

(2010) 09 AP CK 0071

In the Andhra Pradesh High Court

Case No : Writ Petition No. 17671 of 2010

N.R.S. Narayana

APPELLANT

Vs

Additional Industrial Tribunal-cum-Additional Labour Court
and Another

RESPONDENT

Date of Decision : 28-09-2010

Acts Referred:

Andhra Pradesh State Road Transport Corporation Employees (Conduct) Regulations,
1963 — Regulation 28(32), 28(6), 28(9)

Citation : (2010) 09 AP CK 0071

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

**Advocate : Party in Person, for the Appellant; K. Madhava Reddy, for R2 and
G.P. for Labour R1, for the Respondent**

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—The Petitioner was appointed as a Conductor, in the A.P. State Road Transport Corporation (for short "the Corporation"), on 20.03.1980. In the year 2008, he was working in the Ranigunj Bus Depot. On 13.09.2008, he was conducting a service on route No. 49. A check was conducted enroute. A charge memo dated 21.10.2008 was issued alleging that the Petitioner collected a sum of Rs. 20/-, from three passengers, who were scheduled to travel from Secunderabad to Bluemoon Hotel, returned Rs. 8/- and instead of issuing ticket of Rs. 4/- denomination, each, had issued only one such ticket. It was further alleged that on noticing the checking party, he issued another ticket of Rs. 4/- denomination. The relevant provisions of the service regulations were referred to in other subsidiary charges. The Petitioner was also placed under suspension. Ex party enquiry was conducted and the report, dated 05.01.2009, was submitted by the Enquiry Officer, holding that the charges are proved. Taking the same into account, the Depot Manager, the 2nd Respondent, passed an order, dated 13.04.2008, directing removal of the Petitioner from service. The Petitioner filed I.D. No. 100 of 2009 before the Additional Industrial Tribunal-cum-Additional

Labour Court, Hyderabad (for short "the Labour Court"). Through its award, dated 08.04.2010, the Labour Court, dismissed the I.D. Hence, this Writ Petition.

2. The Petitioner appeared as party-in-person. He submits that the 2nd Respondent conducted the proceedings without issuing any notice of hearing and the unilateral report submitted by the Enquiry Officer was taken into account. He contends that though the Labour Court came to the conclusion that the domestic enquiry was invalid, it held that the charges are proved. The Petitioner further submits that neither the passengers, who were mentioned in the charge memo, nor the officials, who conducted the check, were examined as witnesses and still the charges were held proved.

3. Learned Standing Counsel for the Corporation, on the other hand, submits that the Petitioner did not respond to the charge memo, and in that view of the matter, the enquiry was proceeded with ex party. He further submits that two witnesses were examined on behalf of the management and the Labour Court held that the charges are proved. He contends that the findings recorded by the Labour Court cannot be interfered with in a writ petition.

4. The charges framed against the Petitioner read as under:

1. For having failed to complete ticket issues even after crossing fare stage which constitutes misconduct under Regulation 28 (xxxii), of APSRTC Employees (Conduct) Regulations 1963.

2. For having failed to issue tickets to two passengers found traveling without tickets who boarded your bus at Secunderabad station and bound for Bluemoon ex-stages 1 to 4/5 though you have already collected an amount of Rs. 20/- from a batch of 3 (Three) passengers and returned an amount of Rs. 8/- to them and issued only one ticket of Rs. 4/- denomination vide ticket No. 579/797452 and accounted at stage No. 3, and further on sighting of Checking Officials at checking point you have issued ticket No. 579/797483 of Rs. 4/- denomination and handover to the above passengers and caused delay in handing over tray to the checking officials which constitutes misconduct under Regulation 28 (vi)(a) of APSRTC Employees (Conduct) Regulations 1963.

3. For having failed to Acknowledge the MTD - 353 R and refused to receive the same and disobedience with the checking officials which constitutes misconduct under Regulation 28 (viii) of APSRTC Employees (Conduct) Regulations 193.

5. The Petitioner was placed under suspension and the 2nd Respondent had initiated the disciplinary proceedings. The Enquiry Officer submitted a report without any reference to the explanation submitted by the Petitioner. It was not even mentioned that the Petitioner failed to submit explanation, even after receipt of the charge memo. The 2nd Respondent straight away proceeded to accept the report submitted by the Enquiry Officer. It was stated that the letter, dated 19.01.2009, addressed to the Petitioner inviting objections was displayed in the notice board. Admittedly, the Petitioner was placed under suspension. An

order was passed removing the Petitioner from service. The Petitioner approached the Labour Court challenging the order of removal. The Labour Court found that the domestic enquiry was defective. Therefore, it directed the Corporation to prove the charges. The two witnesses, namely, Deputy Superintendent (Traffic) and a Typist were examined as M.Ws.1 and 2. The documents pertaining to the disciplinary proceedings were filed as M.1 to M.35. The Petitioner made as many as 10 representations, in the course of disciplinary proceedings and they were marked as Exs.M.11, M.12 and M.14 to M.21. No reference was made to them in the notices or the orders passed against the Petitioner.

6. Once the Labour Court held that the domestic enquiry is defective, the burden rested upon the Corporation, to prove the charges. Recognizing the difficulty of the Corporation to procure the presence of the passengers, in connection with the irregularities in issuance of tickets, the Hon'ble Supreme Court held that the disciplinary proceedings against Conductors do not suffer, on account of failure to examine the concerned passengers. The charges in relation thereto can be proved only by examining the officials, who conducted the check. If neither the passengers, nor the checking staff are examined, there is no way that a charge pertaining to cash and ticket irregularities, can be said to have been proved.

7. M.Ws.1 and 2 are not part of the checking party. It was not even alleged that the members of the squad are not available. The Petitioner categorically stated as WW.1 that the entire check and the consequential proceedings were stage-managed and the check report was not even served upon him. The Labour Court did not take these aspects into account, and held that the charges are proved. It proceeded to press into service, its own reasoning.

8. The allegation against the Petitioner was that, having collected fare of Rs. 4/- each from a batch of three passengers, he has issued only one ticket, at the boarding point and issued one ticket to another passenger on noticing the checking party. There is no mention that another passenger was not issued ticket at all. In such an event, the provision to be invoked would have been different. At any rate, the charge can be said to have been proved before the Labour Court, if only any person connected with the checking, was examined. Admittedly, no such person was examined and the finding recorded by the Labour Court is the one, not based on evidence, if not perverse.

9. The Petitioner rendered service to the Corporation for about 30 years. He has since attained the age of superannuation. The fruits of the long service rendered by him cannot be taken away in such a casual and arbitrary manner.

10. Hence, the Writ Petition is allowed and the award dated 08.04.2010, passed by the Labour Court in I.D. No. 100 of 2009 is set aside. In addition, the order, dated 21.10.2008, passed by the 2nd Respondent, placing the Petitioner under suspension is set aside. Since the Petitioner is retired from service, he shall be entitled to the benefit of continuity of service and 50% back wages.

There shall be no order as costs.