THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.25314 of 2008

ORDER:

This writ petition, under Article 226 of the Constitution of India, by the petitioner/conductor, is directed against the Award, dated 04.01.2008, of the learned Chairman-cum-Presiding Officer, Industrial Tribunal–cum–Labour Court, Anantapur, ('the Tribunal', for brevity) passed in I.D.No.135 of 2006.

2. I have heard the submissions of *Sri G.V.L.Murthy*, learned counsel for the writ petitioner, and of *Sri A.Rama Rao*, learned Standing Counsel for APSRTC, representing the first respondent. I have perused the material record.

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

The petitioner was appointed as a Conductor in the 1st respondent-Corporation in the year 1986. On 20.08.2005, while he was conducting the bus bearing Registration No.AP 10Z 9474 on route-Proddutur-Tirupathi, a check was exercised by the checking officials at stage No.20 at about 11 AM. During the said check, certain cash and ticketing irregularities were detected, according to the management. Basing on the material available on record, the Disciplinary Authority suspended the petitioner from service, on 26.08.2005. A charge sheet was served on the petitioner on the same day. The charges formulated verbatim are as follows:

1) For having collected Rs.58/- from a passenger who boarded the bus at stage No.07 travelled to Tirupathi stage No.20 and issued ticket den. of Rs.20/- bearing No.790/959470 and Rs.8/- den. Bearing No.397/186915 totally worth of Rs.28/- instead of Rs.58/- which is requisite fare. An amount of Rs.30/- has been pocketed by you which is the legitimate revenue of the Corporation which constitutes serious

misconduct under Reg. 28 (XXV) of APSRTC Employees' (Conduct) Ret. 1963.

2) For having closed the ticket tray number of all denominations in the SR up to stage No.20 without completing the above ticket issues, which constitutes serious misconduct under Reg. (XXXII) of APSRTC Employees' (Conduct) Reg. 1963."

The petitioner submitted an explanation to the charge sheet, on 29.08.2005. However, as the Corporation is not satisfied with the contents of the said explanation, a domestic enquiry was ordered. The enquiry Officer, after duly conducting a domestic enquiry, submitted a report, on 08.11.2005, holding that the charges are proved. As the comments and objections of the petitioner to the said enquiry report were found unconvincing and unsatisfactory, a show-cause notice, dated 02.12.2005, was issued to the petitioner proposing punishment of removal from service. The petitioner's further explanation, dated 05.12.2005, to the said show-cause notice was found unsatisfactory. Hence, the Disciplinary Authority passed final orders, on 05.12.2005, removing the petitioner from service. His appeal was dismissed by the appellate authority, on 10.04.2006. His review petition was rejected, on 08.06.2006, by the reviewing 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 Chairman of the Tribunal having observed that the petitioner honestly admitted his mistake in his spot statement and that the petitioner has no fraudulent intention in committing the said mistakes, *inter alia,* held that the punishment of removal from service requires to be set aside; and, accordingly, the said punishment was set aside and the Corporation was directed to reinstate the petitioner into service with continuity of service; however, without attendant benefits and back wages for the break period. Aggrieved thereby, the petitioner filed this writ petition.

4. The further submissions made on behalf of the petitioner are as follows:

The petitioner having joined the services of the Corporation as a Conductor in the year 1986 rendered nearly two decades of unblemished service. When a charge sheet was issued, he gave a detailed explanation stating that he could not tally the tickets at Kodur with reference to the Statistical Return since about 70 passengers boarded the bus at Kodur, which was bound for Tirupathi, and as the bus was overloaded with passengers. The petitioner also submitted in his explanation that the colours of the tickets of Rs.50/- denomination and Rs.20/- denomination are one and the same; and therefore, there was some confusion while issuing the tickets of the same colour but of different denominations. He did not commit any illegality or irregularity. He has no fraudulent intention as rightly held by the Chairman of the Tribunal. When once the learned Chairman of the Tribunal came to the conclusion that the acts of the petitioner are purely mistakes and that the petitioner had also honestly admitted his mistakes, the learned Chairman ought to have held that there is no misconduct and that therefore, the charges are not proved. However, the learned Chairman of the Tribunal erroneously held that the penalty of removal from service is liable to be set aside and that the punishment requires to be modified. While modifying the punishment, a punishment, which is not proportionate or commensurate to the gravity of the charges was imposed; and, the penalty imposed under the Award of the Tribunal is grossly disproportionate to the findings to the effect that there is no misconduct, but there is only a mistake on the part of the petitioner and that the said mistake is also honestly admitted by the petitioner. But for the heavy load of passengers and the same colour of tickets of different denominations, the mistake would not have occurred. The petitioner has no fraudulent intention; and, no loss of revenue is caused to the Corporation. The Enquiry Officer did not appreciate the facts and the explanation of the petitioner correctly and the evidence in proper perspective. The appellate and the reviewing authorities mechanically confirmed the orders of the Enquiry Officer. In any view of the matter, the quantum of punishment imposed is shockingly disproportionate to the alleged mistaken acts which are committed without any fraudulent intention of causing loss of revenue to the Corporation. Hence, the Award may be set aside and the petitioner may be granted back wages and all consequential benefits.

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

The charges formulated reflect that the petitioner indulged in serious cash and ticketing irregularities. When a check was exercised, certain irregularities were detected. 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. A show cause notice along with a copy of the enquiry report was served on the petitioner and his explanation was called for. As his explanation was unconvincing and unsatisfactory, he was removed from service by proceedings, dated 05.12.2005. His appeal and petition for review were rejected by orders, dated 10.04.2006 and 08.06.2006, respectively passed 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 held 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 with the employer is fiduciary in nature. 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 reinstatement 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. However, the Corporation out of generosity did not challenge the said findings of the Tribunal. 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. Learned counsel for the petitioner would further submit that the petitioner/Conductor retired from service on attaining the age of superannuation. After his reinstatement into service, he served the Corporation without any complaint from any quarter. He is an employee with good track record. He was awarded merit certificates on two occasions in due appreciation of his services. His past record ought to have been taken into consideration by the learned Chairman. The learned Chairman ought to have granted attendant benefits and also back wages for the break period.

7. I have bestowed my attention to the facts and given earnest consideration to the submissions.

8. To begin with, it is necessary to consider the graveman of the charges. The 1st charge relates to collection of Rs.58/- from a passenger, who boarded the bus at stage No.7-Kadapa and travelled up to stage No.20-Tirupathi and issuance of tickets worth Rs.20/- and Rs.8/- denominations total worth Rs.28/- instead of issuance of tickets worth Rs.58/-, which is the requisite fare. Thus, according to this charge, the petitioner pocketed Rs.30/-, which

is the legitimate revenue of the Corporation. The 2nd charge is a consequential charge relating to closing the ticket tray nos. of all denominations in the SR up to stage no.20 without completing the above said ticket issues. After due enquiry, the Enquiry Officer found that the charges are proved. The petitioner, in his explanation admitted that he collected the requisite fare of Rs.58/- from the passenger in question, who boarded the bus at Kadapa and bound for Tirupati, and also further stated that he issued tickets to the passengers and that later, picked up passengers on the way at Rajampet, Pullampet and Obulavaripalli stages and closed the Statistical Return at proper places and that at Kodur stage, about 70 passengers boarded the bus and therefore, he could not tally the tickets and that after reaching Tirupati, the checking officials checked the bus and detected that tickets of Rs.20/- and Rs.8/- denominations in combination were found with the passenger, who boarded the bus at Kadapa and travelled up to Tirupathi by paying Rs.58/- to the petitioner conductor. His further explanation is that the colour of Rs.50/- and Rs.20/- denomination tickets is one and the same and thereby, he was mistaken and was carried away and that on account of the same colour of tickets of two different denominations, the mistake has occurred. However, he also admitted that there isn't any stage for issuance of Rs.28/- denomination tickets in combination. Thus, the material brought on record sufficiently established that the petitioner having collected the requisite fare of Rs.58/- from a passenger who boarded the bus at Kadapa and bound to Tirupati, issued two tickets of Rs.20/- and Rs.8/- in combination instead of issuing tickets worth Rs.58/- towards the requisite fare collected by him and thus, pocketed Rs.30/-, which is the legitimate revenue of the Corporation. However, at the time of check, there were 49/57 +1 passengers in the bus and the bus was over-loaded with passengers was undisputed. According to the petitioner, he did not tally the tickets at Kodur with reference to the Statistical Return due to heavy rush of passengers in the bus.

In view of the explanation and the evidence brought on record, the Enquiry Officer, in the well considered view of this Court, is justified in holding that the charges formulated against the petitioner are proved. The findings of the learned Chairman of the Tribunal also reflect that he concurred with the findings of the Enquiry Officer that the charges are proved.

9. Thus, a careful perusal of the material record including the Award of the Tribunal would show that after examination of the facts and circumstances and also the relevant evidence, the learned Chairman of the Tribunal arrived at the conclusion that the charges are proved and accordingly, confirmed the findings of the Enquiry Officer. 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 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 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.

10. 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:
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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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> I 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;

[1] (2015) 2 SCC 610

(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."

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, legal position and the findings supra, this Court holds that the contention of the petitioner/conductor that the finding of the Tribunal that the charges are proved is incorrect and that the said finding deserves to be set aside is devoid of merit and needs no countenance in the facts and circumstances of the case.

11. Coming to the quantum of punishment, though the punishment of removal from service was set aside and a lesser punishment, as indicated supra, was imposed, the Corporation did not assail the said portion of the Award before this Court. 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. When once the Tribunal concurred with the findings of the Enquiry Officer that the charges are proved, it ought not to have interfered with the quantum of penalty. However, the learned Chairman of the Tribunal interfered with the measure of penalty and the said part of the order of the

Tribunal was not challenged by the Corporation out of generosity. Having regard to the facts and the legal position obtaining, this Court finds that the contention of the petitioner that he is entitled to attendant benefits and back wages along with continuity of service is a contention liable for rejection being devoid of merit. Accordingly, the said submissions made on behalf of the petitioner are rejected since having no acceptable merit.

12. On the above analysis, this Court finds that the award of the Tribunal 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.

M.SEETHARAMA MURTI, J

20th April, 2017
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