

**HON'BLE SRI JUSTICE M. GANGA RAO**

**WRIT PETITION No.13436 OF 2002**

**ORDER:**

The petitioner, who worked as Conductor, filed this Writ Petition aggrieved by the Award, dated 04.10.2001, passed in I.D. No.41 of 2000 by the 1<sup>st</sup> respondent *i.e.*, Chairman, Industrial Tribunal-cum-Labour Court, Godavarikhani (for short, 'the Labour Court'); wherein his claim petition for reinstatement with continuity of service and back wages was dismissed.

2. Brief facts of the case are that the petitioner was appointed as Conductor in the 2<sup>nd</sup> respondent – Corporation, in the year 1992. While conducting the bus on 25.09.1998, the checking officials exercised check and found that there are some cash and ticket irregularities and issued charge sheet, dated 15.10.1998, framing the following three charges:

"1) For having violated the rule 'Issue and start' which constitutes misconduct under Reg.28(vi-a) of APSRTC Employees' (Conduct) Reg. 1963 .

2) For having failed to issue tickets to three passengers from whom you have collected Rs.3/- each instead of Rs.2-50 ps. each at boarding point itself and who boarded the bus at Jammikunta and alighting without tickets at Dharmaram, ex-stages 16 to 16/15, which constitutes misconduct under Reg.28(x) of APSRTC Employees' (conduct) Reg. 1963.

3) For having reissued the ticket Nos.302/441361, 362, 364 of Rs.3/- deno. to three passengers who boarded the bus at Jammikunta and bound for Nagampet, ex-stages 16 to 14 from whom you have collected Rs.3/- each though the above tickets were already issued and accounted in SR. No.A4/934779, dt.25.09.1998 *i.e.*, ticket No.302/441364 was already issued at

stage No.9 and accounted against stage No.10, which constitutes misconduct under Reg.28(xxiii) of APSRTC Employees' (conduct) Reg. 1963."

3. Thereafter, the petitioner submitted explanation to the charge sheet denying the allegations made against him. The 2<sup>nd</sup> respondent, having not satisfied with the explanation, appointed an Enquiry Officer. The Enquiry Officer, conducted enquiry and, submitted his report, dated 05.12.1998, holding that the charges are proved. The 2<sup>nd</sup> respondent – disciplinary authority, based on the Enquiry Officer's report, issued show-cause, notice dated 11.12.1998, to the petitioner and considering his explanation, issued final proceedings, dated 07.01.1999, removing the petitioner from service and the same was confirmed in the Appeal and Review.

4. The petitioner, being aggrieved by his termination from service, raised an Industrial Dispute i.e., I.D. No.41 of 2000 before the 1<sup>st</sup> respondent – Labour Court, under Section 2-A(2) of the Industrial Disputes Act, 1947 (for short, 'the Act'), claiming reinstatement with continuity of service and back wages.

5. The 1<sup>st</sup> respondent – Labour Court, considering the record before it and the documents marked as Exs.M-1 to M-28, came to the conclusion that the charges are proved against the petitioner and the punishment of removal from service imposed on the petitioner is in proportion to the charges proved, dismissed his claim petition confirming the removal order, dated 07.01.1999. Further aggrieved, the petitioner preferred the present Writ Petition.

6. Heard Sri P.Govinda Rajulu, learned counsel for the petitioner, and Sri A.Ravi Babu, learned Standing Counsel for the 2<sup>nd</sup> respondent – Corporation.

7. Learned counsel for the petitioner would contend that while the petitioner was conducting bus on 25.09.1998, a check was exercised by the T.T.Is at Stage No.16/15 and detected certain cash and ticket irregularities. The T.T.Is conducted check contrary to the regulations and circular instructions of the Corporation, while alleging the cash and ticket irregularities. However, the petitioner was issued charge sheet alleging certain cash and ticket irregularities. The petitioner submitted explanation denying the charges stating that he has not committed any cash and ticket irregularities. The checking officials wrongly recorded the statements of the passengers and their statements were not recorded before him but the checking officials obtained his signature. Thereafter, the 2<sup>nd</sup> respondent - disciplinary authority appointed an Enquiry Officer, who conducted a farce enquiry, in utter violation of the principles of natural justice, without giving fair opportunity to the petitioner. The Enquiry Officer had failed to consider the evidence of the petitioner and his statement in proper perspective. The Enquiry Officer having considered the evidence of the T.T.Is brushed aside the statement of the petitioner and thereby acted biasedly. The Enquiry Officer based on mere surmises and conjectures without there being any legal evidence, in support of the charges, submitted his report holding that the charges are proved. The finding of the Enquiry Officer that the charges proved is perverse for the reason that he had not considered the evidence adduced in support of the petitioner. For its non consideration, the 2<sup>nd</sup> respondent, without independent application of mind, on an erroneous appreciation of the facts and circumstances available on record, came to the conclusion that the charges against the petitioner held proved and passed the removal order, dated 07.01.1999. He further contended that the appellate authority has not considered the Appeal in its proper perspective with respect to the grounds raised in the

Appeal; the Appellate authority and the Revisional Authority mechanically, rejected the Appeal and Review confirming the removal order.

8. Learned counsel for the petitioner further contended that the Labour Court, on erroneous appreciation of facts and law and the evidence available before it, came to the conclusion that the charges are proved and held that the petitioner failed to issue 3 tickets to three passengers, even after collecting Rs.0.50/- paisa excess from each of the passenger, and he issued reissued tickets to the three passengers which were already issued and accounted for previously. But the statement of the petitioner in Ex.M-19 reveals that the check took place at Dharmaram; prior to that some persons entered into the bus and while giving tickets, he sustained head injury, due to which the tickets tray fell down, the passengers handed over the tray to him. His further statement to the T.T.Is reveals that three passengers, who have picked up the tickets fell down on the floor but not paid the fare, falsely deposed against him and their statements were recorded to the dictates of the T.T.Is. When the petitioner denied correctness of the statements, the T.T.Is ought to have examined the passengers in their favour to prove the charges against the petitioner. The Labour Court committed an error on fact and law in dismissing the claim Petition. The findings of the Enquiry Officer and the Labour Court, without there being any legal evidence holding that the charges are proved against the petitioner, are perverse. Hence, the removal order and the Award passed by the Labour Court are liable to be set-aside and the petitioner is entitled for reinstatement with continuity of service and back wages.

9. *Per contra*, learned Standing Counsel for the 2<sup>nd</sup> respondent – Corporation would contend that the petitioner has committed serious cash

and ticket irregularities for which enquiry was conducted against the petitioner by duly serving the charge sheet; the petitioner was given full and fair opportunity in the enquiry to defend his case. The enquiry was conducted in strict adherence to the rules and regulations of the 2<sup>nd</sup> respondent – Corporation and principles of natural justice and the charges are proved against the petitioner. The 2<sup>nd</sup> respondent – disciplinary authority, having considered the entire evidence available before him, based on the Enquiry Officer's report and explanation submitted by the petitioner, rightly passed the removal order removing the petitioner from service. Thereafter, the order of the appellate authority contains reasons for rejecting the Appeal and the same does not suffer from un-reasonable opinion as contended by the learned counsel for the petitioner. Accordingly, the Labour Court rightly dismissed the claim of the petitioner *vide* Award No.41 of 2000, dated 04.10.2001. The Labour Court having considered the evidence before it *i.e.*, Exs.M-1 to M-28 rightly held that the charges are proved against the petitioner and the petitioner committed serious cash and ticket irregularities of re-issue of tickets. The Award of the Labour Court does not suffer from any illegality, which warrants interference of this Court under Article 226 of the Constitution of India. This Court, exercising the power under Article 226 of the Constitution of India and the power of judicial review, cannot appreciate the evidence before the Labour Court and the Enquiry Officer and this Court cannot come to a different conclusion to that of the Enquiry Officer and Labour Court and held that charges are not proved, findings of the Enquiry Officer and Labour Court are perverse and this Court could not substantiate the punishment given by the disciplinary authority and impose lesser punishment, and if this Court comes to a different conclusion that charges are not proved and findings of the Enquiry Officer and Labour Court are

perverse, the matter has to be remanded back to the disciplinary authority for imposing lesser punishment than that of the removal from service and as such learned counsel for the 2<sup>nd</sup> respondent – Corporation would finally contend that the Writ Petition is misconceived and liable to be dismissed.

10. Having considered the facts and circumstances of the case and in the considered view of this Court, the finding of the Enquiry Officer that the charges are proved against the petitioner is not based on any legal evidence. The Enquiry Officer has acted biasedly in considering the evidence before him and, while considering the evidence of the T.T.Is., the Enquiry Officer brushed aside the evidence of the petitioner and his statements given to the Enquiry Officer and the 2<sup>nd</sup> respondent – authorities. The Enquiry Officer, on mere surmises and conjectures, without there being any legal evidence on perverse finding that the charges are proved against the petitioner and basing on his report, the 2<sup>nd</sup> respondent – disciplinary authority removed the petitioner from service without independently considering evidence before the authorities. The appellate authority had not considered the petitioner's appeal grounds in proper perspective while rejecting the Appeal. The appellate authority, being a quasi judicial authority, ought to have considered the evidence and grounds of appeal in proper perspective and decided the validity or otherwise of the removal order and could have passed a reasoned order. The appellate authority, being carried away by the order of the disciplinary authority, mechanically rejected the Appeal. The Labour Court, based on the finding of the Enquiry Officer, which is erroneous, bias and suffering from perversity, without independently assessing the evidence before it, came to the conclusion that the charges are proved, the petitioner has committed serious misconduct of cash and ticket irregularities and the punishment of removal from service is proportionate to the proved

misconduct, which is arbitrary and illegal. The Labour Court, without appreciating the evidence to the proportionality of the punishment exercised its discretionary power under Section 11-A of the I.D. Act and simply held that the punishment of removal from service is proportionate to the proved misconduct. Hence, this Court finds that the Labour Court also committed error on fact and law by dismissing the claim petition without assigning any valid reasons holding that the charges are proved against the petitioner and punishment of removal from service is against the proved misconduct. Hence, the order of removal of 2<sup>nd</sup> respondent – disciplinary authority and the award of the Labour Court are liable to be set-aside and they are accordingly set-aside. To sub-serve the interests of justice, the 2<sup>nd</sup> respondent – Corporation is directed to reinstate the petitioner with continuity of service but without attendant benefits and back wages. However, at this stage, learned counsel for the petitioner brought to the notice of this Court that, subsequent to the filing of this Writ Petition, the petitioner retired from service on attaining the age of superannuation, the 2<sup>nd</sup> respondent – Corporation is directed to pay a lump sum amount equivalent to 50% of the back wages to the petitioner in lieu of his reinstatement with continuity of service but without attendant benefits and back wages.

11. Accordingly, with the above observations, the Writ Petition is allowed in part. No order as to costs.

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

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**M.GANGA RAO, J**

Date: 10.08.2018.  
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**HON'BLE SRI JUSTICE M. GANGA RAO**

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Date. 10.08.2018

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