

HIGH COURT FOR THE STATE OF TELANGANA

THE HON'BLE CHIEF JUSTICE SRI RAGHVENDRA SINGH CHAUHAN

AND

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

WRIT APPEAL No.412 of 2019

Date: 05.08.2019

Between:

The Depot Manager,
Telangana State Road Transport Corporation.

... Appellant

And

Bolly Ramchander.

...Respondent

Counsel for the Appellant : Sri N.Praveen Reddy
for Sri N. Vasudeva Reddy

Counsel for the Respondent : Sri V.Narsimha Goud

The Court made the following:

JUDGMENT: *(Per Hon'ble Dr.Justice Shameem Akther)*

This appeal, under Clause 15 of Letter Patent, is filed by the appellant-Corporation, aggrieved by the order of this Court dated 20.11.2018 passed in W.P.No.17963 of 2011, wherein the learned Single Judge allowed the writ petition and set aside the award of the Industrial Tribunal-I, Hyderabad, dated 16.02.2005 passed in I.D.No.126 of 2001 and directed the appellant-Corporation to reinstate the respondent-writ petitioner into service as Conductor afresh without continuity of service, back wages and other attendant benefits.

2. Heard Sri N.Praveen Reddy, the learned Standing Counsel for the appellant-Corporation and Sri V.Narsimha Goud, learned counsel for the respondent-writ petitioner and perused the record.

3. The facts that led to filing of this appeal are that the respondent-writ petitioner was appointed as Conductor in the year 1996 and his services were regularised in the year 1997. On 22.04.1999, while the respondent-writ petitioner discharging his duty as Conductor on route Charminar to Keshampet, the officials of the appellant-Corporation conducted a check at Stage No.13 and found certain cash and ticket irregularities against the respondent-writ petitioner in respect of 13 passengers, who said to have boarded at Stage No.12, and framed the following three charges:

“1. "For having failed to issue tickets to a batch of (13) thirteen passengers even after collecting requisite fare of Rs.2.50 each (Total 32.50) who were found alighting without tickets at Keshampet and boarded at Kothapet ex-stages 12 to 13, which

constitutes misconduct in terms of Reg. 28(x) of APSRTC Employees (Conduct) Regulations, 1963.

2. "For having closed the tray numbers of all denominations against stage No.13 except Rs.2.50 den., which constitutes misconduct in terms of Reg. No.28(xxxii) of APSRTC Employees (Conduct) Regulations, 1963.

3. "For having failed to observe the rule Issue and Start, which constitutes misconduct in terms of Reg. No.28 (vi-a) of APSRTC Employees (Conduct) Regulations, 1963."

4. The charge sheet was issued on 26.04.1999 and the respondent-writ petitioner was suspended from service. Thereafter, the appellant-Corporation initiated disciplinary proceedings and after conducting enquiry, imposed punishment of removal from service. Against the said order of removal, the appeal and a review filed by the respondent-writ petitioner before the Divisional Manager, Charminar and Regional Manager were rejected on 29.08.1999 and 10.04.2000, respectively. Thereafter, the respondent-writ petitioner filed I.D.No.126 of 2001 before the Industrial Tribunal-I, Hyderabad. The Tribunal having held that there are no irregularities in the enquiry, an opportunity was given to the respondent-writ petitioner to challenge the charges, the respondent-writ petitioner participated in the enquiry and the enquiry officer held that the charges were proved against respondent-writ petitioner, ultimately dismissed the I.D. Against the said award passed by the Tribunal, respondent-writ petitioner filed the impugned writ petition and the learned Single Judge vide impugned order allowed the same directing the appellant-Corporation to reinstate the respondent-writ petitioner afresh, without continuity of service, without back wages and other attendant benefits. Against the order of the learned Single Judge, this writ appeal is filed.

5. Learned counsel for the appellant-Corporation would contend that the order of the learned Single Judge is contrary to law, probabilities of the case and evidence on record. The respondent-writ petitioner failed to issue tickets to 13 passengers, despite collecting fare at the boarding point and by such misconduct the respondent-writ petitioner lost confidence and trust of the appellant-Corporation. The respondent-writ petitioner accepted the statement of the passengers with regard to collection of fare from them and did not issue tickets, as evident from Ex.M.3-passengers statement and the same was not disputed by the respondent-writ petitioner. The action of the respondent-writ petitioner would have amounted to causing loss of revenue to the Corporation, had the check not taken place. The respondent-writ petitioner took inconsistent stand that he had issued tickets to 11 passengers while in fact he had collected fare from 13 passengers. The learned Single Judge ought to have appreciated the fact that the disciplinary authority is the fact finding authority and the scope of judicial review under Article 226 of the Constitution of India is limited. The order of removal by the appellant-Corporation was a well reasoned order passed based on enquiry officer's report after conducting detailed enquiry as per the procedure and the same was confirmed by the Tribunal. The learned Judge failed to assign reasons and erred in directing the appellant-Corporation to reinstate the respondent-writ petitioner into service, afresh. The learned counsel ultimately prayed to allow the appeal as prayed for.

6. On the other hand, learned counsel for the respondent-writ petitioner would submit that the Tribunal without assigning

cogent reasons recorded the finding that the charges against the respondent-writ petitioner were proved and upheld the order of removal. The learned Single Judge rightly held that the punishment of removal is highly disproportionate and by way of the impugned order rightly directed the appellant-Corporation to reinstate the respondent-writ petitioner afresh, without continuity of service, back wages and other attendant benefits. Learned counsel in support of his contentions, relied upon the judgment of the Hon'ble Apex Court in **Workmen and Ors v. Bharat Fritz Werner (P) Ltd. and Ors**¹ and the Judgments of the erstwhile High Court of Andhra Pradesh in **P.Rajanna v. Labour Court, Godavarikhani and Ors**², **APSRTC v. S.Ramachander and Ors**³, **Depot Manager, APSRTC v. G.Durgaiah and Ors**⁴ and **C.V.Ramulu v. Labour Court, Hyderabad represented by its Presiding Officer**⁵. Thus, the learned counsel supported the impugned order and ultimately prayed to dismiss the writ appeal.

7. In view of submissions made by both sides, the point that arises for determination is:

1. Whether the learned Single Judge is justified in setting aside the award of the Industrial Tribunal-I, Hyderabad, dated 16.02.2005, passed in I.D.No.126 of 2001 and ordering reinstatement of the respondent-writ petitioner afresh without continuity of service, back-wages and other attendant benefits?

8. **POINT:** The material placed on record reveals that the respondent-writ petitioner was appointed in the year 1996 and his services were regularised in the year 1997. On 22.07.1999, while the respondent-writ petitioner was discharging his duty as

¹ AIR 1990 SC 1054

² 2002 (1) ALD 64

³ 2002 (6) ALD 778

⁴ 1997 (4) ALD 220

⁵ 1984 LawSuit (AP) 266

Conductor on route Charminar to Keshampet, the officials of the appellant-Corporation conducted a check at Stage No.13 and found certain cash and ticket irregularities. The passengers boarded the Corporation bus at Stage No.12 and a check was conducted at Stage No.13 and found that tickets were not issued to 13 passengers, though an amount of Rs.32.50 was collected from the passengers. When these aspects were put to the respondent-writ petitioner, he has given different versions. These factual aspects were determined against respondent-writ petitioner in a departmental enquiry as well as by the Tribunal in I.D.No.126 of 2001. Further, no irregularity was/is found in the departmental enquiry and the charges levelled against the respondent-writ petitioner were proved by leading cogent and convincing oral evidence and also by marking documents Exs.M.1 to M.19.

9. The respondent-writ petitioner did not issue tickets to 13 passengers having collected Rs.32.50 @ Rs.2.50 paisa from each passenger and such conduct of the respondent-writ petitioner certainly constitutes misconduct in terms of Regulation 28 (x) of APSRTC Employees (Conduct) Regulations, 1963. It was also proved that the respondent-writ petitioner had closed the tray numbers of all denominations against Stage No.13, except Rs.2.50 denomination and this conduct of the respondent-writ petitioner also certainly constitutes misconduct in terms of Regulation 28 (xxxii) of APSRTC Employees (Conduct) Regulations, 1963. Further, the evidence establishes that the respondent-writ petitioner failed to follow the rule 'Issue and Start' which constitutes misconduct in terms of Regulation 28 (vi)

of APSRTC Employees (Conduct) Regulations, 1963. Having dealt with all the latches on the part of the respondent-writ petitioner, the appellant-Corporation imposed the punishment of removal from service and the Tribunal confirmed the same vide order dated 16.02.2005 passed in I.D.No.126 of 2001. There is also statement of the passengers-Ex.M3 to demonstrate that though the money was paid by 13 passengers, tickets were not issued to them. Therefore, these circumstances establish that the appellant-Corporation lost faith in the respondent-writ petitioner. Further, the continuation of the respondent-writ petitioner as Conductor would certainly jeopardise the interest of the Corporation.

10. The learned Single Judge, while passing the impugned order simply held that since the punishment of removal is shockingly disproportionate, the ends of justice would be met, if the respondent-writ petitioner is reinstated into service afresh as Conductor and directed reinstatement without continuity of service, back-wages and other attendant benefits. No reason is assigned by the learned Single Judge to come to such conclusion that the punishment of removal is disproportionate to the alleged misconduct.

11. In the case of **Workmen and Ors** (*supra* 1), the Hon'ble Apex Court at paragraph 17, held as follows:

“17. The aforesaid directions have been given by the High Court while exercising the powers which are exercised by the industrial tribunal in view of the joint memo dated June 22, 1984 submitted by both the parties, whereby it was requested that the Court may decide the entire matter without remitting it to the Tribunal and grant appropriate relief finally in

accordance with law. Moreover, in view of the provisions contained in Section 11-A of the Act, which empowers the industrial tribunal to go into the question whether the order of discharge or dismissal passed against a workman is justified or not and permits the tribunal to set aside the order of discharge or dismissal as the circumstances of the case may require, it was open to the High Court to consider what would be adequate punishment for the misconduct found to have been committed by these workmen and take the view that the acts of misconduct found proved against these five workmen were not such as to warrant dismissal and denial of one half of the back wages for the period of about six years was adequate punishment for the misconduct found to have been committed. We do not find any infirmity in the aforesaid view expressed by the Appellate Bench of the High Court. The question which still remains to be considered is whether, in the facts and circumstances of the case, the Appellate Bench of the High Court was justified in directing reinstatement of these five workmen.”

12. In the case of **P.Rajanna** (*supra* 2), a Division Bench of erstwhile High Court of Andhra Pradesh at paragraph No.10, held as follows:

“10. This takes us to the second contention of the learned counsel for the petitioner. Undoubtedly, the Labour Court has the discretionary power under Section 11-A of the Act to alter or modify the penalty imposed by the Disciplinary Authority, if it is of the opinion that the penalty imposed by the Disciplinary Authority, in the facts and circumstances of the case, is disproportionate to the gravity of the mis-conduct. It is also a well-settled position that this Court also while reviewing the Industrial Award under Article 226 of the Constitution in appropriate cases can exercise the same power, which is available to the Labour Court under Section II-A of the Act.”

The delinquent in the above case was the driver of A.P. State Road Transport Corporation. He was found on the Driver's Rest Seat of Guntur Service, which came to Depot on 17.11.1988 in a drunken and unconscious state. In the said case, although the

charge was that the workman consumed alcohol and was found in a drunken condition and admittedly he was taken to the Doctor for examination, quite curiously neither the Doctor was examined in the departmental enquiry nor the certificate issued by the Doctor was produced by the disciplinary authority in the course of enquiry. Therefore, in the absence of relevant evidence, the Division Bench directed reinstatement of the workman as Driver with continuity of service, but without back wages. Therefore, the punishment imposed on the Driver cannot be equated with the case on hand.

13. **APSRTC** (*supra* 3) is a judgment of a Division Bench of erstwhile High Court of Andhra Pradesh wherein the workman was found guilty of not collecting fare from only one passenger out of 61 passengers by inadvertence.

14. The judgment in **Depot Manager, APSRTC** (*supra* 4) is a Judgment of a Division Bench of erstwhile High Court of Andhra Pradesh wherein the Tribunal interfered with the order of removal from service and directed reinstatement with continuity of service in respect of charges involving collection of Rs.120 from batch of 16 passengers and not issuing tickets to them. The Division Bench did not interfere with the order as the workman-Conductor was already reinstated more than seven years back.

15. In **C.V.Ramulu** (*supra* 5), a Division Bench of erstwhile High Court of Andhra Pradesh held that there were several passengers on the foot board of the bus and some irregularities were found with regard to issuance of tickets. The punishment imposed therein was confirmed in appeal by the management and

the labour Court confirmed the order of management. However, in appeal the Hon'ble Division Bench of erstwhile High Court of Andhra Pradesh set aside the orders and remanded the case to the Labour Court, Hyderabad to consider the question of penalty imposed stating that the Tribunal is duty bound to record a finding whether the punishment imposed is proportionate to the charges levelled or not.

16. In the instant case, the irregularities committed by the respondent-writ petitioner are distinguishable from the facts and circumstances mentioned in the aforesaid decisions. Therefore, no relevance can be placed on the decisions cited *supra* at Bar by the learned counsel for the respondent-writ petitioner.

17. Once the charges are held proved, since they are grave in nature, in the absence of any ameliorating factors, the respondent-writ petitioner can look to neither the Tribunal nor this Court to come to his rescue. A conductor of a bus enjoys the faith reposed in him. He accepts the responsibility of honestly collecting fares from the passengers after issuing proper tickets and is obliged to account for the money so collected. If conductors were to be dishonest in the performance of their duties, it would cause serious pecuniary loss to the employer. In the circumstances of the case, it is pertinent to note that the respondent-writ petitioner lost the credibility and the misconduct committed by him is very grave and he became unworthy of continuing in service with the appellant-Corporation. Having considered these aspects in the departmental enquiry, the appellant-Corporation justified in passing the order of removal of the respondent-writ petitioner from service and the appeal and a

review filed by the respondent-writ petitioner before the Divisional Manager, Charminar and the Regional Manager were rightly rejected on 29.08.1999 and 10.04.2000, respectively. In fact, it is well settled that the High Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India will not act as an appellate Court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. Further, the Industrial Tribunal is justified in passing the award confirming the order of removal. The learned Single Judge without recording reasons set aside the order of removal from service. Therefore, the impugned order is liable to be set aside upholding the award of the Industrial Tribunal.

18. Accordingly, the writ appeal is allowed. The impugned order of the learned Single Judge dated 20.11.2018 passed in W.P.No.17963 of 2011 is set aside, and consequently, the award of the Industrial Tribunal-I, Hyderabad, dated 16.02.2005 passed in I.D.No.126 of 2001 is confirmed. There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall also stand dismissed.

RAGHVENDRA SINGH CHAUHAN, HCJ

Dr. SHAMEEM AKTHER, J

Date:05.08.2019

grk