

**THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE SRI JUSTICE A. ABHISHEK REDDY
WRIT APPEAL No.686 of 2019**

Judgment: *(per the Hon'ble the Chief Justice Sri Raghvendra Singh Chauhan)*

The Telangana State Road Transport Corporation ('the Corporation', for short), the appellant, has filed this appeal against the order dated 30.10.2018, passed by a learned Single Judge of this Court, in W.P. No. 18960 of 2007, whereby the learned Single Judge has set aside the Award dated 31.10.2005, passed by the Industrial Tribunal-II, Hyderabad, wherein the learned Tribunal had dismissed the Industrial Dispute raised by the respondent-petitioner ('the petitioner', for short), and had confirmed the removal order dated 15.02.2003.

Briefly, the facts of the case are that the petitioner was appointed as a Conductor in 1985 with the Corporation. From 1985 to 2002, there was no complaint against him with regard to his conduct as a Conductor. However, on 04.02.2002 while he was conducting a bus on Route No.217, the checking officials of the APSRTC, Zaheerabad, Medak District, checked the bus between stage No. 13 to stage No. 18. There were about one hundred passengers traveling in the said bus carrying valid tickets, and bus passes. However, during the checking, it was discovered that the petitioner had collected Rs.121.50 ps. from a batch of twenty-seven passengers to whom he had failed to issue tickets, and had closed the denomination tickets in the S.R. Without serving a charge memo to the petitioner on 04.02.2002, at 10:00 a.m., the checking officials simply got

down at stage No. 18. The charge memo was served upon the petitioner on 08.02.2002. On the basis of the charge memo, the petitioner was suspended from service on 16.03.2002, and the charge sheet was served upon the petitioner. According to the charge sheet, as mentioned above, he had failed to issue valid tickets to a batch of twenty-seven passengers, and failed to close all the denomination tickets in the S.R. The petitioner submitted his explanation. But, without considering the same, the Corporation nominated an enquiry officer. During the pendency of the enquiry, the petitioner submitted number of representations. However, without considering these representations, the enquiry officer recorded the evidence of a single witness, and submitted his report to the disciplinary authority. The petitioner was issued with the second show-cause notice. But, despite the grounds raised by him, by order dated 15.02.2003, he was removed from service.

Since the petitioner was aggrieved by the removal order, dated 15.02.2003, he raised an industrial dispute. However, by Award dated 31.10.2005, the learned Labour Court dismissed the Industrial Dispute, and upheld the removal order dated 15.02.2003. Therefore, the petitioner filed the writ petition before a learned Single Judge of this Court. By order dated 30.10.2018, the learned Single Judge directed that the petitioner should be reinstated into service subject to medical fitness, but without continuity of service, without back wages,

and other attendant benefits. Hence, this appeal before this Court.

Mr. Praveen Reddy, the learned counsel appearing for the Corporation, has raised the following contentions before this Court:-

Firstly, the scope for interference with the departmental enquiry/punishment order by the High Court under Article 226 of the Constitution of India is an extremely limited one. It is, basically, limited to the question of proportionality of the punishment.

Secondly, considering the fact that the petitioner had collected an amount of Rs.121.50 ps, but had not issued valid tickets to a batch of twenty-seven passengers, the Corporation has justified in removing the petitioner from service. Therefore, the punishment was proportionate to the alleged misconduct.

On the other hand, Mr. G. Ravi Mohan, the learned counsel for the petitioner, has raised the following counter-contentions:-

Firstly, the harshest punishment of removal from service can be awarded only in the "rarest of the rare case".

Secondly, admittedly, there were one hundred passengers in the bus. The petitioner had collected money and issued valid tickets to most of them. Because of the large number of passengers packed in the bus, the petitioner may not have been in a position to complete the distribution of the tickets.

Thirdly, the petitioner had already suffered from 2003 to till now i.e. over sixteen years of being unemployed.

Fourthly, it was the first misconduct allegedly committed by the petitioner. Therefore, the Corporation was unjustified in imposing the harshest of the punishment upon the petitioner.

Lastly, the learned Single Judge has discovered a via-media; while the learned Single Judge has directed the Corporation to reinstate the petitioner into service, his reinstatement would be as a fresh Conductor, subject to medical fitness, without continuity of service and without back wages, and other attendant benefits. Therefore, the petitioner has lost both the continuity of service, and the benefit of back wages. Thus, he has been punished enough for the alleged misconduct committed by him. Hence, the learned counsel has supported the impugned order.

Heard the learned counsel for the parties, and perused the impugned order.

It is, indeed, trite to state that while dealing with a punishment in a departmental enquiry, the scope of the power of judicial review is a limited one. In the case of **Union of India v. P. Gunasekaran**¹, the Hon'ble Supreme Court has observed as under:-

13. Under Article 226/227 of the Constitution of India, the High Court shall not:
(i) reappreciate the evidence;
(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

¹ (2015) 2 SCC 610

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

(Emphasis added)

In the case of **Ranjit Thakur v. Union of India**², the Hon'ble Supreme Court observed as under:-

25. *Judicial review generally speaking, is not directed against a decision, but is directed against the "decision making process". The question of the choice and quantum of punishment is within the jurisdiction and discretion of the Court-Martial. But the sentence has to suit the offence and the offender. It should not be A vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the Court- Martial, if the decision of the Court even as to sentence is an outrageous defiance of B logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review. In Council of Civil Service Unions v. Minister for the Civil Service³ Lord Diplock said:*

"... Judicial Review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call 'illegality'. the second irrationality' and the third 'procedural impropriety'. That is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of 'proportionality' which is recognised in the administrative law of several of our fellow members of the European Economic Community;....

² (1987) 4 SCC 611

³ (1984) 3 WLR 1174 (HL); (1984) 3 All ER 935, 950

Needless to say, the Corporation is a facet of the State. Its actions are legally required to be reasonable, just, and fair. The Corporation is also a model employer. As a model employer, while dealing with its employees, the Corporation is expected to act with a sense of generosity, compassion, and kindness. Therefore, the Corporation is required to take a holistic view of the case. Punishments should not be imposed as a knee-jerk reaction to a given situation. Taking a cue from the criminal jurisprudence, in catena of cases, the Hon'ble Supreme Court has opined that before the harshest punishment of removal from service can be imposed by an employer, the case must necessarily fall within the definition of being the "rarest of rare case". Therefore, before the Corporation could have possibly imposed such a punishment on the petitioner, the enquiry officer, and the learned Labour Court should have weighed the evidence carefully. While weighing the evidence, the learned Labour Court should have examined the "mitigating" and the "aggravating" situations in order to assess if the punishment commensurated with the alleged misconduct or not?

Admittedly, this is the first alleged misconduct committed by the petitioner. Hence, the case clearly does not fall within the category of "rarest of the rate". After all, the harshest punishment cannot be imposed for the first misconduct committed by an employee. Hence, the learned Single Judge was certainly justified in concluding that the punishment is shockingly disproportionate to the alleged misconduct.

Although the learned counsel for the Corporation has pleaded that the said punishment should be substituted by another milder punishment, but the fact remains that the petitioner has been out of job for almost sixteen years. Furthermore, the learned Single Judge has not only denied him the continuity of service, benefit of back wages, but has also declined to give him the attendant benefits. Hence, the petitioner has suffered financially. For the alleged misconduct, the denial of financial benefits is a sufficient punishment. Therefore, the contention raised by the learned counsel for the Corporation is unsustainable.

For the reasons stated above, this Court does not find any illegality or perversity in the impugned order. Hence, the appeal, being devoid of any merit, is hereby dismissed. No order as to costs.

As a sequel, Miscellaneous Petitions, pending if any, shall also stand dismissed.

(RAGHVENDRA SINGH CHAUHAN, CJ)

(A. ABHISHEK REDDY, J)

Date: 30.10.2019
Tsr

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