

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

WRIT PETITION No.4597 of 2007

ORDER:

This writ petition, under Article 226 of the Constitution of India, by the petitioner/ conductor, is directed against the Award, dated 19.12.2005, of the learned Chairman-cum-Presiding Officer, Industrial Tribunal-cum-Labour Court at Anantapur, ('the Tribunal', for brevity) passed in I.D.No.90 of 2002.

2. I have heard the submissions of Sri S.D.Goud, learned counsel for the writ petitioner, and of Sri P. Durga Prasad, learned Standing Counsel for APSRTC representing the first respondent. I have perused the material record.

3. The case facts and the events that lead to the filing of the writ petition, in brief, are as follows:

The petitioner was appointed, on 08.03.1989, as a conductor in the respondent corporation. On 10.09.1997, when he was conducting the bus, bearing registration no. AP 9 Z 4170, on the route Atmakur- Yerramatam, a check was exercised by the checking officials at stage No.5 and certain cash and ticketing irregularities were detected. Therefore, on 18.09.1997, the petitioner was placed under suspension and a charge sheet was issued to him with verbatim the following charges:

- “ 1. For having collected an amount of Rs.12.50 from a batch of five passengers who boarded your bus at Kothapalli and bound for Sivapuram ex.stages 4 to 6 and issued tickets bearing No.493/893966 to 970 of Rs.0-50 denm., E.5 to the above five passengers, which constitutes misconduct under Reg.28(x) of APSRTC Employees (Conduct) Reg.1963.
2. For having collected at the rate of Rs.7-75 per head from three individual passengers travelling from Atmakur to Yerramatam ex.stages 1 to 8 and issued unconcerned tickets bearing Nos.056/868410, 055/714868 and 056/868408 of Rs.7-75 denominations to the above passengers which constitutes misconduct under Reg.28(x) and (xxiii) of APSRTC Employees (conduct) Reg.1963.
3. For having collected Rs.20.25 at the rate of Rs.6-75 per head from a batch of three passengers travelling from Atmakur to Sngarajupalli ex.stages 1 to 6/7 and issued unconcerned tickets bearing Nos.088/480393, 800/480349 and 088/480394 of Rs.6-75 denominations to the above passengers which constitutes misconduct under Reg.28(x) and (xxiii) of APSRTC Employees (Conduct) Reg.1963.
4. For having issued luggage tickets as passengers tickets to passengers at Kothapalli stage no.4 and not shown the issue in the SR

and closed the ticket denominations of Rs.0-50 as 965 instead of 971, which constitutes misconduct under Reg.28(x) and (xxii) of APSRTC (Conduct) Reg.1963.

5. For having closed the ticket tray Nos of all denominations in the SR up to stage No.5 without completing the issue of correct tickets, which constitutes misconduct under Reg.28(xxxii) of APSRTC Employees (Conduct) Reg.1963.

6. For having reissued the tickets bearing Nos.088/480348, 088/480393 and 394 of Rs.6-75 denms and 055/714868 of Rs.7-75 denominations and 056/868408 and 056/868410 of Rs.7-75 denominations to the passengers while you were conducting Atmakur-Yerramatam service on 10-9-97 though they were already issued by you to the passengers on your duty to Atmakur-Yerramatam previously dated 31-8-97 and 5-9-97 and accounted in the SR Nos.A4/3233151 and A3/9883871 respectively, which constitutes misconduct under Reg.28(x) and (xxiii) of APSRTC Employee (Conduct) Reg.1963."

As the Management found that the petitioner's explanation to the charges levelled against him was not satisfactory, a domestic enquiry was ordered. The Enquiry Officer, duly appointed, conducted the enquiry. He submitted a report holding that the charges levelled against the petitioner are proved. Enquiry report was communicated to the petitioner; and, he was called upon to submit his comments. The petitioner submitted his comments. As the Disciplinary authority found that his objections/ comments are not satisfactory and convincing, a notice was issued directing him to show cause as to why he shall not be removed from service. As the petitioner's explanation to the said notice was not to the satisfaction of the authority, orders of removal from service were passed, on 13.02.1998. The appeal and review filed by the petitioner were rejected respectively on 17.03.1998 and 31.07.1998. Thereafter, the petitioner raised an Industrial Dispute by filing a claim petition. The said claim petition was resisted by the Corporation. By the order impugned in this writ petition, the learned Chairman of the Tribunal eventually held that in view of his observations and finding given on the charges levelled against the petitioner, the order of removal from service has to be modified to fresh appointment of the petitioner into service; and, accordingly ordered the reinstatement of the petitioner into service on the same terms and conditions on which he entered into service of the respondent Corporation; he, however, held further that the petitioner shall

not be entitled for attendant benefits and back wages; but, would be entitled for continuity of service for the purpose of reckoning retiral benefits. Aggrieved thereby the petitioner-Conductor preferred this writ petition.

4. Learned counsel for the petitioner would submit as follows:

The learned Chairman of the Tribunal recorded findings favourable to the petitioner. The spot statement of the petitioner discloses that tickets issued to the passengers in question tallied with the tickets in that statistical return but the passengers have shown old tickets of the previous day though they were having the current tickets with them. The checking officials had taken into consideration the old tickets only, by threatening the passengers. The only finding recorded by the learned Chairman of the Tribunal is that the petitioner did not exercise due diligence; but, there is no finding that he committed any acts of misconduct. Therefore even the modified punishment is highly disproportionate to the findings recorded by the learned Chairman of the Tribunal. Hence, the petitioner, in any view of the matter, is entitled to back wages or a part of the back wages besides attendant benefits and continuity of service for all purposes.

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

The charges formulated postulate that the petitioner indulged in serious cash and ticketing irregularities. On detection of such irregularities at the time of check, a charge sheet was issued and a detailed enquiry was duly conducted. The enquiry officer, after due enquiry, held that the charges levelled against the petitioner are proved. After issuance of a show cause notice and serving a copy of the enquiry report on the petitioner, his explanation was called for. As his explanation was unconvincing and not satisfactory, he was served with a show cause notice and was removed from service by proceedings, dated 13.02.1998. His appeal and petition for review

were rejected by orders dated 17.03.1998 and 31.07.1998 respectively passed by the appellate and reviewing authorities. The Tribunal having held that the charges are proved un-necessarily interfered with the penalty imposed by the disciplinary authority. The workman-conductor holds a post of trust and faith and his relationship is a fiduciary relationship with the employer. When once there is a breach of trust and loss of faith, the Corporation is justified in imposing the penalty of removal from service. In view of the fact that the charges involved financial embezzlement, the learned Chairman of the Tribunal ought to have seen that the Corporation/ employer lost faith and trust in the petitioner-conductor and, therefore, the punishment of removal from service is justified. Therefore, there is no justification in the Tribunal directing fresh appointment of the workman into service. After due enquiry, when once it was found, that the petitioner indulged in cash and ticketing irregularities, which resulted in loss of revenue to the Corporation, the Corporation is justified in passing an order of removal from service. 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 bestowed my attention to the facts and given earnest consideration to the submissions.

7. The first charge relates to collection of amount of Rs.12.50 paise from a batch of five passengers who boarded the bus at Kothapalli and bound for Svapuram ex-stages 4 to 6 and issuance of tickets of Rs.0.50 paise denomination to the above five passengers. In the discussion related to the said charge, the learned Chairman of the Tribunal also referred to the explanation. The 2nd charge relates to collection of Rs.7.75 paise per head from three individual passengers travelling from Atmakur to Yerramatam ex-

stages 1 to 8 and issuance of unconcerned tickets of Rs.7.75 paise denominations to the above passengers. The 3rd charge relates to collection of Rs.20.25 paise at the rate of Rs.6.75 paise per head from the batch of three passengers travelling from Atmakur to Singarjupalli ex-stages 1 to 6/7 and issuance of unconcerned tickets of Rs.6.75 paise denomination to the above passengers. The learned Chairman of the Tribunal while dealing with the said charges first referred to the statement of the petitioner under exhibit M3. Further, in the concluding portion of the discussion on the said charges, he observed as under: 'Same is the position in the case of the tickets of Rs.6.75 denomination covered by charge No.3 i.e., the passengers covered by charge No.2 and 3 were holding unconcerned tickets.' The said finding clearly suggests that the learned Chairman of the Tribunal agreed with the finding of the enquiry officer that the charges are proved. Insofar as charge no.4, the gravamen is that the petitioner issued luggage tickets as passenger tickets to passengers at Kothapalli stage no.4 and has not shown the issue of the said tickets in the SR and closed the ticket denominations of Rs.0.50 paise as 965 instead of 971. On the said charge, the learned Chairman of the Tribunal referred to the statement of the petitioner and explanations offered by him from time to time and held that the same reveal that he was not diligent while performing his duty as a conductor and that he did not exercise due diligence while attending to his duties. Thus, the learned Chairman of the Tribunal agreed with the finding of the enquiry officer that the said charge is proved. There are two more charges, 5 and 6, respectively dealing with closing of ticket tray numbers of all denominations in the SR up to stage no.5 without completing the issue of correct tickets; and, reissuance of tickets of Rs.6.75 paise and Rs.7.75 paise denominations to passengers. The enquiry officer held in his report that the said charges are proved. The disciplinary authority while imposing the penalty agreed with all the findings of the enquiry officer. The learned Chairman of the Tribunal has neither

disagreed with findings of the enquiry officer nor disturbed the said findings. The conclusion that was recorded in the Award is to the following effect: 'In view of the observations and findings given in respect of the charges levelled against the petitioner, the order of removal from service has to be modified into fresh appointment of the petitioner into service and his reinstatement into service has to be ordered on the same terms and conditions on which he entered into the service of the Corporation; but, he shall not be entitled to attendant benefits and back wages; but, he shall be entitled for continuity of service for the purpose of reckoning retiral benefits at the time of retirement.'

8. A careful perusal of the material record including the Award of the Tribunal would show that after necessary examination of the facts and relevant evidence, the learned Chairman of the Tribunal arrived at a conclusion that the charges 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 fact recorded by the Enquiry Officer and the learned Chairman of the Tribunal. When once conclusions arrived at by the Enquiry Officer and the learned Chairman of the Tribunal are found to be sustainable on facts and evidence, this Court will not normally substitute its subjective opinion in the place of the one 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-

¹ (2015) 2 SCC 610

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."

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

11. Therefore, having regard to the facts and the legal position, this Court holds that the contentions of the petitioner-workman that the finding of the Tribunal that the charges are proved is incorrect and deserves to be set aside needs no countenance, in the facts and circumstances of the case.

12. Coming to the quantum of punishment, though the punishment of removal was set aside and a lesser punishment as already indicated supra was awarded by the Tribunal, the Corporation did not assail the said Award before

² (2006) 6 SCC 187

this Court. The learned counsel for the petitioner would submit that the learned Chairman of the Tribunal ought to have granted back wages and attendant benefits along with the relief of continuity of service for all purposes but not just for the purpose of reckoning of retiral benefits. When once the Tribunal agreed with the finding of the enquiry officer that the charges are proved, it would not be open to the Tribunal or this Court to interfere with the quantum of punishment. However, the Chairman of the Tribunal interfered with the punishment and the said part of the Award was not assailed by the Corporation obviously out of generosity and mercy and perhaps on its satisfaction in regard to the proportionality of punishment. Having regard to the facts, circumstances and the legal position obtaining this Court finds that the penalty imposed is not disproportionate the acts of misconduct held proved and, therefore, the contention that the petitioner is entitled to back wages and attendant benefits and also continuity of service for all purposes and not just for the purpose of reckoning retiral benefits is a contention liable for rejection being devoid of merit. Accordingly, the said submission on behalf of the petitioner, which is having no acceptable merit, is rejected.

13. On the above analysis, this Court finds that the Award of the Tribunal does not suffer from any flaw and does not, therefore, call for interference by this Court and that the writ petition, which is devoid of merit, is liable to be dismissed.

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

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

11th April, 2017
Vjl

M. SEETHARAMA MURTI, J