

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.16246 OF 2011

Date: 29.08.2017

Between:

Kornipalli Venkata Seshaiah, s/o Venkata Ratnaiah,
E.110448, RTC Conductor, D.NO.4-993, Near Girls
High School, Gorantla, Ananthapur district.

.....Petitioner

and

The Depot Manager, APSRTC, Hindupur Depot,
Ananthapur district and another.

.....Respondents



The Court made the following:

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.16246 OF 2011

ORDER:

Petitioner joined service as Conductor on 01.07.1986. On 29.11.1998 he was assigned duties in the Bus on the route from Gorantla to Kodikonda. While so, on a check conducted on the Bus, the checking officers found that four passengers, who boarded the Bus at Gorantla and found alighting at Kodikonda were not having tickets. When questioned, the passengers stated that amount of Rs.5/- was paid by each of the passengers, but tickets were not issued. The checking officers also found that petitioner did not follow the rule of 'issue and start' and closing of statistical return upto stage no.5. Disciplinary action was initiated against the petitioner by serving charge sheet. Charge memo contained three charges; first charge is on violation of rule 'issue and start'; second charge is on failure to issue tickets even after collecting the requisite fare from four passengers; and third charge is on closing the S.R. upto stage no.5 without completing the issuance of tickets was illegal. The enquiry officer held the charges as proved. Consequently, the disciplinary authority passed orders dated 31.03.1999 removing the petitioner from service. His appeal and revision were rejected.

2. Aggrieved thereby, petitioner raised industrial dispute in I.D.No.93 of 2000 on the file of Industrial Tribunal-cum-Labour Court, Ananthapur. Industrial Tribunal by award dated 29.07.2002, sets aside the termination order and directed to issue fresh appointment to the petitioner by reducing his pay to one

annual increment with cumulative effect. Aggrieved by the decision of Labour Court treating his appointment as fresh appointment, not granting continuing of service, attendant benefits and back-wages, this writ petition is filed.

3. Heard Sri A.G.Sathyanaraya Rao, learned counsel for petitioner, Sri K.Srinivas Rao, counsel, holding for Sri Aravala Rama Rao, learned standing counsel for APSRTC for respondent no.1 and learned Government Pleader for Labour (AP) for respondent no.2.

4.1 Learned counsel for petitioner contended that Labour Court on evaluation of evidence on record held allegations in the 2nd charge as not proved and also observed that the charges 1 and 3 are incidental to the charge no.2. Having come to this conclusion, Labour Court ought to have awarded the other claims of the petitioner. He would submit that categorical finding recorded by the Labour Court would show that the petitioner did not commit any misconduct and tickets could not be issued to the four passengers as they failed to present the amount to purchase the tickets and as the Bus was heavily crowded with 67 passengers, there was no possibility to undertake checking of each of the passengers. It is thus contended that once Labour Court holds that petitioner's action in not issuing tickets to four passengers was not deliberate, rest of the issues fall to the ground and, therefore, petitioner is entitled to all the benefits.

4.2. He would submit that once the allegations fall to the ground, the punishment imposed becomes illegal and, therefore, delinquent employee is entitled to all consequential benefits

including continuity of service, attendant benefits and back-wages. Denial of the same is illegal. According to the learned counsel, Labour Court erred in not exercising properly the power under Section 11-A of the Industrial Disputes Act in granting the reliefs to the petitioner as a consequence to the holding the charge no.2 as not proved.

4.3 In support of his contention, learned counsel placed reliance on the following decisions of Supreme court.

i) **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.ED.) and others**¹; and

ii) **Nicholas Piramal India Limited v. Harisingh**².

5.1 Learned standing counsel would submit that three charges were leveled against the petitioner. The evidence against 2nd charge would show that passengers paid the fare, but tickets were not issued to them and, therefore, what is alleged against petitioner amounted to cash and ticket irregularities. Labour Court erred in recording the finding in favour of petitioner when evidence clearly supports that fare was paid by the passengers. He would submit that Labour Court erred in relying on the deposition of Sri C.N.C.Basha, Checking Inspector, in holding the punishment as excess.

5.2 He would further submit that Labour Court was only held charge no.2 as not proved. On Charge nos.1 & 3 Labour Court has not recorded finding in favour of petitioner. Labour Court held against the petitioner on violating mandatory rule, 'issue and

¹ (2013) 10 SCC 324

² (2015) 8 SCC 372

start' and closing the SR at stage no.5. Thus, it is not a case of full exoneration of charges leveled against the petitioner. Having held that charge no.2 was not proved, Labour Court opined that punishment of removal was excessive. Thus, petitioner is not entitled to claim benefits of continuity of service, attendant benefits and back-wages. According to the learned counsel, petitioner ought to have been content with the relief already granted by the Labour Court.

5.3. In support of his contention, learned standing counsel placed reliance on the following decisions.

i) **Senior Superintendent of Post Offices, Pathanamthitta and others**³;

ii) **Divisional Controller, N.E.K.R.T.C. v. H.Amaresh**⁴;

iii) **Union of India and others v. Bishamber Das Dorga**⁵; and

iv) **Union of India and others v. P.Gunasekaran**⁶.

6. Punishment of removal was based on three charges leveled against the petitioner. As noted above, first charge relates to violation of rule 'issue and start'; second charge relates to not issuing tickets even after collecting requisite fare and third charge relates to closing of SR even before tickets were issued.

7. Labour Court relied on the deposition of the Checking Inspector to hold in favour of petitioner. According to the deposition of checking inspector, initially passengers did not state about the payment of money to the Conductor, but on threat of being penalized for not paying the ticket fare, took different version

³ (1997) 11 SCC 239

⁴ (2006) 6 SCC 187

⁵ (2009) 13 SCC 102

⁶ (2015) 2 SCC 610

and stated that fare was paid. Having regard to this piece of evidence, Labour Court held that the charge of not issuing the tickets even after collection of fare cannot be held as proved. This finding of the Labour Court has become final. Though, learned standing counsel sought to contend against finding recorded by Labour Court on charge No.2, since the respondent-Corporation did not challenge the award passed by the Labour Court, this Court is not inclined to go into the correctness of the findings arrived by the Labour Court in this writ petition. The decision relied upon by the learned standing counsel are on merits of the charges held proved or even if one charge is not proved, but other charges are grave. Therefore, the decisions relied upon by the respondent-Corporation have no help to the respondent-Corporation.

8. As noted above, disciplinary action was initiated on three charges leveled against the petitioner. The finding in favour of petitioner was against only charge no.2. Labour Court has not recorded any contrary finding against the finding recorded in disciplinary proceedings in charge nos.1 and 3. Reading of the award would show that petitioner was repenting for his misconduct and requested to take a lenient view in awarding the punishment. It was contended on behalf of the petitioner that penalty of removal was highly disproportionate. Having regard to its finding on charge no.2, Labour Court was of the opinion that the punishment of removal was excessive.

9. While considering the issue as to what is appropriate relief that can be granted to the employee once charge no.2 was held not

proved, the employer brought to the notice of the Labour Court that it was not a solitary instance and the petitioner was earlier visited with punishment of censure on four occasions and that his annual increments were deferred on five occasions. The Labour Court was also informed that those punishments were inflicted for his involvement in cash and ticket irregularities. While exercising its discretionary jurisdiction vested in the Labour Court under Section 11-A of the Act, Labour Court considered the stand of employer with reference to past conduct to modulate and impose appropriate punishment after holding the punishment of removal as not valid being disproportionate to the delinquencies ultimately established against the petitioner.

10.1. While considering the quantum of punishment that can be imposed on the employee, employer is competent to take note of past conduct. I am supported in my view by the following decisions.

10.2. In **Government of Andhra Pradesh Vs. Mohd Taher Ali**⁷, Supreme Court held as under:

“5. Learned counsel appearing on behalf of the respondent submitted that in fact, the disciplinary authority while passing the order has taken into consideration the earlier absence of the respondent from the duty. He submitted that this could not have been taken into consideration as the respondent was not aware about these incidents and those were not the part of the charges levelled against him. In support of his submission learned counsel for the respondent has invited our attention to the judgment of this Court titled *State of Mysore v. K. Manche Gowda* [AIR 1964 SC 506 : (1964) 4 SCR 540] but in the present case we are satisfied that in fact the respondent deliberately absented himself from duty and did not offer any explanation for his absence from election duty. It is not the respondent's first absence. He also absented himself from duty on earlier occasions also. ***In our opinion there can be no hard-and-fast rule that merely because the earlier misconduct has not been mentioned in the charge-sheet it cannot be taken into***

⁷ (2007)8 SCC 656

consideration by the punishing authority. Consideration of the earlier misconduct is often only to reinforce the opinion of the said authority. The police force is a disciplined force and if the respondent is a habitual absentee then there is no reason to ignore this fact at the time of imposing penalty. Moreover, even ignoring the earlier absence, in our opinion, the absence of 21 days by a member of a disciplined force is sufficient to justify his compulsory retirement.”
(emphasis supplied)

10.3. In **Union of India and others Vs Bishamber Das Dogra**

(supra), Supreme Court held:

“30. In view of the above, it is evident that it is desirable that the delinquent employee may be informed by the disciplinary authority that his past conduct would be taken into consideration while imposing the punishment. **But in case of misconduct of grave nature or indiscipline, even in the absence of statutory rules, the authority may take into consideration the indisputable past conduct/service record of the employee for adding the weight to the decision of imposing the punishment if the facts of the case so require.**”
(emphasis supplied)

10.4. In **Central Industrial Security Force Vs Abrar Ali⁸**,

Supreme Court reiterated the view expressed in **Bishamber Das Dogra** (supra). Supreme Court held, “*In any event, past conduct of a delinquent employee can be taken into consideration while imposing penalty*” (paragraph 17).

10.5. In **Harisingh** (supra), Supreme Court held that nothing in law prevents the punishing authority from taking past record of the delinquent employee for consideration at the stage of punishment. However, Supreme Court observed that what is essential is that the Government servant should be given a reasonable opportunity to know that fact and meet the same. (paragraph-30).

⁸ (2017) 4 SCC 507

10.6. Facts on record would disclose that company issued two charge sheets against employee alleging violation and disregarding orders of his senior officers and intentionally slowed down the work under process and made less production by adopting 'go-slow work' tactics. Enquiry officer found the employee guilt of misconduct. The said finding was accepted and was dismissed from service on 30.07.2001. On challenging before the Labour Court, Labour Court affirmed the decision of employer. Appellate Court remitted the matter to the Labour Court. On remand, Labour Court again passed award upholding the punishment. The same was again challenged in appeal, which again remanded to the Labour Court. On second remand, Labour Court partly allowed the application setting aside the order of dismissal dated 30.07.2001 and directed payment of 50% of back-wages. This time, employer preferred appeal before the Industrial Court. Industrial Court dismissed the appeal. The employer challenged the same before the High Court. High Court confirmed the decision of Labour Court as affirmed by the Industrial Court.

10.7. Supreme Court affirmed the decision of the Labour Court holding that punishment of dismissal was disproportionate and granted back-wages. From the reading of the judgment, it is seen that Supreme Court was not considering the past misconduct as an issue.

11. Thus, when employer can look into past misconduct to arrive at a decision to impose appropriate punishment, it cannot be said that while exercising its discretion under Section 11-A, Labour Court cannot take note of the contention of the employer on past

conduct and deal with the same in modulating the quantum of punishment imposed. More so, such contention of employer was in response to assertion of employee.

12. I am of the considered opinion that when the Labour Court was called upon to exercise its discretion under Section 11-A, such power inheres in the Labour Court the competence to go into all aspects to assess whether domestic enquiry is valid and whether punishment imposed is commensurate with the delinquency alleged and proved. Such assessment can not be in isolation. While considering the proportionality of punishment vis-à-vis charges levelled and proved, it is within the competence of Labour Court to assess rival stands. Petitioner contended that he had good record of service. This was opposed by respondents by referring to punishments imposed earlier. It is to be noted that relationship of employer and employee is based on trust and confidence and competence of employee to attend to the requirements of employer. Discipline in employment is a fundamental requirement. An employee may have been proceeded on a misconduct and the same is proved. The proved misconduct *per se* may not warrant a grave punishment but if employee was indulging in repeated malfeasance and the employer notes that there is no remorse in the employee, he may impose more graver punishment than what was warranted on a given misconduct. That being so, it cannot be said that stand of employer cannot be considered at all by the Labour Court.

13. In **V.Ramana Vs. APSRTC, Visakhapatnam Region and others⁹**, Full Bench of this Court held that Section 11-A of the Industrial Disputes Act, 1947 confers wide powers on the Industrial Tribunal/Labour Court to consider as to whether the punishment imposed upon a delinquent workman is legal or justified and whether commensurate with delinquency alleged and proved and to award appropriate punishment, whereas, the jurisdiction of High Court to interfere with quantum of punishment is limited.

14. The scope of power of Labour Court with reference to considering the validity of the domestic enquiry and modifying punishment imposed was elaborately considered by the Supreme Court in **The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Ors¹⁰**.

15.1. In **Deepali Gundu Surwase (supra)**, on the allegation of refusing to comply with the dictate of the Headmistress, several memos were issued to the appellant; she was placed under suspension; and disciplinary action resulting in termination from service. The appellant contested the termination in the appeal preferred by her. By order dated 20.06.2009, the Presiding Officer of the School Tribunal allowed the appeal and quashed the termination order and directed payment of full back wages to the appellant. The said order of the Tribunal was challenged before the High Court. The learned Single Judge agreed with the view taken by the Tribunal against suspension and termination. However, the direction given by the Tribunal regarding payment of

⁹ 2001 (5) ALT 180 (FB)

¹⁰ AIR 1973 SC 1227

back wages was set aside by relying on the judgment of the Supreme Court in **J.K.Sinthetics Vs K.P.Agarwal**¹¹. Aggrieved by the denial of back wages, the appellant invoked the jurisdiction of the Supreme Court. On review of the entire law on the subject, the Supreme Court delineated the propositions which can be culled out from the precedent decisions.

15.2. To the extent relevant to this case paragraph 38 of the judgment reads as under :

“38. The propositions which can be culled out from the aforementioned judgments are :

38.1. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

38.2. The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

.....

38.4. The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and/or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

38.5. The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimising the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc., merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The courts must always keep in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee/workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him

¹¹ 2007 (2) SCC 433

of the burden to pay to the employee/workman his dues in the form of full back wages.

.....

(emphasis supplied)

16. In the case on hand, with reference to plea raised by the petitioner that he was innocent and he discharged his entire service honestly, Labour Court noted the contention of the respondent corporation that petitioner was censured on four occasions and on five occasions his annual increments were deferred. Thus, factum of previous disciplinary action was taken note by the Labour Court.

17. However, mere reference to past conduct would not make the award a nullity having regard to the facts of this case. It is not a case, where employee was completely exonerated. Thus, even if looking into past conduct is held erroneous, petitioner cannot make a claim for all service benefits as he was not completely exonerated. Claim for back-wages, continuity of service and attendant benefits would arise only if entire disciplinary action is held as illegal. Facts on record and the award passed by the Labour Court would disclose that petitioner was not acquitted of all the three charges. The Labour Court held only charge no.2 as not proved. Since petitioner was not acquitted fully, it cannot be said that denial of continuity of service, attendant benefits and back-wages as amounting to perverse decision of the Labour Court warranting interference by this Court. Furthermore, having regard to facts of this case, it cannot be said Labour Court erred in prescribing punishment of fresh appointment to the petitioner by reducing his pay to one annual increment with cumulative effect.

It is a decision made in valid exercise of power vested in the Labour Court under Section 11-A of the Industrial Disputes Act, 1947.

18. I, therefore, see no merit in the contentions urged. Writ petition is dismissed accordingly. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 29.08.2017
kkm



HON'BLE SRI JUSTICE P.NAVEEN RAO



WRIT PETITION NO.16246 OF 2011

Date: 29.08.2017

kkm