

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.2659 OF 2017

Date: 09.04.2019

Between:

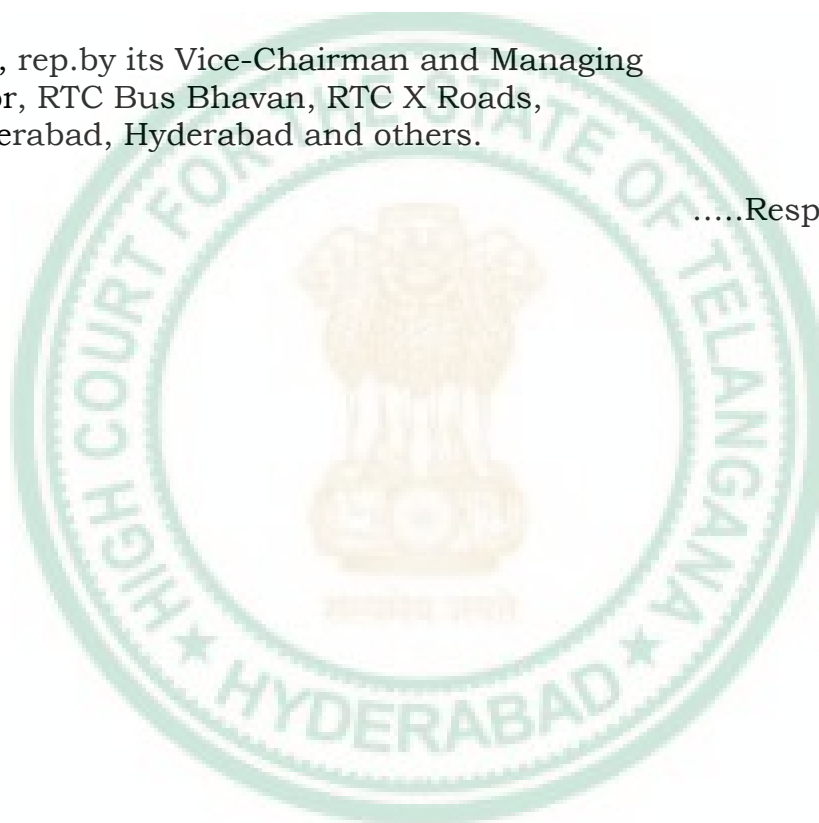
K.Moses, s/o. K.Samuel, aged about 55 years,
Occu: Ex.Driver E.No.109078, Telangana State
Road Transport Corporation, Ranigunj-II Depot,
Secunderabad, R/o. H.No.1-7-81/39A,
New Bowenpally, Kadakpare, Secunderabad.

.....Petitioner

and

TSRTC, rep.by its Vice-Chairman and Managing
Director, RTC Bus Bhavan, RTC X Roads,
Musheerabad, Hyderabad and others.

.....Respondents



The Court made the following:

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ORDER:

Petitioner was appointed as Driver in the year 1987. On 30.09.2015, he was assigned duty on Route No.B2 (JBS to RGIA) as Driver-cum-Conductor. In addition to driving the Bus, he is also required to issue tickets through Ticket Issuing Machine (TIM). Alleging cash and ticket irregularities while operating the Bus on the said date, disciplinary action was initiated. By proceedings dated 06.10.2015, he was suspended pending disciplinary proceedings, charges were also drawn up, and enquiry was conducted. Based on the report of Enquiry Officer, show-cause notice was issued and on consideration of show-cause notice, by order dated 27.12.2016 petitioner was removed from service, impugned in this Writ Petition.

2. Heard Mr. Mohammed Ghouseuddin, learned counsel for petitioner and learned standing counsel for respondent-Corporation.

3. According to learned counsel for petitioner, the disciplinary action is vitiated on the following counts:

3.1. The Divisional Manager appointed the Officer of other division as Enquiry Officer, whereas he is not competent to appoint any person of another division as Enquiry Officer. While petitioner belongs to Secunderabad Region, the Enquiry Officer was working under Sanathnagar Divisional Manager of Hyderabad Region. He would further submit that even the Regional Manager of Secunderabad Region (3rd respondent) is not competent to appoint

Enquiry Officer of another Region. As the appointment of Enquiry Officer itself is illegal, all further proceedings get vitiated.

3.2. Learned counsel alleges that the Enquiry Officer recorded the statement of the Controller, by name, B.Mallesha, but as the said Controller refused to give replies against the Depot Manager, Ranigunj-II, the ADC Sri Venkatesh of Miyapur Depot gave replies on behalf of the Controller. This is illegal. Learned counsel further submits that Enquiry Officer refused to call the Assistant (T) Pushpak Service, RGIA Airport, to cross-examine him and there was no discussion in the enquiry report. Enquiry Officer also erred in refusing to call the passengers, and the Depot Manager, Ranigunj-II, to enable the petitioner to cross-examine; that Enquiry Officer did not put up any question to the petitioner as to whether he has any witness to be called to prove his innocence; that he conducted the enquiry under the guidance of the Depot Manager of Ranigunj-II Depot. He would further submit that not calling the passengers during the enquiry vitiates entire process.

3.3. Learned counsel further contends that Depot Manager issued show-cause notice proposing to remove the petitioner from service without giving his findings, and without discussing on the replies given by the ADC and without assigning reasons notice was issued and, on that ground alone, the proceedings get vitiated. It is mandatory for the disciplinary authority to assign reasons in the show-cause notice calling for explanation.

3.4. Learned counsel also contended that as petitioner was not well versed with the operation of Ticket Issuing Machine, there

were mistakes in operation and there was no intention to misappropriate the funds as alleged.

4.1. Learned standing counsel raised preliminary objection on maintainability of the Writ Petition. According to learned counsel, Petitioner has not availed the remedy of appeal against the order of removal; he also has remedy provided by the Industrial Disputes Act, 1947 and as those remedies are effective and efficacious, Writ Petition is not maintainable.

4.2. Based on the averments in the counter-affidavit, he would submit that as per the service regulations, an Enquiry Officer should be superior in rank to the delinquent employee. There is no restriction imposed in the regulations against appointment of Enquiry Officer from outside the division, as sought to be contended. Regulation-11 (1&2) of the APSRTC Employees (Classification, Control and Appeal) Regulations, 1967 (for short, 'Regulations, 1967'), empowers the disciplinary authority to authorize any other employee to conduct enquiry. Thus, when there is no restriction imposed by the Regulations, the decision of the disciplinary authority appointing an Officer of other division as Enquiry Officer is not vitiated.

4.3. He would submit that the contention of learned counsel for petitioner that petitioner was an illiterate and was not well versed with the operation of Ticket Issuing Machine, is not valid. Petitioner has been operating the Ticket Issuing Machine for one year and he never made any complaint on his difficulty to operate the machine.

4.4. Learned standing counsel submitted that sufficient opportunity was afforded to the petitioner. All the relevant documents required were supplied, and the procedural formalities were complied before imposing punishment.

5. It is not in dispute that disciplinary authority is the Depot Manager and he initiated disciplinary proceedings, appointed enquiry officer; enquiry officer conducted enquiry and submitted his report. After considering the report of enquiry officer, having come to provisional conclusion the Disciplinary Authority issued show-cause notice, and passed final orders imposing punishment of removal from service. Against the order of removal from service, regulations provide remedy of appeal to the Divisional Manager. Petitioner has not availed the remedy of appeal. No reasons are assigned as to why petitioner has not availed the remedy of appeal before instituting this Writ Petition. Petitioner also has efficacious remedy under the Industrial Disputes Act, 1947, against the order of removal, but for reasons best known, petitioner has not chosen to avail said remedy also. Ordinarily, whenever efficacious remedy is available to an employee, writ Court do not entertain Writ Petition and relegates him to avail the alternative remedy. No case is made out to entertain the Writ Petition without availing the remedy of appeal/remedy under the Industrial Disputes Act.

6. It is appropriate to note that parameters of judicial review against the disciplinary proceedings are limited to the extent of considering whether incompetent authority passed orders imposing punishment, whether procedural formalities were not properly observed, causing grave prejudice to the delinquent

employee in effectively defending himself in the domestic enquiry, vitiating the entire exercise, and whether there is infraction of mandatory procedure prescribed in the relevant regulations. Further, mere infraction of procedures does not vitiate disciplinary action as such unless prejudice is pleaded and proved. Writ Court would examine whether mandatory procedure was not followed causing prejudice to the employee. Only if prejudice is established, the Court can review the decision of disciplinary authority. In such a case, Court may remit to the disciplinary authority to conduct further enquiry/*de novo* enquiry and in a given case, to give quietus to the litigation, may substitute the punishment commensurate with the delinquency. The Court do not act as appellate authority to reevaluate the evidence, and to come to conclusion different from one arrived by the disciplinary authority. The appellate authority can go into the merits of the contentions, re-evaluate the evidence and consider whether petitioner was denied to lead evidence, and can modify the punishment imposed by the disciplinary authority. He can also examine the allegation of violation of procedures in conducting domestic enquiry. If such employee is governed by Industrial Disputes Act, he can avail remedies provided under the Act. The Labour Court is competent to examine whether proper procedure was followed in domestic enquiry, can record evidence, and has the competency to grant appropriate relief to a workman. Thus, an aggrieved person ought to exhaust remedy of appeal/ under the I D Act, as may deem proper, where he can raise all grounds touching on merits and on procedure.

7. Regulation 11(2) of Telangana State Road Transport Corporation (CCA) Regulations vests power in the disciplinary authority to appoint Enquiry Officer. Regulation only requires appointing a person superior in rank to the delinquent employee to act as Enquiry Officer but does not require that the Enquiry Officer should be from the same division. When there is no such express bar, the appointment of Officer of other division as Enquiry Officer cannot be held as vitiated.

8. Petitioner sought to contend that the Controller did not depose, but on behalf of the Controller, ADC deposed during the enquiry; that the deposition given by the ADC was not appreciated; that Enquiry Officer erred in not calling the Depot Manager, Ranigunj-II during the enquiry for cross-examination; that he did not ask the petitioner as to whether he wants to lead any evidence, and whether he satisfies with the enquiry conducted. These contentions can also be urged in the appeal/before the Labour Court. Consideration of these contentions require appreciation of evidence recorded, relevancy of the evidence vis-a-vie objections raised, the proceedings conducted before the enquiry officer and in the event of the appellate authority accepting the contentions of petitioner he can take remedial measures, which include remittance for further enquiry/*de novo* enquiry/setting aside the order of disciplinary authority/modification of punishment imposed. Similarly, the scope of jurisdiction of Labour Court is far wider. Having regard to the same, Court is not dwelling deep into these contentions as it would prejudice his grounds of challenge to order of Disciplinary Authority in the appeal/before Labour Court, if he chooses to avail such remedy/remedies.

9. *Prima facie*, according to the respondents, petitioner did not issue three tickets to the passengers when boarded the Bus and issued those three tickets in panic after seeing the inspection team at Airport and therefore, established that tickets were issued only after alighting point and further already used ticket was issued to another passenger. Petitioner can specifically plead and establish before Appellate Authority/ Labour Court that having regard to the nature of allegations leveled against him, non-examination of certain persons and not following proper procedure vitiated his defense and caused serious prejudice and it is for the appellate authority/Labour Court to consider the same and take appropriate decision.

10. No case is made out to hold the order impugned as patently illegal, without jurisdiction and competence and no procedural illegality of all pervasive to hold as *per se* vitiated is made out for this Court to interfere at this stage scuttling the remedy of appeal/ remedy under the Industrial Disputes Act.

11. The Court is not inclined to entertain the Writ Petition when petitioner has an effective and efficacious remedy in the form of appeal provided by the CCA Regulations, wherein all the contentions as urged in the Writ Petition can be urged. He also has remedy under the Industrial Disputes Act. As noted above, jurisdiction of appellate authority/the Labour Court is far wider as compared to the judicial review under Article 226 of the Constitution of India against order of removal from service. It is made clear that there is no expression of opinion. The discussion herein above is limited to the extent of consideration of

maintainability of the Writ Petition when alternative remedy is available.

12. Writ Petition is accordingly dismissed. Pending miscellaneous petitions shall stand closed.

JUSTICE P.NAVEEN RAO

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