

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.15528 of 2007

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed by the Andhra Pradesh State Road Transport Corporation ('the Corporation', for brevity) represented by its officers requesting to issue a writ of certiorari and quash the impugned award, dated 30.10.2006, passed by the Labour Court-I, Hyderabad, in I.D.no.43 of 2004, which was published in G.O.Rt.no.422, dated 23.02.2007, and to set aside the direction to reinstate the 1st respondent, Ex. Conductor, of the Corporation into service & extend other benefits to him and the said Award by declaring the same as illegal, invalid and without jurisdiction.

2. I have heard the submissions of *Sri N.Vasudeva Reddy*, learned counsel appearing for the petitioners; of *Sri V. Narasimha Goud*, learned counsel appearing for the 1st respondent; and of the learned Government Pleader for Labour appearing for the 2nd respondent. I have perused the material record.

3. The genesis of the matter and the facts, which lead the Corporation to file this writ petition, may be stated, in brief, as follows:

The 1st respondent was appointed as a casual Conductor, on 28.03.1991, on daily wage basis. His services were disengaged on 25.04.1996, as he was involved in serious cash and ticketing irregularities. On the Regional Manager allowing his appeal, he was re-engaged, on 10.02.1998. His services were regularized with effect from 01.08.1999. On 07.08.2002, when the 1st respondent was conducting the bus of the Corporation, bearing Registration no.8098

plying on route no.3-H, the checking officials/the Travelling Ticket Inspectors of the HES/ Nirmal exercised a check, at about 12.00 hours, at stage no.7, Vidyanagar, and detected cash and ticketing irregularities. A charge memo was duly served on the 1st respondent. Later, a charge sheet, dated 16.08.2002, was served upon him. The 1st respondent submitted his explanation. As the Depot Manager was not satisfied with the explanation of the 1st respondent, a detailed enquiry was ordered by appointing an Enquiry Officer. As is evident from the impugned Award, the following charges 1 & 2 were framed against the 1st respondent.

Charge No.1 For having collected Rs.6/- each from 2 individual passengers at boarding point itself, who boarded your bus at S.P.Nagar (Community Hall) and bound for Barkatpura Ex. Stages 12 to 7/6 and you have issued tickets bearing Nos.132/799303 & 304 of Rs.6/- denomination which were already issued at stage No.13 in the 9.15 hours trip, which constitutes serious misconduct in terms of Reg.28 (ix) (a) & (xxxii) of APSRTC Employees (Conduct) Reg.1963.

Charge No.2 For having closed the ticket tray nos. of all denominations upto stage No.7 without completing the above issues, which constitutes serious misconduct in terms of Reg. 28(ix) (a) & (xxxii) of APSRTC Employees (Conduct) Reg.1963.”

[Reproduced verbatim]

The officer, who conducted enquiry, found that the charges are proved. A copy of the enquiry report was supplied to the 1st respondent requiring him to offer his objections. The 1st respondent submitted his objections. The Disciplinary Authority, by his proceedings, dated 28.12.2002, ordered for removal of the 1st respondent from service with immediate effect and gave further directions including a direction that the period of suspension shall be treated ‘as not on duty’ for all purposes.

Aggrieved thereof, the 1st respondent preferred an appeal. The appellate authority, by orders, dated 14.05.2003, rejected the appeal of the 1st respondent. Later, the review petition of the 1st respondent was also rejected, on 21.11.2003. Thereafter, the 1st respondent raised an industrial dispute. Accordingly, I.D.no.43 of 2004 was taken on file by the learned Presiding Officer, Labour Court-I, Andhra Pradesh, Hyderabad. The learned Presiding Officer, by an Award, dated 30.10.2006, which is impugned in this writ petition by the Corporation, partly allowed the petition of the 1st respondent. The operative portion of the said Award reads as under:

“In the result the petition is allowed partly. The respondent is directed to reinstate the petitioner into service with continuity of service and with all other attendant benefits. However the petitioner is not entitled for back wages. The respondent is directed to implement the award within one month from the date of its publication. Award is accordingly passed.”

Subsequently, the Award was published in the Gazette, vide G.O.Rt.no.422, dated 23.02.2007. Aggrieved thereof, the Corporation is before this Court.

4. The case of the Corporation is this:

The Award of the Labour Court, which is impugned, is contrary to the facts & law. The reasons recorded in support of the conclusions in the award to the effect that the 1st respondent conductor cannot be faulted and that the charges leveled against the 1st respondent are not proved and that his spot explanation indicates that he did not collect any fare & issue any tickets to the passengers and that his version in the explanation that the passengers showed the tickets lying on the floor of the bus are not correct reasons as per facts and evidence. The learned Presiding Officer of the Labour Court went wrong in holding that there

was no evidence to show as to who was the author of the statements of the passengers. In fact, the said passengers' statements were attested by the 1st respondent without raising any protest. However, he alleged in his explanation to the charge memo that attestation was obtained from him by force. The said explanation is an after thought. The observations in the impugned award that the Enquiry Officer ought to have considered the spot explanation of the 1st respondent along with other circumstances and that during the course of enquiry, the spot explanation ought to have been confronted to the passengers, who were examined, and that there is no evidence to prove that he collected from the passengers, the fare related to the confiscated tickets, which related to the previous trip are not correct. The theory is introduced by the learned Presiding Officer of the Labour Court. The same cannot stand the test of scrutiny by this Court. The Labour Court went wrong in taking into consideration, the omission on the part of the checking officials with regard to the verification of the bus cash as a ground for recording a finding in favour of the 1st respondent. The Labour Court erroneously, illegally and without jurisdiction partly allowed the petition of the 1st respondent. The approach of the Labour Court is arbitrary and not correct. The award of the Labour Court is unsustainable under facts & in law. The findings of the Labour Court are contrary to the settled legal position. Hence, the writ petition may be allowed and the award may be set aside.

5. Learned counsel for the 1st respondent-conductor while supporting the Award of the Labour Court contended as follows: 'The Enquiry Officer did not provide an opportunity to the 1st respondent-conductor to put forward his case, which is based on the genuine facts. He conducted the enquiry in an arbitrary manner and violated the principles of natural

justice. The Labour Court-I, Hyderabad, is the last Court of fact. It considered, in detail, the spot explanation, the evidentiary value of the statements of the passengers and the vital aspect of non-verification of the bus cash by the checking officials and the mischief, the passengers who do not purchase the tickets would generally resort to at the time of checking of the bus by the checking officials, and rightly held that there is no evidence brought before the Enquiry Officer to hold either that the charges are proved or that the 1st respondent is guilty of the charges. The Labour Court also noted that at the time of checking of the bus, there are (68) passengers and the bus is over loaded beyond the seating capacity and that there was heavy rush in the bus and therefore, it was not possible for the conductor to verify and find out as to whether every passenger purchased and possessed a ticket or not. The Labour Court also took into consideration the widely known facts and the practices, which the employees and officers of the Corporation generally follow at the times of heavy rush of passengers in view of the fact that less number of buses are available to the commuters and that overloading of the buses beyond the seating capacity is a general phenomenon. The well reasoned Award of the Labour Court does not warrant interference. In view of the fact that this writ petition is filed under Article 226 of the Constitution of India, this Court is not required to interfere with the impugned award.

6. Learned counsel for the petitioner placed reliance on the following decisions:

- (i) West Bokaro Colliery (Tisco Ltd.) v. Ram Pravesh Singh¹
- (ii) Bharat Heavy Electricals Ltd. V. M.Chandrasekhar Reddy²

¹ (2008) 3 Supreme Court Cases 729

² (2005) 2 Supreme Court Cases 481

- (iii) U.P.State Road Transport Corporation v. Vinod Kumar³
- (iv) U.P.State Road Transport Corporation v.Suresh Chand Sharma⁴

6.1 Learned counsel for the 1st respondent placed reliance on the following decisions:

- (i) APSRTC, Hyderabad and another v. N.V.Subbaiah and another⁵
- (ii) Divisional Manager, APSRTC and another v. E Raja Reddy⁶
- (iii) LIC of India and Another v. Ram Pal Singh Bisen⁷
- (iv) The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. V. The Management and Ors.⁸
- (v) The Regional Manager, APSRTC v. J.J.Ramesh⁹

7. I have carefully gone through the record and I have given thoughtful consideration to the facts & submissions.

8. The gravamen of the charges is that the 1st respondent having collected Rs.6/- each from two passengers at the boarding point itself had re-issued the tickets, which were already issued at the earlier stages of an earlier trip. It is borne out by the record that when the checking officials checked the bus, two passengers showed the re-issued tickets to the said officials. At the spot, the 1st respondent gave an explanation as follows: 'On 07.08.2002, while he was performing the service, the check took place at Vidyanagar. It was detected that two passengers were traveling with the tickets, which they purchased in the earlier trip. The said passengers, without alighting at ECIL and without purchasing tickets afresh, were traveling in the bus, in the return journey. At that time of check, they have shown the same tickets to the checking officials. Thus,

³ (2008) 1 Supreme Court Cases 115

⁴ (2010) 6 Supreme Court Cases 555

⁵ 2016 (3) ALD 517

⁶ 1999 (5) ALD 735

⁷ (2010) 1 SCC (LS) 1072

⁸ AIR 1973 SC 1227

⁹ W.P.No.1300 of 2009, dated 14.06.2017

they cheated him. They did not pay any money to him. He did not issue any tickets to them in the current trip.' However, not being satisfied with his explanation, charges were framed and an enquiry was held. According to the Corporation, the two passengers stated in their statements that they have boarded the bus at S.P. Nagar Community Hall to go to Barkatpura and that they gave Rs.6/- each to the Conductor and that the Conductor had issued the tickets, which they have shown to the officials at the time of the check, and that a co-passenger countersigned the statements of the said two passengers and that their statements were also signed by the 1st respondent. In the circumstances, the Officers of the Corporation held that the 1st respondent having collected the fare of Rs.6/- each from the two individual passengers had re-issued the tickets, which were accounted for in the earlier trip, and that there is clear proof of his intention to pocket the amount; but the timely exercise of check arrested the leakage of revenue of the Corporation. However, the further explanation of the 1st respondent is as follows: 'The said two passengers stated to the officials that they travelled in the earlier trip and that they are continuing their journey in the next trip. However, when they were threatened that heavy penalty would be imposed, they had changed their versions with *mala fide* intentions and gave statements as per the dictation of the checking officials. His signatures on the statements were obtained under coercion. He did not sign the passengers' statements voluntarily. Admittedly, he received the charge memo under protest.' It is also borne out by the record that at the time of check, the bus was overloaded beyond its seating capacity. In the impugned award, the learned Presiding Officer of the Labour Court noted that as there was heavy rush in the bus, it was not possible for the

conductor to verify every one of the passengers and find out whether each one of them possessed valid tickets issued by him. The version of the 1st respondent is that because of the compelling circumstances, he could not issue tickets and collect the fare from the two passengers and that, therefore, the Labour Court rightly appreciated the entire gamut of the matter in proper perspective and rightly partly allowed the case and granted appropriate reliefs to the 1st respondent. The learned Presiding Officer of the Labour Court, took into consideration the spot explanation, i.e., exhibit M4, of the 1st respondent and held that once the tickets were issued, they remain with the passengers and that there is no evidence brought on record to show that the Conductor had collected back the tickets, which were issued in the earlier trip; and, since there is no evidence to prove that the 1st respondent collected back the tickets, which were issued to the passengers in the previous trip, no inference can be drawn that he had re-issued the confiscated tickets in the current trip. The learned Presiding Officer then noted that the checking officials had not verified the bus cash. He then observed in the impugned award that had the checking officials verified the bus cash on the spot, the result of such verification would have certainly established the guilt of the 1st respondent had excess amount been found in his cash bag. Therefore, having recorded reasons the learned presiding officer of the Labour Court arrived at a finding that the charges are not proved and that the removal of the 1st respondent from service is not justified and accordingly, granted the reliefs to the 1st respondent by partly allowing the case.

9. Now, it is pertinent to note that the learned Standing Counsel for the Corporation forcefully contended that there is no requirement of checking the bus cash with the conductor at the time of checking and for

not checking the bus cash by the checking officials, an inference favourable to the 1st respondent need not be drawn. He placed reliance on the decision of the Supreme Court in UPSRTC v. Suresh Chand Sharma & batch (4 supra). The facts of the cited decision show that the Supreme Court noted that the High Court had decided the writ petition only on the ground that the passengers found without tickets had not been examined and that the cash with the employee was not checked and that the High Court has not given any other reasons. Further, the facts of the cited case reflect that the bus conductor was found carrying (28) passengers without tickets and that he already recovered fare from eight of such passengers and six tickets issued by him were found to be not in seriatim and that no corresponding entries were made in the way bill and that those and other facts persuaded the Enquiry Officer to hold that the charge of misappropriation has been proved. Thus in the cited case there was adequate other evidence, which sufficiently established the facts in issue and hence, non verification of the bus cash by the checking officials did not matter and make much of a difference. Hence, this decision does not advance the case of the Corporation any further. It is now necessary to deal with other decisions riled upon by the learned standing counsel appearing for the Corporation: (1) The decision in UPSRTC v. Vinod Kumar (3rd supra) was relied upon in support of the contention that in a case where the workmen has challenged only the conclusions reached by the Enquiry Officer and the quantum of punishment but not the legality and the fairness of the enquiry proceedings, the Labour Court could not examine the findings of the Enquiry Officer and hold that the charge was not proved. In the case on hand, the 1st respondent challenged the legality and the fairness of the enquiry proceedings before the Labour Court is borne out by record.

(2) In the decision in Bharat Heavy Electricals Limited (2nd supra), the facts reflect that that the Labour Court after considering the report of the Enquiry Officer and also the evidence of the witnesses summoned and examined by it came to a conclusion that the finding given by the Enquiry officer and also the confirmation of the said finding by the Disciplinary Authority was legal and valid and yet, set aside the punishment of dismissal from service and reduced the punishment. In the above stated factual matrix, the Supreme Court held that the Labour Court has no unlimited jurisdiction in the matter of reduction of punishment. And, (3) The decision in West Bokaro Colliery (Tisco Limited) (1st supra), is relied upon in support of the submission that in a case where two views are possible on the evidence on record, then the Labour Court or Tribunal should be very slow in coming to the conclusion other than the one arrived at by the domestic Tribunal and in substituting its opinion in place of the one rendered by the domestic tribunal. The facts of the cited case show that the Labour Court fell into factual as well as legal errors in setting aside the finding recorded by the domestic tribunal and that the learned Single Judge as well as Division Bench of the High Court affirmed the findings recorded by the Tribunal. In the case on hand, the Corporation could not show that any such errors were committed by the Labour Court. In this very decision, the Supreme Court referred to the decisions in (i) Workmen of Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. V. The Management and others (AIR 1973 SC 1227); and, (ii) South Indian Cashew Factory Workers' Union v. Kerala State Cashew Development Corporation Limited (2006(5) SCC 201). In the decision in Workmen of Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. (supra), the Supreme Court held as follows:

It has to be remembered that a Tribunal may hold that the punishment is not justified because the misconduct alleged and found proved is such that it does not warrant dismissal or discharge. The Tribunal may also hold that the order of discharge or dismissal is not justified because the alleged misconduct itself is not established by the evidence. To come to a conclusion either way, the Tribunal will have to reappraise the evidence for itself. Ultimately it may hold that the misconduct itself is not proved or that the misconduct proved does not warrant the punishment of dismissal or discharge. That is why, according to us, Section 11A now gives full power to the Tribunal to go into the evidence and satisfy itself on both these points, Now the jurisdiction of the Tribunal to reappraise the evidence and come to its conclusion enures to it when it has to adjudicate upon the dispute referred to it in which an employer relies on the findings recorded by him in a domestic enquiry. Such a power to appreciate the evidence and come to its own conclusion about the guilt or otherwise was always recognized in a Tribunal when it was deciding a dispute on the basis of evidence adduced before it for the first time. Both categories are now put on a par by Section 11A.

Thus, the law is well settled that the Labour Court being the last Court of fact is obliged to re-appreciate the evidence acting as an appellate Court and substitute its findings for those of the departmental authorities and that the Labour Court is now clothed with the power to re-appreciate the evidence and satisfy itself and that it is the satisfaction of the Tribunal that finally decides the matter.

10. A careful perusal of the material record including the Award of the Labour Court would show that after necessary examination of the facts and the appreciation of evidence in proper perspective, the learned Presiding Officer of the Labour Court arrived at a finding that the charges are not proved and accordingly partly allowed the petition of the 1st respondent and ordered reinstatement of the 1st respondent

into service with continuity of service with all attendant benefits but without back wages. This Court, in the facts and circumstances of the case, does not find any grounds much less valid grounds calling for interference with the well reasoned findings of fact recorded by the learned Presiding Officer of the Labour Court. When once conclusions arrived at by the Presiding Officer of the Labour Court are found to be sustainable on facts and in law, this Court will not normally substitute its subjective opinion in the place of the one arrived at by the said officer.

11. In the decision in *Union of India v. P. Gunasekaran*¹⁰ 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:

- (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.”

¹⁰ (2015) 2 SCC 610

12. In *Indian Overseas Bank vs. I.O.B. Staff Canteen Workers' Union and Ors.*¹¹, the Supreme Court held that it is impermissible for the High Court in exercise of writ jurisdiction, to liberally re-appreciate the evidence and draw conclusions of its own on pure questions of fact, as the High Court does not exercise any appellate jurisdiction over the awards passed by a Tribunal/ Labour Court, presided over by a Judicial Officer. The Supreme Court further held as follows: "The findings of fact recorded by a fact-finding authority duly constituted for the purpose and which ordinarily should be considered to have become final cannot be disturbed for the mere reason of having been based on materials or evidence not sufficient or credible in the opinion of the writ Court."

13. On the above analysis and having regard to the reasons assigned supra & the legal position obtaining, 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.

14. In the result, the Writ Petition is dismissed.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

01st October, 2018
RAR

M. SEETHARAMA MURTI, J

¹¹ AIR 2000 SC 1508