

(1999) 09 AP CK 0047

In the Andhra Pradesh High Court

Case No : Writ Petition No. 3321 of 1993

Depot Manager, APSRTC, Asifabad Depot, Adilabad

APPELLANT

Vs

G. Badaiah and another

RESPONDENT

Date of Decision : 08-09-1999

Acts Referred:

Andhra Pradesh State Road Transport Corporation Employees (Conduct) Regulations,
1963 — Rule 28
Constitution of India, 1950 — Article 14, 226
Industrial Disputes Act, 1947 — Section 11

Citation : (2000) 6 ALD 792 : (2001) 88 FLR 363

Hon'ble Judges : B. Sudershan Reddy, J

Bench : Single Bench

Advocate : Ms. G. Jyothi Kiran, SC for APSRTC, for the Appellant;

Judgement

1. Heard the learned Standing Counsel Ms. G. Jyothi Kiran, appearing on behalf of the A.P. State Road Transport Corporation. None appears on behalf of the 1st respondent herein inspite of service of notice as is evident from the postal acknowledgment. The Registry on verification of the record submits that there is no appearance entered on behalf of the 1st respondent, The 1st respondent is called absent.

2. The instant writ petition is directed against the Award passed by the Industrial Tribunal-cum-Labour Court, Godavarikham dated 16-11-1991 in ID No.194 of 1991 directing the reinstatement of the 1st respondent herein with continuity of service as Conductor in the Corporation, but without any back wages and attendant benefits.

3. Before advertng to the question as to whether the Award suffers from incurable infirmities warranting interference of this Court, it may be necessary to notice a few relevant facts.

4. The 1st respondent herein was appointed as a temporary Conductor on 26-10-1977. It is evident from the record that he was removed from the service

once with effect from 29th March, 1982. But, on appeal preferred by the 1st respondent, the Divisional Manager took a lenient view and allowed his appeal dated 12-2-1998 purely on compassionate grounds and ordered his reinstatement into service without any financial benefit for the past service and treating the period of absence as "not on duty" and fixed his pay at minimum level. The first respondent while working as Conductor in Asifabad Depot, was served with a charge memo containing the following charges:

1. For having violated the rule issue, close and start which is misconduct under Rule 28(xxxii) of APSRTC Employees (Conduct) Regulation, 1963.
2. For having collected the requisite fare of Rs.36.00 from a passenger at boarding point itself towards ticket from who boarded your bus at Hyderabad and bound for Mancheria and issued tickets Nos.340/126242 of Rs.20-00 denomination, 034/620100 of Rs.5/- denomination and All/ 34567 of Rs.1/- worth of Rs.26/- therein by you have issued lower denomination of Rs.10/- which is misconduct under Regulations 28(vi) (a) APSRTC Employees (Conduct) Regulations, 1963.
3. For having already closed the ticket tray numbers of all denominations upto stage No.31 (Siddipet) which is a misconduct under Rule 28(xxv) of APSRTC Employees (Conduct) Regulations, 1963.
4. For working without nipper and failed to show the numbers of issue in the SR where the column was already provided which is a misconduct under Regulation 28(xxxii) of APSRTC Employees (Conduct) Regulation, 1963.

The 1st respondent submitted his explanation for the said charge memo. An enquiry was held into the matter by the Enquiry Officer appointed by the disciplinary authority. The Enquiry Officer submitted his report to the disciplinary authority holding the 1st respondent guilty of all the charges. The disciplinary authority having gone through the enquiry report and material available on record, directed a notice to show-cause as against the 1st respondent herein requiring his explanation as to why he should not be removed from the service on the ground of misconduct. The 1st respondent submitted his explanation in the matter once again. The disciplinary authority having gone through the enquiry report as well as the material available on record and the explanation submitted by the 1st respondent, concurred with the findings of the Enquiry Officer and in view of the seriousness of the charges, directed the removal of the 1st respondent from service by an order dated 5-6-1990. The 1st respondent raised industrial dispute and the Industrial Tribunal-cum-Labour Court by an Award dated 16-11-1991 directed the reinstatement of the 1st respondent into service with continuity of service, but without backwages. It is that Award which is challenged in this writ petition.

5. Ms. G. Jyothi Kiran, learned Standing Counsel appearing on behalf of the Corporation submits that the Award suffers from incurable infirmities and has to be quashed by this Court in exercise of its certiorari jurisdiction. The learned

Standing Counsel submits that the charges levelled and proved against the 1st respondent herein are very serious in nature and the finding of the disciplinary authority holding the 1st respondent herein guilty of misconduct does not suffer from any legal infirmity. It is the submission of the learned Standing Counsel that the exercise of power by the Industrial Tribunal-cum-Labour Court purported to be u/s 11-A of the Industrial Disputes Act, 1947 (for short "the Act") directing the reinstatement of the 1st respondent into the service is contrary to law. I have carefully gone through the material available on record including the findings of the Labour Court. It is required to notice that the 1st respondent himself filed a memo before the Labour Court after giving notice to the other side requesting the Labour Court to decide the matter on merits with the material available therein u/s 11-A of the Act. Under those circumstances, the documents produced by the Management were marked as Ex.M1 to Ex.M20. The first respondent/workman has not filed any documents as such. The Labour Court rightly took the view that the domestic enquiry held against the 1st respondent was not vitiated for any reasons whatsoever.

6. The Labour Court after elaborate consideration of the matter accepted the explanation offered by the 1st respondent herein that he has issued Rs.5/- denomination tickets under the impression that they were of Rs.15/- denomination tickets since they are alike and since the roof lights were not properly functioning at that time. According to the Labour Court, the explanation offered by the 1st respondent herein under the circumstances of the case appears to be plausible, but not quite satisfactory. Having stated so, the Labour Court adopted a peculiar reasoning and held that it is the duty cast upon the passenger to verify whether he got correct tickets for the amount paid by him. It is observed by the Labour Court that the passenger failed to discharge his duty. However, it is observed by the Labour Court that it is equally the duty of the 1st respondent to give correct denomination tickets to the passenger. Under those circumstances, the Labour Court held that there is no mala fide intention on the part of the 1st respondent, but there is dereliction of duty on his part in not giving proper denomination tickets to the passenger. However, the Labour Court does not leave the matter there. It proceeds on the assumption that there is element of mala fides on the part of the 1st respondent herein in respect of non-issuance of Rs.10/-denomination tickets or issuance of tickets of lesser value by Rs.10/-. The Labour Court observed that such mala fide intention on the part of the 1st respondent herein cannot be ruled out. Having stated so, the Labour Court observes that "in view of the aforesaid judgment of the Supreme Court and the Patna and Haryana High Court, cited by the learned advocate for the petitioner and also by virtue of powers or discretion given to this Court to be used u/s 11-A of ID Act, I am constrained to hold that the extreme punishment of removal of the petitioner once for all is not called for nor just much less proportionate and hence, not equitable. Obviously, the Labour Court while referring to the judgment of the Supreme Court reported in Baldev Singh Vs. Presiding Officer, Labour Court, Patiala and Another, upon which reliance appears

to have been placed by the 1st respondent's Counsel before the Labour Court and also the judgment of Punjab and Haryana High Court reported in 1991(4) SLR 52, it is nowhere discussed as to what is the principle and ratio laid down by the said judgments.

7. It is evident from the record and the Award that the Labour Court concurred with the findings of the disciplinary authorities and held that the charges levelled against the 1st respondent herein were proved. The Labour Court even goes to the extent of saying that the mala fide intention on the part of the 1st respondent herein in issuing tickets of lesser denomination cannot be ruled out. The Labour Court also held that the 1st respondent herein is guilty of dereliction of his duty. The sum and the substance of the charges held proved against the 1st respondent herein would disclose the monetary loss suffered by the petitioner-Corporation. It speaks voluminous of conduct of the 1st respondent/workman. In my considered opinion, the Labour Court having found that the Charges leveled against the 1st respondent herein were proved and the mala fide intention on the part of first respondent cannot be ruled out, could not have interfered with the punishment imposed upon the 1st respondent by the disciplinary authority. It is not the question of amount involved. The question is, whether the Corporation can have trust in such an employee who could indulge in such serious acts of misconduct. It is settled now, neither the Labour Court nor this Court could interfere with the order of the disciplinary authority imposing a particular punishment, unless the Court comes to the conclusion that the punishment inflicted upon the delinquent employee is shockingly and totally disproportionate to the gravity of proved misconduct. If this is not the case where an employee has to be removed from the service, hardly there would be any case where an employee of the corporation could be removed from the service. It would be appropriate to have a look at the decision in G.R. Reddy Vs. Presiding Officer, Labour Court, Godavarikhani and Another, , rendered by the Full Bench of this Court, in which it is held in categorical terms that:

"From a conspectus of decided cases, the golden thread which is noticed throughout, is that this Court while exercising the power of judicial review under Article 226 of the Constitution cannot lightly interfere with the punishment imposed by the disciplinary authority, since the High Court does not sit as a Court of appeal over the decision of the authority holding domestic enquiry against a public servant. It is not open to the High Court to reappraise the evidence and to arrive at an independent conclusion on the evidence adduced in the case. However, the grey area where the High Court can interfere is only where during the course of departmental proceeding, principles of natural justice were violated causing prejudice to the delinquent officer. The High Court may interfere with the punishment when the same is shockingly disproportionate to proved guilt or on misconduct no reasonable prudent man would award such a punishment which is so arbitrary and unreasonable attracting application of Article 14 and in such circumstances, the High Court may well be justified in treating such cases as amounting to discrimination calling for redressal under

Article 14 of the Constitution of India. Even here, this Court while exercising the power of judicial review may not substitute the punishment which is reasonable according to its opinion, for the punishment awarded by the disciplinary authority. It should always be left to the disciplinary authority to impose appropriate punishment in the circumstances of the case. Such power may be exercised by a Court of Appeal and not by the High Court while exercising jurisdiction under Article 226 of the Constitution of India."

For all these reasons, we are of the opinion that in cases of misappropriation of public funds, whether the sums so misappropriated are small or large, deterrent punishment is always called for in the interest of administration and what should be the appropriate punishment in the circumstances of each case, should always be left to the discretion "of the disciplinary authority and the High Court while exercising judicial review under Article 226 of the Constitution of India shall not interfere and substitute itself as a Court of appeal".

8. The charges levelled against the 1st respondent herein are very serious and they are held to be proved. The 1st respondent, undoubtedly is guilty of the charge of misconduct. It is also an admitted fact that the 1st respondent herein has earlier suffered many punishments including the order of removal and which was interfered with by the appellate authority on compassionate grounds by imposing lesser punishment. Yet, the 1st respondent has not mended his face. Under those circumstances, the Labour Court ought not to have been interfered in the matter in purported exercise of its discretion u/s 11-A of the Act. Sympathy and compassionate view is no ground to interfere with the orders of the disciplinary authority. Interference by the Labour Court in such matters u/s 11-A of the Act is required to be in accordance with law and settled legal position. Mere feeling of the Labour Court that some injustice has been done to a workman is not enough for interference u/s 11-A of the Act, particularly, in the cases where the Labour Court concurs with the findings of the disciplinary authority about the proved misconduct. The exercise of discretion in the instant case by the Labour Court is not in accordance with Law and settled legal position. The Award suffers from an incurable error apparent on the face of the record and imminently a fit case for interference by this Court in exercise of its certiorari jurisdiction. The impugned Award is quashed.

9. Writ petition is accordingly allowed. No order as to costs.