

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Writ Petition No.5067 of 2003

ORDER:

This Writ Petition is filed by the petitioner challenging the Award dated 20.06.2000 in I.D.No.9 of 1999 passed by the Chairman-cum-Presiding Officer, Industrial Tribunal-cum-Labour Court, Ananthapur (for short “the Industrial Tribunal”), whereunder the petitioner was reinstated into service as a ‘*Fresh Conductor*’ but without continuity of service or back wages.

2) The factual matrix of the case is thus:

a) The petitioner was appointed as Conductor in 2nd respondent—Corporation in the year 1978 and while he was conducting bus bearing No.9975 on the route from Ananthapur to Rayadurg, the authorities exercised check on 27.02.1997 and charge sheet was issued with three charges thus:

1. For having collected the requisite fare of Rs.18/- from a batch of two passengers who boarded your bus at Kalyandurg and bound for Rayadurg (Ex.stages 5-1) and failed to issue the valid tickets to them on 27.02.1997 when checked by the TTIs of Headquarters, Enforcement Squad, Kadiri at stage No.3/2 on route Ananthapur to Rayadurg, which constitutes misconduct under Regulation 28(vi)(a) and (x) of APSRTC Employees (Conduct) Regulation, 1963.

2. For having closed the SR of all denominations upto the check point without completing the above tickets issued which constitutes misconduct under Regulation 28 (xxxi) of APSRTC Employees (Conduct) Regulations, 1963.

3. *For having violated the rules “issue and start” which constitutes misconduct under Regulation 28(xxxi) of APSRTC Employees (Conduct) Regulations, 1963.”*

b) The petitioner submitted his explanation stating that there were 82 passengers at the time of check and taking advantage of the situation, some of the passengers failed to purchase the ticket and due to overload he could not tally the number of passengers with issued tickets and requested the checking officials to check the bus cash but they did not accede his request and there was no fault on his part.

c) Being not satisfied with the explanation offered by the petitioner, the authorities appointed Enquiry Officer who after enquiry held the petitioner guilty of the charges vide his enquiry report dated 05.06.1997 upholding the charges levelled against the petitioner. Basing on the said report the 2nd respondent—Depot Manager passed an order dated 01.10.1997 terminating the petitioner from service. Aggrieved, the petitioner filed I.D.No.9 of 1998 wherein the Tribunal after considering the facts and circumstances of the case, directed the management to reinstate the petitioner as Conductor afresh but without continuity of service or back wages.

Hence, the instant writ petition.

b) Respondent No.2/APSRTC filed counter and opposed the petition contending that during the check done by the officials of the Corporation on 27.02.1997, the petitioner was found committing certain serious cash and ticket irregularities. Basing on the report of checking officials, charge sheet was issued to the petitioner and he was removed from service.

Aggrieved, the petitioner filed I.D.No.9 of 1998 before the 1st respondent and the Tribunal took a lenient view and passed Award dated 20.06.2000 directing the management to reinstate the petitioner into service as ‘*fresh conductor*’ but without continuity of service and back wages. Thus the 2nd respondent prayed to dismiss the Writ Petition.

3) Heard arguments of Smt.K.Udaya Sri, learned counsel for petitioner and Sri Aravala Rama Rao, learned standing counsel for APSRTC/2nd respondent.

4) The point for determination is:

“Whether the award passed by the Industrial Tribunal is factually and legally sustainable?”

5) **POINT**: The petitioner filed I.D.No.9 of 1998 on the file of Industrial Tribunal-cum-Labour Court, Ananthapur challenging the departmental proceedings and consequent removal from service. The Industrial Tribunal though confirmed the departmental proceedings and held the petitioner was guilty of non-issuing tickets to two passengers, however, taking into consideration of the facts that the petitioner served as Conductor and the amount involved was Rs.18/- and the punishment imposed by the management was disproportionate to the gravity of the charge, directed the management to appoint the petitioner as Conductor afresh and the petitioner shall forego the continuity of service and back wages. The cardinal principle is that unless departmental enquiry suffers the vice of perversity, arbitrariness and capriciousness and the punishment imposed by

the disciplinary authority is shockingly disproportionate to the charges proved, the Courts and Tribunals, shall not interfere with the same in the judicial review. Vide:

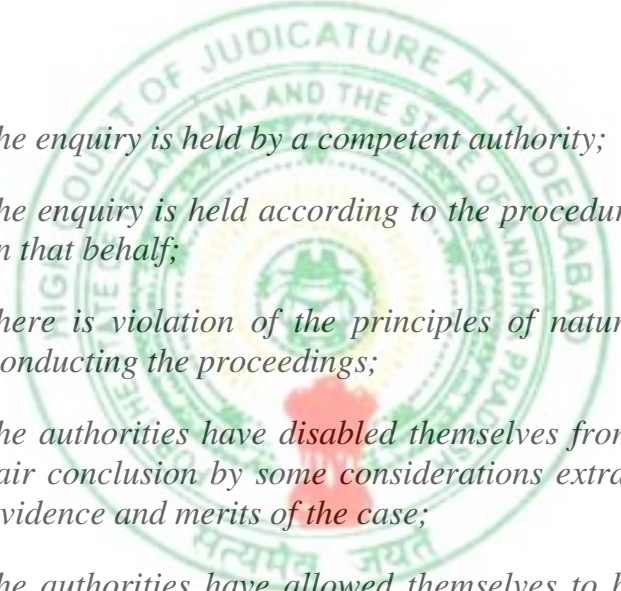
1) *State Bank of Bikaner and Jaipur vs. Nemi Chand Nalwaya*¹

2) *V. Ramana vs. A.P.S.R.T.C. and others*²

3) *Union of India vs. P.Gunasekaran*³

6) In *Gunasekaran*'s case (3 supra) the Apex Court observed that the High Court can only see whether:

“Para-12:

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- (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.”*

¹ (2011) 4 SCC 584

² (2005) 7 SCC 338

³ (2015) 2 SCC 610

7) In the light of above precedential jurisprudence, it has now to be seen whether the Tribunal was right in approving the departmental proceedings holding the petitioner guilty of non-issuance of tickets to two passengers. It is also required to be seen whether the award passed by the Tribunal directing reinstatement without continuity of service and back wages is legally valid.

8) Admittedly, on 27.02.1997 the petitioner was the Conductor of APSRTC bus plied between Ananthapur and Rayadurg. The allegation is that he collected Rs.18/- from a batch of two passengers who boarded the bus at Kalyandurg to go to Rayadurg but did not issue tickets. The check was conducted by TTIs. of Headquarters Enforcement Squad, at Kadiri at Stage No.3/2. They noticed that petitioner did not issue tickets to two passengers. Hence, for the misconduct of not issuing tickets and not following “*issue and start*” rule he was charge sheeted. The checking officers have recorded the sport statements of R.C.Thimmappa, one of the two passengers to whom the petitioner did not issue tickets and also the spot statement of the conductor. The said Thimmappa stated that they were two persons and both of them were travelling from Kalyandurg to Rayadurg and they paid Rs.18/- at Kalyandurg but the Conductor did not issue tickets to them. He admitted that since they have not demanded tickets from the Conductor, the checking officials imposed fine of Rs.40/- on them. Then, the Conductor stated that two passengers were travelling from Kalyandurg to Rayadurg and the checking officers entered at Kadirimpalli and found those two passengers not having tickets. They

stated as if they paid Rs.18/- but he does not remember whether they paid the amount or not. Had they paid the amount he would have issued tickets to them.

a) Then, the enquiry report shows that the Enquiry Officer has observed that the petitioner after collecting Rs.18/- from the two passengers who are wife and husband did not issue tickets to them and since the petitioner was conducting to a fast service bus, he had sufficient time to check the passengers and tickets before closing the SR but he neglected his duty. He thus, held that the charge was established. A perusal of the record would show that the spot explanation of the petitioner was not that the passengers did not pay him money but he did not remember whether they paid money or not. Be that it may, as a conductor it is his duty to check whether all the passengers have been issued tickets or not. Whether the passengers gave a false statement before the authorities that they paid the amount is not the main issue. As already stated, the Conductor is duty bound to check and see that the tickets were issued to all the passengers. Thus, he has not followed the “*issue and start*” rule. In that view of the matter, the guilt of the petitioner is manifest. Therefore, the department as well as the Tribunal have rightly found him guilty of misconduct.

b) Then, coming to the proportionality of the punishment, the Tribunal took a lenient view and set aside his dismissal order and directed him to be reinstated but without back wages and continuity of service. Since the Tribunal has already shown clemency, in the considered view of this Court, there is no need to interfere with the award passed by the Tribunal.

9) In the result, this Writ Petition is dismissed by confirming the Award passed by the Tribunal in I.D.No.9 of 1998. No costs.

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

U. DURGA PRASAD RAO, J

Date: 08.06.2018
Murthy

