

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT APPEAL No.1685 of 2018

JUDGMENT: (per Hon'ble Sri Justice Sanjay Kumar)

This writ appeal by the Depot Manager of Telangana State Road Transport Corporation (TSRTC) at its Thorrur Bus Depot, Warangal District, being the successor-in-interest of the erstwhile Andhra Pradesh State Road Transport Corporation (APSRTC), is directed against the order dated 09.11.2018 passed by a learned Judge of this Court in W.P.No.15701 of 2009. By the said order, the learned Judge directed reinstatement of the first respondent-writ petitioner in service as a fresh Conductor, subject to medical fitness, without continuity of service, back wages and other attendant benefits.

The first respondent-writ petitioner was a Conductor in the service of the erstwhile APSRTC. By order dated 30.04.2004, he was visited with the punishment of removal from service on the ground of his involvement in cash and ticket irregularities. Aggrieved thereby, he raised an Industrial Dispute in I.D.No.7 of 2007 before the Industrial Tribunal-cum-Labour Court, Warangal. However, the Labour Court dismissed the said I.D. *vide* Award dated 29.08.2008. Assailing the same, the first respondent-writ petitioner approached this Court by way of W.P.No.15701 of 2009. By the order dated 09.11.2018, presently under appeal, the learned Judge referred to the contentions of both sides and observed as under:

“This Court having considered the submissions made by the parties and the nature of the charges levelled against the petitioner, is of the considered view that the punishment of removal imposed by the respondent-Corporation is very disproportionate and the Labour Court ought to have examined the case of the petitioner and interfered with the punishment of removal by applying the

proportionality theory and at least, the Labour Court ought to have directed the respondent-Corporation to reinstate the petitioner into service as fresh conductor. Since the punishment of removal is shockingly disproportionate, this Court feels that ends of justice would be met if the respondent-Corporation is directed to reinstate the petitioner into service as fresh conductor.

Accordingly, the Writ Petition is disposed of directing the respondent-Corporation to reinstate the petitioner into service as fresh conductor, subject to medical fitness, without continuity of service, without back wages and other attendant benefits. No costs.”

It is no doubt open to this Court to interfere with the quantum of punishment on the doctrine of proportionality but, in the general course, it would be appropriate for this Court to remit the matter to the disciplinary authority to reconsider the quantum of punishment. That being said, power would also vest in this Court, in deserving cases, to substitute the punishment instead of driving the employee concerned to go through another round before the competent authority with regard to the reduction in the quantum of punishment. However, in such a case, it would be incumbent upon this Court to record the reasons as to why it has chosen to exercise this exceptional power and also the reasons for substituting the punishment with a particular lesser punishment. Reference in this regard may be made to the observations of the Supreme Court in REGIONAL MANAGER, U.P.SRTC, ETAWAH V/ s. HOTI LAL¹, which read as under:

“10. It needs to be emphasized that the court or tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment was not commensurate with the proved charges. As has been highlighted in several cases to which reference has been made above, the scope for interference is very limited and restricted to exceptional cases in the indicated circumstances. Unfortunately, in the present case as the quoted

¹ (2003) 3 SCC 605

extracts of the High Court's order would go to show, no reasons whatsoever have been indicated as to why the punishment was considered disproportionate. Reasons are live links between the mind of the decision taken to the controversy in question and the decision or conclusion arrived at. Failure to give reasons amounts to denial of justice. [See *Alexander Machinery (Dudley) Ltd. v. Crabtree* (1974 LCR 120 (NIRC))] A mere statement that it is disproportionate would not suffice. A party appearing before a court, as to what it is that the court is addressing its mind. It is not only the amount involved but the mental set-up, the type of duty performed and similar relevant circumstances which go into the decision-making process while considering whether the punishment is proportionate or disproportionate. If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable. Judged in that background, conclusions of the Division Bench of the High Court do not appear to be proper. We set aside the same and restore order of learned Single Judge upholding the order of dismissal.”

The aforesaid principle was reiterated by the Supreme Court in *U.P.SRTC V. SURESH CHAND SHARMA*². Para 17 thereof reads as under:

“17. In view of the above, the reasoning so given by the High Court cannot be sustained in the eye of the law. More so, the High Court is under an obligation to give not only the reasons but cogent reasons while reversing the findings of fact recorded by a domestic tribunal. In case the judgment and order of the High Court is found not duly supported by reasons, the judgment itself stands vitiated. (Vide *State of Maharashtra v. Vithal Rao Pritirao Chawan* [(1981) 4 SCC 129]; *State of U.P. v. Battan* [(2001) 10 SCC 607]; *Raj Kishore Jha v. State of Bihar* [(2003) 11 SCC 519] and *State of Orissa v. Dhaniram Luhar* [(2004) 5 SCC 568])”

² (2010) 6 SCC 555

Perusal of the order under appeal would demonstrate that the learned Judge did not undertake the required exercise. The order under appeal therefore stands vitiated in the light of the aforestated mandate of the Supreme Court and cannot be sustained.

We accordingly set aside the order under appeal and remit the matter for consideration afresh keeping in mind the aforestated edict of the Supreme Court.

The writ appeal is allowed.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

Date: 24.12.2018
IBL



SANJAY KUMAR, J

M. GANGA RAO, J