

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.21725 OF 2001

ORDER:

Petitioner-workman filed this writ petition seeking issuance of a Writ of *Certiorari* calling for the records pertaining to the award dated 11.02.1999 passed in I.D.No.39 of 1997 by the Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad, denying the reliefs prayed for in the petition, and quash the same being illegal, arbitrary and contrary to the provisions of the Industrial Disputes Act, 1947.

Brief facts of the case are that the petitioner joined in the second respondent-Corporation as conductor in the year 1984. On 19.09.1996 while he was conducting city bus on route No.10 Metro Liner, a check was exercised by the checking officials at stage No.7 and found certain cash and ticket irregularities. Petitioner was issued with a charge memo to which the petitioner submitted a detailed explanation denying the charges. Thereafter, the second respondent issued a charge sheet on 25.09.1996 framing the following charges:

Charge No.1: For having collected Rs.8/- at Sanathnagar, stage No.8, from a batch of two passengers and issued them one ticket bearing ticket No.011/154324 of Rs.5/- denomination on seeking the TTIs at the time of check at Erragadda, stage No.7 and the passengers were found alighting at Erragadda but the said ticket was already accounted in the SR at 12-20 hrs. trip up journey towards Sanathnagar which is a serious misconduct in terms of Regulations No.28 (xxiii), (iii) & (x) of APSRTC Employees (Conduct) Regulations 1963.

Charge No.2: For having collected Rs.8/- at Sanathnagar, stage No.8, from a batch of two passengers of them one was lady passenger and issued them one ticket bearing ticket No.028/772896 of Rs.4/- denomination on seeking the TTIs at the time of check at Erragadda, stage No.7, and the passengers were found alighting at Erragadda but the said ticket was already accounted in the S.R. at 12-20 Hrs. trip up journey towards Sanathnagar, which is a misconduct in terms of Regulations No.28 (xxiii), Regulations 1963.”

Petitioner submitted a detailed explanation to the charge sheet. The second respondent having not satisfied with the explanation, got conducted departmental enquiry into the charges against the petitioner. The Enquiry Officer submitted enquiry report, after considering the evidence available on record, holding that the charges are proved. The second respondent-Disciplinary Authority, based on the Enquiry Officer's report, issued a show cause notice dated 12.02.1997 of removal from service along with Enquiry Officer's report. The petitioner submitted his explanation to the show cause notice on 22.02.1997. The second respondent passed removal order, after considering the explanation of the petitioner and the enquiry officer's report, removing the petitioner from service on 15.03.1997. Being aggrieved by the removal order, the petitioner raised I.D.No.39/1997 before the first respondent-Labour Court under Section 2-A (2) of the Industrial Dispute Act, 1947. The Labour Court framed the preliminary issue 'whether the domestic enquiry conducted by the management is vitiated as pleaded by the petitioner?'. The petitioner mainly contended that when the petitioner denied the spot statement of the passengers obtained by the TTIs, as not correct, non-examination of the

passengers in the enquiry, non-supply of enquiry officer's report to the petitioner would vitiate the enquiry and no fair and proper enquiry was conducted. The Labour Court on 26.12.1997 held that the enquiry was valid. The need of leading evidence before the Labour Court to prove the charges had not arisen. The Labour Court considering the evidence before it including Exs.M.1 to M.14, held that the charges are proved, for which the punishment of removal from service is just and proper. Being aggrieved by the award of the Labour Court, the present writ petition came to be filed.

Sri A.K.Jaya Prakash Rao, learned counsel for the petitioner, would contend that the Labour Court has not properly appreciated the evidence before it. The alleged statement of the petitioner, in charge memo, reads thus:

(1) We boarded the bus at Sanath Nagar to go to Erragadda, paid Rs.10/- asked for tickets. But, the conductor had not given tickets and not returned the change. Meanwhile, the TTIs at Erragadda asked us tickets. At that time, the conductor had given Rs.5/- denomination ticket No.011184324 to my friend. It is true that we were returned Rs.2/-.

2) Separately, one lady and gent, illiterates, boarded the bus at Sanathnagar to go to SR Nagar, were given Rs.8/- to the Conductor. But, the conductor had given them Rs.4/- denomination ticket No.028772896 at Erragadda. They also demanded ticket along with us, it is true.

The said statements were attested by the petitioner stating that they are not true. The Labour Court considered the evidence of TTIs, who checked the bus, and discussed at paras 8, 9, 10 and 11 of the award. Labour Court also opined that as per Ex.M.-4 written by one A.V.Mahendra, one of the passengers, the

passengers gave Rs.10/- and demanded tickets but the conductor did not give either tickets or change.

Learned counsel would further contend that the Labour Court on mere surmises and conjectures, without properly appreciating the evidence on record, came to the conclusion that the charges are proved. He would further contend that the statement of the petitioner given in the enquiry was not properly considered by the Labour Court, the petitioner specifically denied the issuance of tickets to one of the passengers in the charge, collected the tickets had given to the TTIs. If that is so, the petitioner shall not have re-issued tickets to the passengers. The petitioner categorically stated that the two passengers boarded the bus individually. One of them paid Rs.4/- for his journey to Erragadda and as such he was issued ticket for Rs.4/-. Another passenger informed that he was bound for Ameerpet and paid Rs.5/-. As such, the petitioner had issued ticket for Rs.5/- bearing No.011/154324 to the said passenger. Another person to whom the conductor got issued ticket for Rs.4/- has lost his ticket and when the TTIs asked for ticket, said passenger picked up a ticket from the floor of the bus and shown to the TTIs. In spite of knowing the said fact, the TTIs recorded the statements of the passenger and obtained the signature of the one of the passengers, actually, the statement was recorded by another passenger travelling in the bus and TTAs took the statement and obtained the signature of the passengers.

In respect of the second charge, learned counsel would submit that the TTIs obtained thumb impression of the passengers and allowed them to get down the bus at Erragadda. He would

further submit that there was a personal enmity between the petitioner and S.M.Bakath, TTI, and the same was not properly considered by the Enquiry Officer and the Labour Court. Ignoring the petitioner's statement given in the enquiry, the Labour Court erroneously came to the conclusion that the charges are proved against the petitioner.

Learned counsel for the petitioner further contended that the Labour Court has not exercised its power under Section 11-A of the I.D. Act. The Labour Court has not addressed the question of exercising power under Section 11-A or proportionately as to punishment, in its proper perspective. The Labour Court committed grave error of law and fact in passing the impugned order.

Per contra, Sri Vasudeva Reddy, learned counsel for the second respondent, would contend that the Labour Court rightly passed the impugned award on appreciation of the evidence and held that the charges are proved. The Labour Court held that the punishment is just and proper and there is no perversity in the findings of the Labour Court. Hence, this Court cannot re-appreciate the evidence under Article 226 of the Constitution of India and come to a different conclusion to that of the Labour Court.

In the facts and circumstances of the case, this Court is of the considered view that the Labour Court had not considered the evidence before it in proper perspective. No cogent reasons were given in arriving the conclusion that the charges are proved against the petitioner. The Labour Court had brushed aside the evidence of the petitioner given before the Enquiry Officer on the

ground that the spot explanation given to the charge memo and explanation given to the show cause notice are not corroborating with each other and different versions were given. The Labour Court only relied on the statements of the passengers which appear to be not correct. In the facts and circumstances of the case, as the petitioner's statement is not corroborated by the evidence of the TTIs, the Labour Court on its hixy and dixy consideration of the evidence, came to the conclusion that the charges are proved while brushing aside the statement of the petitioner given in the enquiry and held that removal from service is just and proper. When the finding of the Labour Court and appreciation of evidence before it is perverse, this Court can exercise power under Article 226 of the Constitution of India, and re-appreciate the evidence to find out whether the Labour Court has rightly appreciated the evidence or not. Hence, the contention of the learned counsel that this Court has no power to re-appreciate the evidence under Article 226 of the Constitution of India is merit no consideration. As the findings arrived by the Labour Court are without any cogent reasons, the award passed by the Labour Court based on such findings holding that the charges are proved and punishment is just and proper, are liable to be set aside. Accordingly, the impugned award of the Labour Court and termination order are set aside.

In view of the submission made by the learned counsel for the petitioner that the petitioner has crossed the age of superannuation, this Court cannot direct the respondents to reinstate the petitioner into service. However, considering the circumstances that the petitioner was removed from service on

15.03.1997, the Labour Court passed award on 11.02.1999, petitioner filed this writ petition in the year 2001, petitioner was out of service nearly for about 21 years, he was not gainfully employed during the said period and was put to severe financial hardships, this Court finds that to meet the ends of justice a *lump sum* amount equivalent to 50% of the back wages can be awarded in *lieu* of reinstatement with continuity of service and 50% of back wages, as the termination is *per se* illegal. The second respondent is directed to pay the said amount to the petitioner within a period of two (2) months from the date of receipt of a copy of this order, failing which the same shall carry interest @ 9% per annum. No order as to costs.

Accordingly, the Writ Petition is allowed.

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

13.07.2018
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(M.GANGA RAO, J)