

**HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE G. SHYAM PRASAD**

Writ Appeal No.543 of 2016

ORDER: (per V. Ramasubramanian, J.)

This writ appeal filed by the Management of the Andhra Pradesh State Road Transport Corporation is directed against the order of the learned single Judge modifying the award of the labour Court and directing reinstatement of the 1st respondent with continuity of service and half of the back wages.

2. Heard Mr. S.V. Ramana, learned standing counsel for the appellants and Sri A.K. Jaya Prakash Rao, learned counsel for the 1st respondent.

3. The 1st respondent was employed as a Conductor in the appellant Corporation from the year 1998. On 01-05-2007 when he was on duty in Vehicle No.937, the checking officials of the Regional Enforcement Squad found out that two passengers were not issued with tickets though they paid Rs.6/-. Therefore, disciplinary proceedings were initiated with the issue of a Charge Memo.

4. The charges alleged against the 1st respondent were (1) that he violated the Rule "issue and start" while performing the duty on 01-05-2007 and (2) that he failed to issue tickets of the denomination of Rs.3/- to two passengers even after collecting the requisite fare from them at the boarding point itself, thereby committing a serious misconduct.

5. The 1st respondent gave an explanation claiming that those two passengers tendered Rs.50/- for the purchase of two tickets for a total amount of Rs.6/-; that as there was no sufficient change available with him, he was trying to get the change from the other passengers; that in the meantime, the bus reached Annavaram where the surprise check took place and that there was neither an intention nor an act of any misappropriation.

6. In the domestic enquiry, the 1st respondent was found guilty of misconduct and a penalty of removal from service was passed. The 1st respondent raised an Industrial Dispute under Section 2 A of the Industrial Disputes Act, 1947, which was taken on file in I.D.No.76 of 2008.

7. It was agreed that there was no challenge to the legality of the domestic enquiry. Therefore, the Tribunal examined the case on the basis of the available material and came to the conclusion that the finding of fact arrived at by the Enquiry Officer was not liable to be interfered. On the question of penalty, the Labour Court concluded that in cases where the conductor of a Transport Corporation played fraud on the Corporation by misappropriating the revenue without issuing the tickets to the passengers after having collected the fare, the penalty could not be interfered with.

8. Aggrieved by the award of the Labour Court confirming the penalty, the petitioner filed a writ petition in W.P.No.12474 of 2010. The learned Judge allowed the writ petition on the ground that the passengers from whom the fare was collected and tickets not issued, were neither examined nor their statements recorded; that as

a consequence, it would be a case of no evidence and that the punishment was also shockingly disproportionate. In that view of the matter, the learned Judge allowed the writ petition and directed reinstatement with 50% of back wages.

9. Aggrieved by the said order, the Management is before us.

10. At the outset we must point out that the learned Judge was not correct in law in holding the non-examination of the passengers in the domestic enquiry as fatal to the case of the Management. The view so taken by the learned Judge in Para 8 of his judgment is contrary to the law laid down by the Supreme Court in ***State of Haryana v. Rattan Singh*** (1977 (2) SCC 491), wherein the Supreme Court held that once the evidence of the Inspector was before the Enquiry Officer, the Courts could not have insisted on the evidence of the ticketless passengers. The view so taken in ***Rattan Singh*** was followed in ***Devendra Swamy v. Karnataka State Road Transport Corporation*** ((2002) 9 SCC 644) and also in ***Divisional Controller, KSRTC v. A.T. Mane***¹. Therefore, the failure of the management to examine the passengers or to record their statements, is not fatal to the case of the Management at all. The learned Judge actually ought to have seen whether at least the checking officials were examined in the course of the enquiry and whether there was some evidence. Since the learned Judge did not do so, we are constrained to look into the domestic enquiry report that was filed as Ex.M.14 before the Labour Court.

11. In the domestic enquiry, one of the checking officials of the Regional Enforcement Squad by name L.M. Rao was examined. All

¹ 2005 (3) SCC 254

that he stated was that when he and another official by name T.S. Narayana conducted a check they found two passengers without tickets and that they informed the officials that they had paid Rs.50/- for the purchase of two tickets of Rs.3/- each and that though they got the balance of Rs.44/-, they were not issued tickets. If the Enquiry Officer has stopped with the examination of one of the checking officials, then the management could probably rely upon the same. But in the enquiry, the statement given by one of the passengers to the checking officials was also marked and relied upon. The 1st respondent had no opportunity to controvert this statement.

12. More over the 1st respondent made a spot explanation even at the time when the checking took place. This spot explanation was to the effect that at A.M.G. Colony, two passengers boarded the bus and gave Rs.50/-. Due to non-availability of change he asked the other passengers. By the time he collected the change and paid it to the passengers, the bus reached Annavaram stage. This explanation was actually a possible explanation. While analysing the evidence of one of the officials together with the statement given by one of the passengers to the checking officials, the Enquiry Officer merely concluded that the 1st respondent was guilty of negligence while on duty. In other words, the Enquiry Officer did not find the 1st respondent guilty of a charge of misappropriation, temporary or otherwise. The relevant portion of the enquiry report reads as follows:

“The primary duty of the service conductor is collected requisite fare from the boarded passenger and issued correct and valid

ticket duly punching correctly and then closed the Sr, but in this connection the service conductor had failed to do so. Further, the service conductor is clearly accepted that this mistake was happened due to non-observance of forthcoming stage, it clearly shows his gross negligence while on duty.....”

13. Therefore, the logic that would apply to cases where allegations of misappropriation are made are completely different from cases where the Enquiry Officer holds a conductor guilty of negligence in the discharge of duty. It is this fine distinction that the Labour Court failed to take note of, especially when the Court had a special jurisdiction under Section 11 A. This is perhaps the reason which prompted the learned Judge to grant relief though the learned Judge did not say so in so many words.

14. For a charge of negligence in the discharge of duty, especially when the spot explanation offered by the conductor was quite possible and the same was not controverted by other evidence, the extreme penalty of removal from service is completely disproportionate. Therefore, we are of the considered view that the learned Judge was right in directing reinstatement.

15. In so far as the question of back wages is concerned, the order of removal from service was passed on 25-08-2007. A period of more than 9 years has passed. Therefore, it may not be proper to award 50% of the back wages in a case of this nature. Therefore, we modify the back wages payable into one of 25%.

16. Accordingly, the writ appeal is partly allowed modifying the order of the learned Judge. The 1st respondent will be entitled to reinstatement with continuity of service together with back wages at

25% from the date of the award of the Labour Court viz., 21-01-2010. No costs.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

G. SHYAM PRASAD, J

Date: 05-01-2017

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