

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.25521 of 2007

ORDER:

The unsuccessful petitioner-workman (Conductor) filed this writ petition, under Article 226 of the Constitution of India, assailing the Award, dated 25.07.2007, of the learned Presiding Officer of the Labour Court-III, Hyderabad, passed in ID.no.28 of 2006.

2. I have heard the submissions of Sri V. Raja Rama Mohan Rao, learned counsel representing *Smt K. Udaya Sri*, learned counsel for the writ petitioner, of *Sri R. Sheetal Kumar*, learned counsel representing *B. Mayur Reddy*, learned Standing Counsel appearing for the respondents 1 & 2 and of the learned Government Pleader for Labour appearing for the 3rd respondent. I have perused the material record.

3. The parties in this writ petition shall hereinafter be referred to as the petitioner-workman and respondent-Corporation.

4. The facts, which are necessary to be stated as a prelude to this order, in brief, are as follows:

The petitioner was appointed in the year 1989 as a Conductor in the respondent-corporation. On 19.10.2004, while he was conducting bus service on vehicle no. AP 11 Z 3732 of Narayanpet depot on route Narayanpet-Mumbai, the checking officials exercised a check on the said vehicle at stage no.23, that is, Kurla, at about 08.30 hrs. During the course of checking, the checking officials were said to have detected certain serious cash and ticketing irregularities. Therefore, the petitioner was first served with a charge memo, dated 19.10.2004. Later, on 04.11.2004, a charge sheet was served on the petitioner calling upon him to offer his explanation, if any. However the petitioner failed to submit any explanation to the charge sheet.

Therefore, an enquiry was ordered. After conducting a domestic enquiry into the case, the enquiry officer submitted a report, dated 25.05.2005, holding that the charges formulated against the petitioner are proved. Soon after, the petitioner's comments and objections were called for. The petitioner submitted his explanation, dated 17.06.2005. As his comments/ objections were found unsatisfactory and unconvincing, a show cause notice, dated 22.06.2005, proposing a penalty of removal from service, was served upon the petitioner. As his explanation, dated 25.06.2005, was found unsatisfactory and unconvincing, the depot manager/ Disciplinary Authority, issued proceedings, dated 27.6.2005, ordering removal of the petitioner from service. The petitioner's appeal and review petition were dismissed *vide* orders dated, 23.09.2005 and 08.02.2006, respectively passed by the appellate & reviewing authorities. Aggrieved thereby the petitioner raised an industrial dispute and filed a claim petition. The same was resisted by the Corporation. On merits, the claim petition of the petitioner was dismissed. Therefore, the petitioner is before this court.

5. Learned counsel for the petitioner would contend as follows:

The Award impugned is unjust, illegal and contrary to well established principles of law and is, therefore, liable to be quashed. The petitioner was appointed as conductor in the year 1989. The Labour Court failed to consider the provision under Section 11-A of the Industrial Disputes Act, 1947. The dismissal of the claim petition without considering the said provision resulted in miscarriage of justice; and, such a course is against principles of natural justice. There is no excess cash in the Conductor's cash bag. The said crucial aspect was not considered by the officers of the Corporation and also the learned Presiding Officer of the Labour court. The petitioner did not commit any acts of misconduct. In the domestic enquiry, the charges are not proved. The punishment of removal from service is unwarranted and illegal. In any view of the matter, it is not proportionate to the gravity of the alleged

misconduct allegedly proved. The enquiry officer and the depot manager as well as the higher authorities failed to properly look into the allegations of irregularities and also the explanations offered by the petitioner from time to time. The Depot Manager ought to have seen as to whether the charges formulated are proved and the alleged cash and ticketing irregularities warranted imposition of a capital punishment of removal from service. Removal from service is considered as economic death of an employee. Therefore, the disciplinary authority dealing with cases of this nature and while deciding the quantum of penalty should act in a reasonable and judicious manner. The quantum of penalty should always be proportionate to the gravity of the misconduct held proved. Hence, the award is liable to be set aside.

6. Per contra, the submissions of the learned Standing Counsel for the Corporation, in brief, are as follows:

The enquiry officer, after a detailed enquiry found that all the charges are proved. The learned Presiding Officer of the Labour Court having found that the charges are proved and that the enquiry officer is correct in holding that the charges are proved dismissed the claim petition of the petitioner-workman. Enquiry was duly conducted as per procedure by observing the principles of natural justice. After examination of the facts, evidence and all circumstances of the case, a finding of guilt was arrived at by the enquiry officer. The said finding was confirmed by the appellate authority and reviewing authority, as the petitioner has no valid explanation or objections to offer. Further, considering the charges levelled and proved, the penalty which is proportional to the charges proved was imposed against the petitioner. The Supreme Court time and again observed in various decisions that when once the charges are proved, the penalty imposed by the disciplinary authority shall have primacy and shall not be interfered with by

the Labour Court or the High Court. The writ petition is devoid of merit and is liable for dismissal.

7. I have given detailed and thoughtful consideration to the facts and submissions. I have carefully perused the material record including the enquiry report, the explanation with comments and objections submitted by the petitioner to the enquiry report, the petitioner's explanation to the show cause notice proposing the punishment of removal from service and the proceedings of the appellate and reviewing authorities, apart from the other material documents.

8. Before proceeding further, it is apposite to refer to the charges framed against the petitioner-workman, which verbatim read as under:

- i) you have violated the rule "issue close and start" which constitutes misconduct under Re.28(xxxii) of APSRTC Employees (Conduct) Reg.1963.
- ii) You have collected Rs.10,880/- being the requisite fare including reservation charges for 34 passengers at their boarding point itself namely, Narayanpet for their journey from Narayanpet to Kurla (Mumbai) ex-stages 01 to 23 and failed to issue tickets which constitutes misconduct under Re.28(vi-a), (x) & (xxxii) of APSRTC Employees (Conduct) Reg.1963.
- iii) You have shown the No. of passengers who boarded the said bus at the starting point itself viz., Narayanpet as 62 and 67 passengers from Maddur in star STAR document maintained by you bearing No.018 682666, dt.18-10-2004 whereas the value of ticket sales are not tallying with the number of said passengers as shown by you, which constitutes misconduct under rEg.28(xxii) & lxxiii) of APSRTC Employees (Conduct) Reg.1963.
- iv) for having excess bus cash amounting to Rs.10,179/- at the time of check by the travelling ticket inspectors at Kurla bus stand (Mumbai) at stage No.23 on 19-10-2004 and obtained TPT Nos.046/844400 E.100 tickets of Rs.100/- deno., 046/844335 E.1 of Rs.100/- deno., 147/838515 E.1 ticket of Rs.50/- deno., 700/956949 E.1 of Rs.20/- deno., 330/637597 E.1 of Rs.8.00 deno., 527/322277 E.1 of Rs.1/- deno., which constitutes misconduct under Reg.28 (xxiv) of APSRTC Employees (Conduct) Reg.1963.

9. The first charge is in regard to violation of the rule 'issue, close and start'; the second charge relates to collection of Rs.10,880/- which is the

requisite fare including reservation charges from 34 passengers at their boarding point itself, that is, Narayanpet, for journey from Narayanpet to Kurla ex-stages 1 to 23 and failure to issue tickets to them; the third charge relates to showing number of passengers who had boarded the bus at the starting point itself, that is Narayanpet, as 62 and 67 passengers from Maddur in Star document, dated 18.10.2004, maintained by the petitioner and non-tallying of the value of ticket sales with the number of passengers shown by the petitioner; the fourth charge relates to possession of excess cash in a sum of Rs.10,179/- at the time the check was exercised by the checking officials.

10. To the charges formulated, the explanation of the petitioner from the beginning is as follows: - 'He was informed that the ticket fare of 34 intending passengers from Narayanpet to Mumbai was collected and that a kacha hand receipt was given to him; he was informed that 34 passengers would board the bus en-route upto Madduru, that is old bus station, main bazaar and outskirts of Narayanpet town; at Narayanpet bus station, 28 passengers boarded the bus and he had issued valid tickets to them; as he was informed that 34 passengers would board the bus, he closed the SR as 62 (28+34) passengers; but the alleged passengers did not board the bus; what happened to them he does not know; there is no mention in the charge memo and charge sheet that 34 passengers were found without tickets; hence, the question of failing to issue tickets to the alleged 34 passengers does not arise; the question was as to where were the said 34 passengers at the time of check; all the existing passengers were found with valid and correct tickets; no passenger was found without a ticket; no amount of Rs.10,179/- was found in excess in the bus cash physically except a hand receipt.' His further explanation is that he had issued tickets to all the passengers who boarded the bus at Narayanpet and remitted Rs.4,720/- to the ADC at cash counter and obtained a hand receipt; he had not observed as to what amount was written on the voucher; there was noise of passengers at that time; therefore,

he kept the voucher in the cash bag without observing the value mentioned therein; 34 passengers who reserved the seats had not boarded the bus; and, he has not collected the fare from them.

10.1 However, from the evidence adduced at the time of domestic enquiry the enquiry officer found as follows: - 'The Conductor himself admitted in his spot explanation that 34 passengers paid their ticket amount and the same was given to ADC along with other passengers' fare and that the total amount was Rs.15,600/- and that he obtained a receipt but he has not given tickets to 34 passengers but he has shown the capacity in the STAR document as 62.'

Thus, it was clear that he failed to issue tickets to a batch of 34 passengers who boarded the bus at Narayanpet and bound to Kurla inspite of collecting requisite fare of Rs.10,800/- from the ADC which includes reservation charges. His statement itself reflects that he issued tickets to all the passengers who boarded the bus at Narayanpet and remitted Rs.4,720/- to the ADC at cash counter and obtained a hand receipt. Thus, it is obvious that the Conductor collected Rs.10,880/- including reservation charges of 34 passengers and allowed them to travel without issuing tickets upto Kurla. In the spot explanation the petitioner himself stated that 34 passengers paid their ticket amount and that it was given to ADC along with the amount of fare of the other passengers, that is, a total amount of Rs.15,800/- and that he obtained hand receipt for it and also stated that he had not given tickets to 34 passengers. The said amount was found as excess amount by the checking officials when they checked the bus. He also admitted that the capacity in the STAR document is 62 and it is correct. Though in the STAR document the number of passengers was shown as 62, the verification revealed that only 71 tickets of Rs.100/- denomination were issued and thus, there was failure to issue tickets to 34 passengers who were allowed to travel in the bus on the strength of the hand voucher, which was kept with him. Thus, the value of ticket sales has not tallied with the number of passengers

as shown in the SR by the petitioner-conductor and it was also found that he was having excess bus cash in a sum of Rs.10,179/- at the time of check and that he had not issued tickets to 34 passengers but allowed them to travel in the bus on the strength of the voucher, which was with him. Basing on the procedure that is to be followed as spoken to by the witnesses examined at the time of enquiry and the irregularities that were found, the enquiry officer arrived at a conclusion that the charges are proved. After careful examination of the evidence, the learned Presiding Officer of the Labour Court concurred with the findings of the enquiry officer which were confirmed by the appellate authority and reviewing authority.

11. This Court, in the facts and circumstances of the case, does not find any grounds much less valid grounds calling for interference with the said concurrent findings of fact recorded by the enquiry officer and the Presiding Officer of the Labour Court. When once conclusions arrived at by the enquiry officer and the Presiding Officer of the Labour Court 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.

12. Learned counsel for the petitioner having placed reliance on the following decisions of the Supreme Court 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) contended that the Labour Court in the exercise of its jurisdiction under Section 11-A could have come to a different conclusion and that the Labour Court did not exercise its jurisdiction. Considering a similar submission, the Supreme Court in West Bokaro Colliery (TISCO LTD) v. Ram Pravesh Singh¹ held as follows:

¹ (2008)3 SCC 729

‘In a case where two views are possible on the evidence on record, then the Industrial Tribunal should be very slow in coming to a conclusion other than the one arrived at by the domestic Tribunal by substituting its opinion in place of the opinion of the domestic tribunal.’ Moreover, in the case on hand, the award reflects that the Labour Court carefully examined the facts and evidence before dismissing the case of the petitioner.

12.1 In the decision in *Union of India v. P. Gunasekaran*² 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.”

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;

² (2015) 2 SCC 610

(vii). go into the proportionality of punishment unless it shocks its conscience.

12.2. In *Divisional Controller, N.E.K.R.T.C. Vs. H.Amaresh*³, the Supreme Court held as follows:-

In the instant case, the mis-appropriation of the funds by the delinquent employee was only Rs. 360.95. This Court has considered the punishment that may be awarded to the delinquent employees who mis-appropriated funds of the Corporation and the factors to be considered. This Court in a catena of judgments held that the loss of confidence as the primary factor and not the amount of money mis-appropriated and that the sympathy or generosity cannot be a factor which is impermissible in law. When an employee is found guilty of pilferage or of mis-appropriating a Corporation's funds, there is nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of dismissal. In such cases, there is no place for generosity or misplaced sympathy on the part of the judicial forums and interfering therefore with the quantum of punishment. The judgment in *Karnataka State Road Transport Corpn. Vs. B.S. Hullikatti*, (2001) 2 SCC 574 was also relied on in this judgment among others. Examination of passengers of vehicle from whom the said sum was collected was also not essential. In our view, possession of the said excess sum of money on the part of the respondent, a fact proved, is itself a mis-conduct and hence the Labour Court and the learned Judges of the High Court misdirected themselves in insisting on the evidence of the passengers which is wholly not essential. This apart, the respondent did not have any explanation for having carried the said excess amount. This omission was sufficient to hold him guilty. This act was so grossly negligent that the respondent was not fit to be retained as a conductor because such action or inaction of his was bound to result in financial loss to the appellant irrespective of the quantum.

12.3 On the quantum of punishment, the Supreme Court, in *Divisional Controller, KSRTC (NWKRTC) Vs. A.T.Mane*⁴, held as follows:-

Coming to the question of quantum of punishment, one should bear in mind the fact that it is not the amount of money misappropriated that becomes a primary factor for awarding punishment, on the contrary, it is the loss of confidence which is the primary factor to be taken into consideration. In our opinion, when a person is found guilty of misappropriating corporation's fund, there is nothing wrong in the corporation losing confidence or faith in such a person and awarding a punishment of dismissal.

12.4 Further, in the decision in *U.P. State Road Transport Corporation, Dehradun Vs. Suresh Pal*⁵, the facts disclose that in the domestic enquiry it was found that the petitioner/workman was guilty of not issuing tickets to twenty passengers who were traveling by the time when the check was done by the Checking Official of the UPSRTC; The Corporation imposed a punishment of dismissal from service; The same was upheld by the Labour Court and the High Court; However, the learned judge of the High Court

³ (2006) 6 SCC 187

⁴ (2005) 3 SC 254

⁵ (2006 (3) LLJ 967(SC) = (2006) 8 SCC 108

directed reinstatement of the conductor into service by substituting the punishment of dismissal with the punishment of 'one censure entry' and stoppage of two increments with cumulative effect without back wages. The Supreme Court held that after having held that the charge against respondent conductor was proved, it was not open to the High Court to interfere with the quantum of punishment.

12.5 In Karnataka State Road Transport Corporation Vs. B.S.Hullikatti⁶, the Supreme Court held as follows:-

On the facts as found by the Labour Court and the High Court, it is evident that there was a short-charging of the fare by the respondent from as many as 35 passengers. We are informed that the respondent had been in service as a Conductor for nearly 22 years. It is difficult to believe that he did not know what was the correct fare which was to be charged. Further-more, the appellant had during the disciplinary proceedings taken into account the fact that the respondent had been found guilty for as many as 36 times on different dates. Be that as it may, the principle of *res ipsa loquitur*, namely, the facts speak for themselves, is clearly applicable in the instant case. Charging 50 paise per ticket less from as many as 35 passengers could only be to get financial benefit by the Conductor. This act was either dishonest or was so grossly negligent that the respondent was not fit to be retained as a Conductor because such action or inaction of his is bound to result in financial loss to the appellant-Corporation.

It is misplaced sympathy by the Labour Courts in such cases when on checking it is found that the Bus Conductors have either not issued tickets to a large number of passengers, though they should have, or have issued tickets of a lower denomination knowing fully well the correct fare to be charged. It is the responsibility of the Bus Conductors to collect the correct fare from the passengers and deposit the same with the Company. They act in a fiduciary capacity and it would be a case of gross misconduct if knowingly they do not collect any fare or the correct amount of fare.

In our opinion, the order of dismissal should not have been set aside, but we are informed that in the meantime the respondent has already superannuated. We, therefore, on the special facts of this case, do not set aside the order of reinstatement, but direct that the respondent would not be entitled to any back wages at all but he would be entitled to the retrial benefits.

13. Coming to the quantum of punishment in the case on hand, the learned Presiding Officer of the Labour Court having considered the proportionality of penalty confirmed the penalty of removal from service. Considering the gravamen of the charges that are held proved, it is manifest that the petitioner-workman has not acted *bona fide* and that his acts of misconduct

⁶ AIR 2001 SC 930

are of such nature warranting the penalty imposed by the disciplinary authority and confirmed by the Labour Court. In the facts and circumstances of the case and the legal position obtaining, this Court finds that the penalty imposed is not disproportionate to the acts of misconduct held proved.

14. On the above analysis, this Court holds that the writ petition is devoid of merit and is liable to be dismissed.

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

There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

04th October, 2018
VJI

JUSTICE M. SEETHARAMA MURTI

