

THE HON'BLE THE CHIEF JUSTICE SATISH CHANDRA SHARMA

AND

THE HONOURABLE SRI JUSTICE K. LAKSHMAN

WRIT APPEAL No.1157 OF 2006

JUDGMENT: (Per Hon'ble Sri Justice K.Lakshman)

Feeling aggrieved and dissatisfied with the Order dated 17.03.2006 passed by the learned Single Judge in W.P. No.19345 of 2001, the unsuccessful petitioner preferred this appeal under Clause - 15 of the Letters Patent.

2. **FACTS:**

i) The appellant herein was appointed as Conductor in respondent No.2 Corporation in the year 1985.

ii) While conducting the bus service on the route Ieeja - Kothapalli on 04.11.1996, a check was conducted at stage No.9 and it was found that the petitioner failed to issue tickets to 24 passengers who had boarded the bus at stage No.8. He failed to collect the fare and issued tickets to 3 passengers. They were found alighting without tickets at the point of check at stage No.9. Therefore, respondent No.2 had issued a charge memo.

iii) Thereafter, a charge sheet was served on the appellant on 12.11.1996 framing five charges. The appellant herein had submitted his explanation which was found unsatisfactory and, therefore, an enquiry was ordered by respondent No.2.

iv) The Enquiry Officer, after conducting Enquiry and on consideration of evidence, both oral and documentary, submitted his report holding that the appellant herein was guilty of the charges levelled against him.

v) Basing on the said enquiry report, a show-cause notice dated 15.04.1997 was served on the appellant as to why he should not be removed from service. The appellant herein had submitted his explanation.

vi) On considering the same and also the seriousness and graveness of the charges levelled against the appellant herein, respondent No.2, vide order dated 06.05.1997, removed him from service.

vii) The appellant herein had filed an appeal before the Deputy Chief Traffic Manager, A.P.S.R.T.C., Mahaboobnagar, which was dismissed vide order dated 20.06.1997.

viii) Thereafter, the appellant herein had raised an Industrial Dispute under Section - 2A (2) of the Industrial Disputes Act, 1947 (for short 'Act, 1947') vide I.D. No.328 of 1997 before the Labour Court-III, Hyderabad and later the same was transferred to the Industrial Tribunal-I, Hyderabad, and re-numbered it as I.D. No.116 of 1999.

ix) The Industrial Tribunal-I, Hyderabad, vide Award dated 27.09.2000, set aside the order of removal and directed respondent No.2 Corporation to reinstate the appellant herein into service as Conductor with starting pay, within 30 days from the date of publication of the Award, and the total service of the appellant shall be counted only for the purpose of terminal benefits. However, the petitioner is not entitled for any back wages and continuity of service.

x) Questioning the said award dated 27.09.2000 in I.D. No.116 of 1999 passed by the Industrial Tribunal-I, the appellant herein had filed W.P.No.19345 of 2001 before this Court.

xi) Learned Single Judge of this Court vide impugned order dated 17.03.2006, dismissed the said writ petition.

xii) Feeling aggrieved by the said order, the appellant herein preferred the present writ appeal under Clause - 15 of the Letters Patent.

4. CONTENTIONS OF THE APPELLANT:

i) The learned Single Judge failed to consider that the award passed by respondent No.1 in so far as denying the back wages and continuity of service was perverse for the reason that respondent No.1 brushed aside the legal evidence on record and erroneously denied the back wages and continuity of service.

ii) The learned Single Judge failed to take into consideration that the appellant herein while issuing tickets, and by that time the checking officials entered into the bus he had issued 42 tickets of various denominations to the passengers who boarded the bus at Stage No.8.

iii) The learned Single Judge has failed to take into consideration of various contentions raised in the writ petition and erroneously dismissed the writ petition, solely on the ground that under Article - 226 of the Constitution of India, there is a limitation for judicial review.

With the aforesaid contentions, the learned counsel sought to set aside the award passed by respondent No.1 in I.D. No.116 of 1999, dated 27.09.2000 published on 25.11.2000 insofar as denying of back wages and continuity of service for all purposes, and grant the relief as prayed in the writ petition.

5. CONTENTIONS ON BEHALF OF RESPONDENTS:

i) Mr. B. Mayur Reddy, learned Standing Counsel appearing for respondent No.2 would submit that the Tribunal

has considered the entire evidence on record, both oral and documentary, and despite holding that the charges levelled against the appellant herein are proved, has granted the relief to the appellant in exercise of its powers under Section - 11A of the Act, 1947. The said facts were specifically considered by the learned Single Judge in the impugned order 17.03.2006 in W.P. No.19345 of 2001.

ii) He would further submit that the learned Single Judge has considered the parameters and the scope of judicial review under Article - 226 of the Constitution of India and also the principle laid down in **Surya Dev Rai v. Ram Chander Rai**¹. Therefore, there is no error in the impugned order.

With the aforesaid contentions, the learned Government Pleader sought to dismiss the present appeal.

6. ANALYSIS AND FINDING OF THE COURT:

i) Perusal of the record would reveal that pursuant to the check conducted on 04.11.1996, it was found that the

¹. AIR 2003 SC 3044

appellant herein being conductor failed to issue tickets and failed to collect the fare, then respondent No.2 Corporation had issued a charge sheet framing the following charges:

- “(i) for having failed to observe the rule ‘Issue and start’;
- (ii) for having failed to collect the fare and issue tickets to 3 individual passengers;
- (iii) for having failed to issue tickets to 20 individual passengers in spite of collecting the requisite fare of Rs.2.50 Ps.,
- (iv) for having failed to issue ticket to a passenger in spite of collecting the requisite fare of Rs.3.50 Ps., and
- (v) for having failed to close the tray Nos.”

ii) The appellant herein had submitted his spot explanation i.e., Ex.M-5. He had also submitted Ex.M-7 explanation to Ex.M-3 charge memo, dated 04.11.1996. Thereafter, respondent No.2 Corporation had issued Ex.M-9 charge sheet dated 12.11.1996, framing the above stated five charges and the appellant herein had submitted Ex.M-10 explanation to the said charge sheet. Ex.M-11 is the statement

of Checking Officer and the witness produced by the appellant recorded during the Enquiry. Ex.M-12 is the statement of the appellant recorded during the Enquiry.

iii) Respondent No.1, considering the said statements and the entire evidence available on record, both oral and documentary, gave a specific finding that the said factual aspects were elicited and reiterated by the Officials in the Enquiry. As the charges are proved, respondent No.2 in his capacity as Disciplinary Authority, after issuing a show cause notice and considering the evidence had agreed with the findings of the Enquiry Officer covered by charge Nos.1 to 5. The passenger gave statement revealing the actual facts. The conductor gave spot explanation, which corroborates with the facts of the case. There is little scope to say that a case has been foisted purposefully against the appellant herein. Respondent No.1 Industrial Tribunal-I also gave a finding that the Appellant has not attributed any motive against the checking officials. So, on an overall consideration of the factual aspects,

it is clear that the material on record is sufficient to hold that the charges levelled against the Appellant have been proved and the commissions and omissions would amount to misconduct attracting the Conduct Regulations, 1963.

iv) Despite holding that the charges levelled against the appellant herein are proved, respondent No.1 in exercise of its powers under Section - 11A of the Act, 1947, granted the relief to the appellant herein by considering the fact that he had put in 11 years of service and crossed the age of getting fresh service elsewhere. Respondent No.2 Corporation has not taken the stand that on account of the irregularities committed by the appellant herein, there is a loss of confidence in continuing him in service in future. Section - 11A of the Act, 1947 was introduced with the object to protect the interest and the welfare of the workman which object should not be defeated. Punishment to be awarded should be a remedial one but not a punitive. All the while, the appellant herein has faced mental agony as well as financial crisis which would be an eye opener

to him and he would discharge his duties sincerely and honestly in future. Therefore, he should be given one more chance to mend himself not involving in such irregularities in future. With the said observations, respondent No.1 has set aside the impugned order of removal dated 06.05.1997 and directed respondent No.2 Corporation to reinstate the appellant herein into service as conductor with starting pay, within 30 days from the date of publication of the award, and the total service of the appellant shall be counted only for the purpose of terminal benefits, but he is not entitled for any back wages.

v) In the impugned order, dated 17.03.2006, the learned Single Judge, considering the seriousness and graveness of the charges levelled against the appellant herein and the findings of respondent No.1 held that the charges levelled against the appellant herein are not proved, then the petitioner would have been justified in contending that he would be awarded continuity of service and back wages, but that is not the case. Respondent No.1 having held that the

charges levelled against the appellant herein are proved has taken a lenient view and ordered fresh appointment. With the said observations, the learned Single Judge has dismissed the said writ petition vide impugned order.

vi) As stated above, the charges levelled against the appellant herein are serious and grave in nature and the same were considered by respondent No.1. However, considering the length of service, the age of the appellant and the fact that an opportunity should be given to him to mend himself, exercising its powers under Section - 11A of the Act, 1947, respondent No.1 granted the relief of fresh appointment to the appellant herein. It is relevant to note that respondent No.2 has not challenged the said award. The appellant herein has challenged the said award to the extent of denying the back wages and continuity of service for all purposes. The learned Single Judge considered the entire factual matrix including the seriousness and graveness of the charges levelled against the appellant herein and the findings of respondent No.1 in the

award dated 27.09.2000 in I.D. No.116 of 1999 and also the fact that respondent No.1 in exercise of its powers under Section - 11A of the Act, 1947, granted the relief to the appellant herein.

It is also relevant to note that perusal of record including the counter filed by respondent No.2 in W.P.No.19345 of 2001 would reveal that the Appellant herein has unclean record of service. He was suffered punishment as many as 19 times on the allegations of committing cash and ticket irregularities. Twice, he was placed under suspension. Thus, the past conduct of the Appellant herein is not clean.

7. CONCLUSION:

i) In view of the aforesaid discussion, this Court is of the considered view that there is no error much less patent error in the award passed by respondent No.1 and as confirmed by the learned Single Judge vide order dated 17.03.2006 in W.P. No.19345 of 2001. The appellant herein failed to make out any case to grant any relief and therefore, the present appeal is devoid of merits and the same is liable to be dismissed.

ii) The Writ Appeal is accordingly dismissed.
However, in the circumstances of the case, there shall be no order as to costs.

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

SATISH CHANDRA SHARMA, HCJ

K. LAKSHMAN, J

26th May, 2022
Mgr