

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.25848 of 2008

ORDER:

Heard the learned counsel for the petitioner and Sri P.Durga Prasad, learned Standing Counsel for AP State Road Transport Corporation (APSRTC).

2. This Writ Petition is filed by the petitioner assailing the Award dt.08-07-2008 in I.D.No.49 of 2005 of the Labour Court, Guntur, dismissing his application filed under Section 2-A (2) of the Industrial Disputes Act, 1947.

3. The petitioner was employed as Conductor in the APSRTC at its Kavali Depot.

4. It is alleged that when he was working as Conductor and doing duty as Conductor on the route to Kavali-K.K.Puram on 10-01-2004, he committed the following mis-conduct:

“1. You have failed to follow the rule “issued and start” while performing duty on route Kavali-K.K.Puram on 10-01-2004 which constituted misconduct vide Reg. 28 (xxxii) of APSRTC Employees (Conduct) Regulations.

2. You have failed to issue passenger tickets to a batch of 2 passengers even after collecting requisite fare of Rs.22/- at boarding point itself, who boarded your bus at Ramanujapuram and bound for Kavali exstages 3 to 11 on 10-01-2004 while performing on the above route, which constituted misconduct vide Reg. 28 (ix-a) of APSRTC Employees)Conduct) Reg, 1963.

3. You have closed the SR of all denms, without completion of issue of tickets to traveling passengers which constituted misconduct vide Reg.28 (xxxii) of APSRTC Employees (Conduct) Reg., 1963.”

A charge sheet dt.12-01-2004 containing the above charges was issued to him. He filed explanation thereto denying the charges. Disciplinary Proceedings were conducted and the enquiry officer found the petitioner guilty of the charges. Disciplinary authority agreed with the findings of the enquiry officer and thereafter imposed on the petitioner punishment of removal from service on 22-04-2004.

5. Petitioner presented a Review Petition to 2nd respondent to review the order of punishment and the 2nd respondent replied on 31-12-2004 that he is not in a position to reconsider the decision taken.

6. Thereupon the petitioner filed an application under Section 2-A (2) of the Act before the Labour Court, Guntur. This was numbered as I.D.No.49 of 2005.

7. Before the Labour Court, the petitioner contended that the disciplinary proceedings were conducted in violation of principles of natural justice; and that 1st respondent did not supply copies of extracts of all documents which found the basis of initiating the disciplinary action. He also contended that he was not allowed to cross examine the Management Witnesses. Apart from these contentions, he also pleaded that the findings of the enquiry officer are

perverse and that the punishment imposed on him is disproportionate to the misconduct.

8. The respondents filed counter affidavit denying these averments. They contended that petitioner had been censured three times earlier, that annual increments were deferred once, that he was removed from service twice on cash irregularities including the present case and he does not have a clean record of service. They supported the findings of enquiry officer and the punishment imposed by the disciplinary authority. They contended that though the petitioner was given opportunity to cross examine the Management Witnesses, he did not cross examine them and there is no truth in the petitioner's allegation and he was not allowed to cross examine the Management Witness. They denied that there was any violation of principles of natural justice in the conduct of enquiry and stated that the enquiry officer held the charges proved basing on the evidence available on record. They also denied that the punishment imposed on him was disproportionate to the misconduct alleged.

9. The Labour Court on 15-12-2007 gave a finding that the domestic enquiry was valid. It then proceeded to consider the evidence on record and found in it's award dt.8.7.2008 on independent consideration of evidence that the findings of the enquiry officer were correct, that the charges were established and also that the punishment imposed on the petitioner on the basis of findings of

the enquiry officer was not disproportionate to the gravity of misconduct.

10. Assailing the same, this Writ petition is filed.

11. Learned counsel for the petitioner reiterated that in fact, the enquiry itself was conducted in violation of principles of natural justice, that the appreciation of evidence by the enquiry officer and the Labour Court was not proper and that the petitioner was unjustly removed from services.

12. As regards the contention of the petitioner that disciplinary enquiry was not conducted in accordance with the principles of natural justice, though it was pleaded that he was not allowed to cross examine the Management Witness, this contention was denied in the counter affidavit and it was specifically stated that the petitioner did not avail the opportunity to cross examine the Management Witness. If these allegations were true, immediately after the denial of the said opportunity to the petitioner as is alleged, petitioner should have filed a memo requesting for cross examination of the Management Witness, but did he not do so. On the contrary, the order of the Labour Court indicates that he did cross examine the Management Witness in the disciplinary enquiry. No material is placed before this Court by the petitioner to interfere with this finding.

13. Also the petitioner has not stated what documents he sought from the management, which according to him, were not

supplied to him. In any event, Labour Court having examined the validity of the domestic enquiry had given a finding that it was valid on 15-12-2007 itself. I therefore reject the contention of the learned counsel for the petitioner that there was any violation of principles of natural justice on part of the Management in the conduct of enquiry.

14. Learned counsel for the petitioner then contended that there is perverse appreciation of evidence by the enquiry officer and by the Labour Court. In particular, he asserted that the evidence of the passenger who gave evidence as defence witness was ignored by the enquiry officer of the Labour Court and this was not permissible.

15. It is important to note that admittedly the said passenger, who was examined by the petitioner as defence witness, was traveling with her sister and the allegation was that the petitioner collected the fare of Rs.22/- at boarding point, but did not issue the passenger tickets and closed the S.R. of all denominations and thus, committed misconduct as specified in the Regulations.

16. Admittedly, in the spot statement given by the passenger, she did state that the petitioner collected the fare but did not issue passenger ticket. Though petitioner contended that the spot statement was obtained from her under threat, he did not make such a suggestion to the Management Witness, who was the TTI, and who had recorded the spot statement.

17. The petitioner has stated in his spot explanation Ex.M-3 that there was passenger rush and he forgot to issue journey tickets to the passenger in question and that when he questioned them whether he had given tickets, she told that he had given them tickets. The passenger in question also gave evidence in support of the petitioner that she gave tickets issued by the petitioner to her daughter who lost them.

18. It is not the case of the petitioner that the said witness/passenger had boarded the bus along with her daughter and the witness herself stated that she had boarded the bus with her sister and did not say that her daughter accompanied her. Therefore, the question of the witness giving the tickets allegedly issued by petitioner to her daughter and that the daughter lost them, would not arise since the daughter never boarded the bus. Therefore, the Labour Court correctly came to the conclusion that the witness is unreliable and that she made the statement only to save the petitioner and her evidence, therefore, cannot be relied upon.

19. It is clear that the disciplinary enquiry established that the petitioner did receive amount from passengers for issuance of tickets but did not issue tickets. Also having taken the plea that he forgot to issue journey tickets because of rush in the spot statement Ex.M-3, the petitioner changed his defence in the disciplinary enquiry and took the plea on basis of evidence of the passenger that he did issue the tickets but the passenger's daughter, who lost the ticket. He also sought to

contend that the spot statements were obtained under threat by the Management Witness/TTI, but this allegation is also not established.

20. Therefore, I am satisfied that the finding of the enquiry officer, the disciplinary authority and the Labour Court on the issue is supported by evidence on record and cannot be said to be perverse or based on no evidence.

21. It is settled law that while reviewing the disciplinary action taken by an employer against a delinquent employee, the Court cannot go into the question of adequacy or inadequacy or sufficiency or insufficiency of evidence on the basis of which findings are recorded by the enquiry authority or the disciplinary authority. If the findings are based on some legal evidence, the Labour Courts are not entitled to interfere with the finding. There cannot be any appreciation of evidence on record in judicial review since it is not an appeal and the High Court cannot act as an appellate authority (**Rae Bareli Kshetriya Gramin Bank Vs. Bhola Nath Singh and others¹**).

22. Learned counsel for the petitioner relied on the decision of the Supreme Court in **Union of India Vs. H.C. Goel²** wherein the Court had observed to the following effect.

“.....; but the High Court can and must enquire is that whether there is evidence at all in support of impugned conclusion. In other words, if the whole of the evidence led in the enquiry is

¹ (1997) 3 S.C.C. 657

² AIR 1964 S.C. 364

accepted as true, does the conclusion follow that the charge in question is proved against respondents? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence illegally the impugned conclusion follows or not....”

23. In the instant case I am satisfied that the evidence of the Management Witness is sufficient to establish the misconduct alleged against the petitioner particularly when the evidence of the defence witness does not appear to be true or believable.

24. Therefore the petitioner can be said to have committed misappropriation of the amount by collecting the fare but failed to issue ticket. The petitioner is dealing with public money and acts in a fiduciary capacity.

25. In this view of the matter, I am of the view that punishment of removal from services imposed on petitioner for such conduct cannot be said to be disproportionate.

26. I therefore see no reason to interfere with the award passed by the Labour Court in exercise of power of judicial review under Article 226 of the Constitution of India.

27. Accordingly, the Writ Petition is dismissed. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 09-03-2018
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