
(2017) 07 AP CK 0038
In the Andhra Pradesh High Court
Case No : 8920 of 2011

M.V.Subbaiah

APPELLANT

Vs

The Depot Manager, APSRTC

RESPONDENT

Date of Decision : 17-07-2017

Acts Referred:

[Industrial Disputes Act, 1947](#), [Section 11-A](#)

Citation : (2017) 07 AP CK 0038

Hon'ble Judges : P.Naveen Rao

Bench : SINGLE BENCH

Advocate : Narasimha Goud, K. Srinivas Rao, Aravala Rama Rao

Judgement

1. Petitioner was served with memo dated 31.10.2004 alleging that he short-remitted Rs.195/- on 27.10.2004. On 11.1.2004 petitioner was placed under suspension and was also served with charge memo. The charge memo contained two charges. In the first charge it was alleged that petitioner lodged a false complaint against Travel Ticket Inspectors (for short TTI) alleging tearing of 15 tickets of Rs.13 denomination, even though, petitioner kept the money with him by selling those tickets. In the second charge, it was alleged that he has short-remitted Rs.195/- by wrongly closing tickets bearing denomination of Rs.13/- as 116/516021 instead of 116/516036 on 28.10.2004. The disciplinary action culminated in imposing punishment of removal from service vide order dated 15.3.2006. Appeal and revision were rejected confirming the punishment. Aggrieved thereby, petitioner raised industrial dispute in I.D.No.106 of 2006 before the Industrial Tribunal-cum-Labour Court, Anantapur (for short the Labour Court). The Labour Court vide award dated 26.10.2010 affirmed the disciplinary action and punishment imposed dismissing the claim of the petitioner. This writ petition is filed challenging the award.

2. Heard learned counsel for petitioner Sri Narasimha Goud and Sri K.Srinivas Rao, counsel representing learned standing counsel for respondent corporation

Sri Aravala Rama Rao.

3. 1. The foremost contention of learned counsel for petitioner is whenever an industrial dispute is raised before the Labour Court against an order of removal by the employer consequent to the disciplinary action, it is mandatory for the Labour Court to first frame preliminary issue on the manner in which the disciplinary proceedings were conducted and only after the Labour Court is satisfied that the procedure followed by the employer is valid, it can proceed to consider the matter on merits, whereas, in the instant case, the Labour Court did not go into that aspect and straight-away went into merits of the disciplinary action taken against the petitioner. Thus, on that count alone the award of the Labour Court is liable to be set aside. 3.2. He next contended that even assuming that the Labour Court validly followed the procedure and dwelt into the merits of the case, the Labour Court failed to exercise power under Section 11-A of the Industrial Disputes Act, 1947 with reference to quantum of punishment imposed. It is mandatory for the Labour Court to consider the aspect of quantum of punishment and hold whether punishment is validly imposed whereas this aspect was not even considered.

3.3. He further contended that the Labour Court erred in looking into the past record which was not the subject matter of disciplinary action or the enquiry before the Labour Court, while upholding the punishment imposed against the petitioner and the same is illegal.

3.4. Learned counsel for petitioner also contended that what was alleged against the petitioner was only a lapse on the part of the petitioner; the short remittance has occurred on account of the peculiar circumstances. According to the learned counsel, while the bus was moving, he fell down on the floor of the bus due to ill health and the cash strewn on the floor of the bus. The passengers collected the cash and put into his bag and after completing his duty same was deposited. It is also the responsibility of Assistant Depot Clerk to verify about the remittances of cash and he did not point out about short remittance. On the next day, after completion of the duty assigned to him, when he was informed of short remittance, he immediately credited the balance amount. Learned counsel further contended that there was no ill motive on the part of the petitioner. At the most it can be classified as negligence. Therefore, the punishment imposed is disproportionate and excessive.

3.5. He further contended that there is no merit in the first charge leveled against the petitioner. The record would disclose that no such complaint was filed by the petitioner as alleged. The said allegation is made only to harass and humiliate the petitioner and in some manner to fix the petitioner.

3.6. In support of the contentions, learned counsel placed reliance on the following decisions: i) The Cooper Engineering Ltd Vs.P.P. Mundhe ;

ii) Hindustan Cables Ltd Vs. Additional Industrial Tribunal-cum- Additional Labour Court and another ;

iii) C.V. Ramulu Vs. Labour Court, Hyderabad ; and

iv) A.V.Swami Vs. Industrial Tribunal-cum-Labour Court, Warangal .

4. 1. Not directly answering the specific contention urged by the learned counsel for petitioner on the issue of Labour Court not deciding the validity of domestic enquiry as preliminary issue, it was argued by Sri K.Srinivas Rao, that the conductor must have high integrity, confidence and trust of employer, as he holds the finances of the employer. Thus, any amount of misconduct in dealing with money in the custody of the conductor has to be viewed seriously. 4.2. According to the standing counsel, petitioner made short- remittance and wrong closure of the number of tickets sold by the conductor and only when this was pointed out, the difference amount was remitted. On the contrary, a false complaint was generated before the local Police alleging as if those tickets were torn off by the TTIs. Proper enquiry was conducted. Charges held proved. The Labour Court considered all aspects while passing the award.

4.3. He further contended that in matters where award is passed by the Labour Court on due consideration of material on record, the jurisdiction of the writ Court is limited.

4.4. In support of his contentions, he placed reliance on the following decisions:

i) Divisional Controller, N.E.K.R.T.C. Vs. H Amaresh ;

ii) Managing Director, North East Karnataka Road Transport Corporation Vs. K Murti ; and

iii) The Divisional Manager, APSRTC and another Vs. E Raja Reddy and another.

5. Both counsel placed reliance on the decision of Full Bench of this Court in V.Ramana Vs. APSRTC, Visakhapatnam Region and others . While counsel for petitioner placed reliance on paragraph No.6 to buttress his contention that it is Labour Court which has to exercise its power under Section 11-A of the ID Act, and such power is very wide, learned standing counsel placed reliance on paragraphs 9 and 16.

6. The question for consideration is whether award of the Labour Court is vitiated on the grounds urged by learned counsel for petitioner?

7. As seen from the case record of Labour Court, the case was posted on 6.2.2008 for hearing on validity of domestic enquiry. At that stage, case underwent several adjournments and finally on 4.10.2010 arguments were heard on the validity of domestic enquiry. Having considered the respective submissions, the Labour Court held the domestic enquiry as valid. Labour Court, however, observed that it would be subject to reappraisal at the time of final hearing. After Labour Court declared the domestic enquiry valid, documents were marked on both sides and on 18.10.2010 heard final arguments on both sides. Thus, it cannot be said that the Labour Court has not considered the validity of domestic enquiry as preliminary issue. On consideration of the rival contentions,

the Labour Court held that the domestic enquiry as validly conducted. No objection was raised to said decision made on 4.10.2010 and the same has become final.

8. 1. In *The Cooper Engineering Ltd*, the issue for consideration was that if the Labour Court holds domestic enquiry conducted by the employer as violative of principles of natural justice, whether any duty is cast upon the Labour Court to give an opportunity to the employer to adduce evidence afresh and failure to do so would vitiate the award. 8.2. The employee was dismissed from service after conducting domestic enquiry and based on the findings in the domestic enquiry, the Labour Court found conducting of domestic enquiry defective and set aside the punishment imposed. Management challenged the decision of the Labour Court. One of the contentions urged by the management was no opportunity was afforded by the Labour Court to adduce evidence on behalf of the employer. Supreme Court considered the issue as to Whether after Labour Court comes to decision about the enquiry being defective, it has any duty to announce a decision in that behalf to enable the employer an opportunity to adduce evidence before it to justify the order on the charge leveled against the workman.

8.3. On through review of the law on the subject, the Supreme Court held as under:

" 22. We are, therefore, clearly of opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication the Labour Court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer, there will be no difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary issue. On that decision being pronounced it will be for the management to decide whether it will adduce any evidence before the labour court. If it chooses not to adduce any evidence, it will not be thereafter permissible in any proceeding to raise the issue. We should also make it clear that there will be no justification for any party to stall the final adjudication of the dispute by the Labour Court by questioning its decision with regard to the preliminary issue when the matter, if worthy, can be agitated even after the final award. It will be also legitimate for the High Court to refuse to intervene at this stage. We are making these observations in our anxiety that there is no undue delay in industrial adjudication. "

(emphasis supplied)

9. In *Hindustan Cables Ltd*, it was argued on behalf of the workman that Labour Court failed to decide the validity of the domestic enquiry or to permit the parties to adduce evidence, therefore prayed for remanding the case to the Industrial Tribunal with prayer to first decide the validity of the domestic enquiry. Holding the said contentions has considerable force, this Court held that jurisdictional error committed by the Industrial Tribunal requires intervention/ correction by

the High Court. The Court directed the Additional Industrial Tribunal, Hyderabad to first decide the validity of the domestic enquiry.

10. As noted above, in the case on hand, the validity of domestic enquiry was considered by the Labour Court as preliminary issue and Labour Court has held the domestic enquiry as valid. The procedure adopted by the Labour Court cannot be found fault with. The Labour Court has not committed any jurisdictional error. Moreover, the decision of Labour Court holding the domestic enquiry as valid is not challenged. The two decisions relied by the learned counsel for petitioner on this issue do not come to his aid.

11. At this stage it is appropriate to note the points for consideration framed by the Labour Court. They read as under: " Whether the enquiry is conducted against the principles of natural justice? Whether the order of removal against the petitioner is proportionate? To what relief the petitioner is entitled? "

12. At the final disposal stage also Labour Court has gone into the issue of validity of domestic enquiry before affirming the disciplinary action. In paragraph 17 of the award, there was elaborate discussion on the manner of conducting of domestic enquiry and held that there was no violation of principles of natural justice and further held that the disciplinary action taken against the petitioner as valid. Labour Court found that the order of removal is not with ill motive and it is based on the irregularities committed by the petitioner. It is appropriate to note at this stage that in domestic enquiry what is required is preponderance of probabilities to prove an allegation.

13. It was next contended that the Labour Court erred in not exercising power under Section 11-A in deciding the validity of the punishment imposed on the proportionality principle and in relying on the past conduct which was not the subject matter of domestic enquiry.

14. On the quantum of punishment also Labour Court has gone into the issue and having found that conductor indulged in short remittance of cash, Labour Court viewed the same as amounting to grave misconduct. In paragraph-18 of the award, Labour Court analyzed the facts on record and has come to the definite conclusion that the short remittance and wrong entry in SR are deliberate and intentional.

15. 1. In V.Ramana, Full Bench of this Court held that Section 11-A of the Industrial Disputes Act, 1947 confers wide powers on the Industrial Tribunal/ Labour Court to consider as to whether the punishment imposed upon a delinquent workman is legal or justified and whether commensurate with delinquency alleged and proved and to award appropriate punishment, whereas, the jurisdiction of High Court to interfere with quantum of punishment is limited.

15.2. In A.V.Swami, learned single Judge reiterated the same principle.

15.3. In E Raja Reddy, learned single Judge of this Court held that Labour Court/ Industrial Tribunal cannot interfere with the punishment imposed by the

disciplinary authority unless it finds the punishment to be shockingly disproportionate after appraisal of the evidence on record. Learned single Judge further held that the jurisdiction of the High Court to interfere, in exercise of power of judicial review on the discretion exercised by the labour Court on the quantum of punishment is very limited.

15.4. The scope of power of Labour Court with reference to considering the validity of the domestic enquiry and altering of quantum of punishment was elaborately considered by the Supreme Court in *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Ors* .

15.5. In *C.V.Ramulu* also two contentions were urged by the workmen in the writ petition challenging the award of the Labour Court, i.e., i) In the absence of findings that the domestic enquiry was improper or defective, Labour Court has no jurisdiction to permit the parties to adduce additional evidence; and ii) Labour Court failed to address itself the question of quantum of punishment. Both contentions were negatived and writ petition was dismissed. Aggrieved thereby, writ appeal was preferred. Division Bench observed that after introduction of Section 11-A in the I.D.Act, the scope of power of Labour Court is enlarged and Labour Court is now clothed with the power to reappreciate the evidence in the domestic enquiry to satisfy itself whether any misconduct is established. As seen from paragraph 6 of the judgment, the Division Bench was also considering the scope of opportunity to adduce evidence before the Labour Court in case of domestic enquiry is found to be improper or defective.

16. With reference to plea raised by the petitioner that he was innocent and he discharged his entire service honestly, Labour Court noted the contention of the respondent corporation that petitioner was censured on 11 occasions and on 4 occasions his annual increments were deferred. Thus, factum of previous disciplinary action was taken note by the Labour Court only with reference to the contention of the petitioner that he discharged his service honestly and also while considering the quantum of punishment. By relying on decision of Full Bench in *V.Ramana*, Labour Court further held that conductor must hold the trust of the employer and therefore quantum of amount involved is not relevant.

17. When the Labour Court was called upon to exercise its discretion under Section 11-A, such power inheres in the Labour Court the competence to go into all aspects to assess whether domestic enquiry is valid and whether punishment imposed is commensurate with the delinquency alleged and proved. Such assessment can not be in isolation. While considering the issue, it is within the competence of Labour Court to assess rival stands. Petitioner contended that he had good record of service. This was opposed by respondents by referring to punishments imposed earlier. In the process, on analyzing the facts on record of this case, Labour Court noted that past conduct of the petitioner was not good.

18. 1. It is settled principle of law that while considering the quantum of punishment that can be imposed on the employee, employer is competent to

take note of past conduct. While so, it cannot be said that while exercising its discretion under Section 11-A, Labour Court cannot take note of the contention of the employer on past conduct and deal with the same in validating the quantum of punishment imposed. More so, such contention of employer was in response to assertion of employee. 18.2. In Government of Andhra Pradesh Vs. Mohd Taher Ali , Supreme Court held as under:

" 5. Learned counsel appearing on behalf of the respondent submitted that in fact, the disciplinary authority while passing the order has taken into consideration the earlier absence of the respondent from the duty. He submitted that this could not have been taken into consideration as the respondent was not aware about these incidents and those were not the part of the charges levelled against him. In support of his submission learned counsel for the respondent has invited our attention to the judgment of this Court titled State of Mysore v. K. Manche Gowda [AIR 1964 SC 506 : (1964) 4 SCR 540] but in the present case we are satisfied that in fact the respondent deliberately absented himself from duty and did not offer any explanation for his absence from election duty. It is not the respondent's first absence. He also absented himself from duty on earlier occasions also. In our opinion there can be no hard-and-fast rule that merely because the earlier misconduct has not been mentioned in the charge- sheet it cannot be taken into consideration by the punishing authority. Consideration of the earlier misconduct is often only to reinforce the opinion of the said authority. The police force is a disciplined force and if the respondent is a habitual absentee then there is no reason to ignore this fact at the time of imposing penalty. Moreover, even ignoring the earlier absence, in our opinion, the absence of 21 days by a member of a disciplined force is sufficient to justify his compulsory retirement. "

(emphasis supplied) 18.3. In Union of India Vs Bishamber Das Degra , Supreme Court held:

" 30. In view of the above, it is evident that it is desirable that the delinquent employee may be informed by the disciplinary authority that his past conduct would be taken into consideration while imposing the punishment. But in case of misconduct of grave nature or indiscipline, even in the absence of statutory rules, the authority may take into consideration the indisputable past conduct/ service record of the employee for adding the weight to the decision of imposing the punishment if the facts of the case so require. "

(emphasis supplied) 18.4. In Central Industrial Security Force Vs Abrar Ali , Supreme Court reiterated the view expressed in Bishamber Das Degra (supra). Supreme Court held, In any event, past conduct of a delinquent employee can be taken into consideration while imposing penalty (paragraph 17).

19. It was next contended that false allegation was leveled on the first charge and that he never gave a complaint to the police and that short remittance was not willful.

20. As seen from the record, the two charges leveled against the petitioner are, false complaint against TTIs and short remittance of Rs.195. The report of the Enquiry Officer disclose that petitioner deposed that after the inspection by TTIs, while the bus was moving, the passengers informed the petitioner that the Inspecting Team removed certain tickets from the tickets tray without his knowledge; on verification of ticket tray with the way-bill, he noticed that certain tickets were missing; in the meantime bus reached the bus stop near Budwel Police Station and when the bus was stopped at that stage, petitioner noticed Assistant Sub Inspector whom he knew; therefore having regard to the missing of tickets and information furnished to him by the passengers, he informed orally to the Assistant Sub Inspector of foul play by TTIs. As per enquiry report he deposed before the Enquiry Officer about his oral complaint to the Assistant Sub Inspector but stated that it was not with any ill motive and it was unintentional and due to ill health. This statement of the petitioner as noted in the enquiry report would show that there was a complaint by the petitioner and based on the complaint, the concerned police officer visited the office of the Depot Manager to find out the truth.

21. The Deputy Superintendent of Budwel depot deposed before the Enquiry officer that when he was working in the office of the Depot Manager, Assistant Sub Inspector of Budwel police station came to him and informed that petitioner complained about tearing of 15 tickets by TTIs and wanted to meet the Depot Manager and enquired whereabouts of the Depot Manager. Deputy Superintendent (Traffic) in his statement also reiterated about what was deposed by another Deputy Superintendent. Having regard to the material on record, Enquiry Officer held that the allegation in first charge was proved. It cannot be said that such finding is perverse. It cannot be said that the allegation leveled against the petitioner in charge No.1 is erroneous.

22. On the second charge petitioner admits of short remittance initially after completion of his duty. A bare look at the charge it is clear that there was not only short remittance but the wrong reflection of ticket series number in STAR. The report of the enquiry discloses that petitioners defense on short remittance was on the ground that the cash fell down on the floor of the bus and that petitioner was ill, therefore there was no proper assessment of exact amount to be credited and having come to know the amount remitted was short later he credited the same. Therefore, the basic fact of short remittance is not in dispute. It is also established in the domestic enquiry that there was difference of 15 tickets in STAR and way-bill. Thus, it is not simple case of short remittance of the amount due to mistake but a wrong reflection of the actual issuance of the tickets shown in the STAR as if tickets were not issued. There is sufficient material on record to show that the allegation in the second charge is also proved.

23. Short remittance of cash by Bus Conductor cannot be viewed as minor misconduct.

24. In *Managing Director, North East Karnataka Road Transport Corporation*, Labour Court having held the domestic enquiry conducted in fair and proper manner but set aside the termination orders. Learned single Judge and Division Bench upheld the award of Labour Court. The Supreme Court reversed the decisions of Courts below. Supreme Court held as under: " 7. We have heard learned counsel appearing for the appellant Management and perused the records. In our opinion, the order passed by the High Court is erroneous on the face of the record. The High Court, in our opinion, ought to have seen that the misconduct was duly established in the enquiry and despite it, the Labour Court had persuaded itself to reinstate the delinquent in service. The learned Single Judge also confirmed the order passed by the Labour Court. In our opinion, the High Court was not justified in altering the quantum of punishment when the enquiry was held to be fair and proper, charge was proved and no evidence was led before the Labour Court while questioning the order of the disciplinary authority dismissing the delinquent workman..

9. In the instant case, the position held by the employee (conductor) is one of faith and trust. A conductor holds the post of trust. A person guilty of breach of trust should be imposed punishment of removal from service. "

(emphasis supplied)

25. In *Divisional Controller, NEKRTC*, the Labour Court declared the domestic enquiry as illegal and invalid, proceeded to consider the matter on merits, held only 4th of the 4 charges as proved and dismissal from service was substituted with reinstatement with 75 % back-wages. On a challenge by the corporation, High Court only reduced back-wages to 25%. On appeal, Division Bench set aside back-wages. The appeal preferred by the corporation was allowed by Supreme Court. Supreme Court held as under: " 17. The order of reinstatement passed by the Labour Court and its affirmation by the High Court is contrary to the law declared by this Court in *Hullikatti* [(2001) 2 SCC 574 : 2001 SCC (L&S) 469] wherein it was held that it is misplaced sympathy by the courts in awarding lesser punishments where on checking it is found that the bus conductors have either not issued tickets to a large number of passengers and deposit the same with the Corporation. They act in a fiduciary capacity and it would be a case of gross misconduct if knowingly they do not collect any fare or the correct amount of fare. It was finally held that the order of dismissal should not have been set aside. As already noticed, this view was reiterated by a three-Judge Bench of this Court in *Regional Manager, RSRTC* case [(2002) 10 SCC 330 : 2003 SCC (L&S) 714] .

18. In the instant case, the misappropriation of the funds by the delinquent employee was only Rs 360.95. This Court has considered the punishment that may be awarded to the delinquent employees who misappropriated the funds of the Corporation and the factors to be considered. This Court in a catena of judgments held that the loss of confidence is the primary factor and not the amount of money misappropriated and that the sympathy or generosity cannot

be a factor which is impermissible in law. When an employee is found guilty of pilferage or of misappropriating the Corporation's funds, there is nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of dismissal. In such cases, there is no place for generosity or misplaced sympathy on the part of the judicial forums and interfering therefore with the quantum of punishment. The judgment in *Karnataka SRTC v. B.S. Hullikatti* [(2001) 2 SCC 574 : 2001 SCC (L&S) 469] was also relied on in this judgment among others. Examination of the passengers of the vehicle from whom the said sum was collected was also not essential. In our view, possession of the said excess sum of money on the part of the respondent, a fact proved, is itself a misconduct and hence the Labour Court and the learned Judges of the High Court misdirected themselves in insisting on the evidence of the passengers which is wholly not essential. This apart, the respondent did not have any explanation for having carried the said excess amount. This omission was sufficient to hold him guilty. This act was so grossly negligent that the respondent was not fit to be retained as a conductor because such action or inaction of his was bound to result in financial loss to the appellant irrespective of the quantum.

"25. In our view, even short remittance amounts to misconduct and, therefore, applying the rulings of this Court, the impugned order ought not to have been passed by the Division Bench ordering reinstatement. We, therefore, have no hesitation to set aside the order passed by the learned Judges of the Division Bench and restore the order of dismissal of the respondent from service. It is stated that pursuant to the order of the Labour Court the respondent was reinstated in service. Since there was no stay granted by this Court the respondent had continued in service of the Corporation. In view of the law laid down by this Court and of the facts and circumstances of this case, the respondent, in our opinion, has no legal right to continue in service any further. We, therefore, direct the appellant Corporation to immediately discharge the respondent from service. However, we make it clear that the salary paid to the respondent and other emoluments during this period shall not be recovered from the respondent. We also make it further clear that in view of the order of dismissal the respondent shall not be entitled to any further emoluments."

(emphasis supplied)

26. In *V.Ramana*, Full Bench of this Court held that a Conductor holds the position of trust. A person guilty of breach of trust should normally be imposed with punishment of removal from service (paragraph 9). The quantum of amount misappropriated and embezzled by a delinquent official may not be taken into consideration in deciding the adequacy of punishment and punishment of removal cannot be termed as shockingly disproportionate (paragraph 19). This view of the Full bench is upheld by Supreme Court in *Managing Director, North East Karnataka Road Transport Corporation* (supra).

27. In the conspectus of the facts and circumstances of the case and material on

record of Labour Court, it cannot be said that there was no application of mind by the Labour Court in considering the issue of holding of proper enquiry and on the question of quantum of punishment and on the merits of disciplinary action taken against petitioner.

28. It is settled principle of law that, the scope of judicial review in matters arising out of awards passed by the Labour Court is very limited, more particularly in case where Labour Court exercises its discretion under Section 11-A of the I.D.Act and when there is no perversity in the award of Labour Court.

29. I, therefore, see no error in the award of Labour Court warranting interference by this Court.

30. For the foregoing reasons, the writ petition fails and accordingly the same is dismissed. No costs. Having regard to the same, miscellaneous petitions, if any pending, are closed.