as follows:-

On the facts as found by the Labour Court and the High Court, it is evident that there was a short-charging of the fare by the respondent from as many as 35 passengers. We are informed that the respondent had been in service as a Conductor for nearly 22 years. It is difficult to believe that he did not know what was the correct fare which was to be charged. Furthermore, the appellant had during the disciplinary proceedings taken into account the fact that the respondent had been found guilty for as many as 36 times on different dates. Be that as it may, the principle of *res ipsa loquitur*, namely, the facts speak for themselves, is clearly applicable in the instant case. Charging 50 paise per ticket less from as many as 35 passengers could only be to get financial benefit by the Conductor. this act was either dishonest or was so grossly negligent that the respondent was not fit to be retained as a Conductor because such action or inaction of his is bound to result in financial loss to the appellant-Corporation.

It is misplaced sympathy by the Labour Courts in such cases when on checking it is found that the Bus Conductors have either not issued tickets to a large number of passengers, though they should have, or have issued tickets of a lower denomination knowing fully well the correct fare to be charged. It is the responsibility of the Bus Conductors to collect the correct fare from the passengers and deposit the same with the Company. they act in a fiduciary capacity and it would be a case of gross misconduct if knowingly they do not collect any fare or the correct amount of fare.

11. In Divisional Controller, N.E.K.R.T.C. Vs. H.Amaresh (2 supra), 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 appellants irrespective of the quantum.

12. On the quantum of punishment, the Supreme Court, in Divisional Controller, KSRTC (NWKRTC) Vs. A.T.Mane³, held as follows:-

Coming to the question of quantum of punishment, one should bear in mind the fact that it is not the amount of money misappropriated that becomes a primary factor for awarding punishment, on the contrary, it is the loss of confidence which is the primary factor to be taken into consideration. In our opinion, when a person is found guilty of misappropriating corporation's fund, there is nothing wrong in the corporation losing confidence or faith in such a person and awarding a punishment of dismissal.

13. Again in U.P. State Road Transport Corporation, Dehradun Vs. Suresh Pal⁴, the facts disclose that in the domestic enquiry it was found that the petitioner/ workman was guilty of not issuing tickets to twenty passengers who were traveling by the time when the check was done by

³ (2005) 3 SC 254

⁴ (2006) (3) LLJ 967(SC) = (2006) 8 SCC 108

the Checking Official of the UPSRTC; The Corporation imposed a punishment of dismissal from service; The same was upheld by the Labour Court and the High Court; However, the learned judge of the High Court directed reinstatement of the conductor into service by substituting the punishment of dismissal with the punishment of 'one censure entry' and stoppage of two increments with cumulative effect without back wages. The Supreme Court held that after having held that the charge against respondent conductor was proved, it was not open to the High Court to interfere with the quantum of punishment.

14. Thus, in the light of the law laid down by the Supreme Court and the facts and circumstances of the case, the 2nd respondent, in the opinion of this Court, has no legal right to continue in service any further. Therefore, this Court is of the opinion that once the Tribunal has opined that the 2nd respondent is guilty of the charges formulated against him, it was not open to the Tribunal to show generosity or misplaced sympathy and direct reinstatement of the 2nd respondent with continuity of service but without back wages duly withholding annual increment for a period of three years with cumulative effect by setting aside the penalty of removal from service passed by the Corporation. Therefore, this Court is not able to agree with the contentions of the learned counsel for the 2nd respondent that the reinstatement ordered by the Tribunal need not be interfered with by this Court.

15. For the aforesaid reasons, the Writ petition is allowed and the Award, dated 23.04.2005, passed in I.D.No.96 of 2002 by the Presiding Officer, Industrial Tribunal –cum –Labour Court, Anantapur, is set aside

to the extent of modification of the penalty and the punishment of removal of the 2nd respondent from service imposed by the Corporation is confirmed. However, it is made clear that any payments made to the 2nd respondent till date shall not be recovered from him.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this writ petition shall stand closed.

08th February, 2017
Bvv

M.Seetharama Murthi, J

