

APHC010257882008



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3504]

FRIDAY, THE TWENTIETH DAY OF DECEMBER
TWO THOUSAND AND TWENTY-FOUR

PRESENT

THE HONOURABLE SRI JUSTICE MAHESWARA RAO KUNCHEAM

WRIT PETITION NO: 28120/2008

Between:

Ganasala Krishna W.G Dist.

...PETITIONER

AND

The Presiding Officer 2 Others and Others

...RESPONDENT(S)

Counsel for the Petitioner:

1.P N MURTHY

Counsel for the Respondent(S):

1.GP FOR LABOUR

2.VINOD KUMAR TARLADA (SC FOR APSRTC)

The Court made the following Order:

The writ petition is filed under Art. 226 of the Constitution of India,
claiming the following prayer:-

“.....to issue writ order or direction of the writ of More particularly one in the nature of writ of Certiorari after calling for the records in I.D.No.71/2006, dt. 15.09.2008 on the file of the Hon'ble Labour Court, Guntur in confirming the removal order prasad by the disciplinary authority as illegal, arbitrary, and unjust and consequently set aside same and direct the

respondents Nos.2 & 3 to reinstate the petitioner into service with continuity of service, back wages and attendant benefits and pass....”

2. In the instant writ petition, the Award dated 15.09.2008 made in I.D No.71 of 2006 on the file of Industrial Tribunal cum Labour Court, Guntur, is called into question. Consequently, the writ petitioner also seeks reinstatement, continuity of service, back wages and attendant benefits.

Brief case of the petitioner:-

3. The petitioner had joined in service as a Conductor on 01.08.1997 in the respondent Corporation at Tadepalligudem. While so, on 02.09.2005 during the course of his employment when he was discharging his duties on the Bus bearing No. AP 9 Z 5281, which was proceeding from Bheemavaram to Tadepalligudem at 3.30pm near Chilakampadu Last stage, the respondent authorities i.e., TTIs conducted a surprise check. On the said check, they found gross irregularities by the petitioner in not issuing the tickets to the passenger, even after collecting the requisite amount also. Thus, the following Charges were made against the petitioner:-

- 1) For having violated the rule "Issue & Start" while you were performing BVRM-T-P-G Service on 2.9.05 which constitutes serious misconduct vide Reg. 28 (xxxii) of APSRTC Employees (Conduct) Reg. 1963.

- 2) For having failed to issue ticket to a passenger, who boarded the bus at Bheemavaram and bound for T.P. Gudem ex-stages 8 to 1, even after collecting the requisite fare of Rs.13/- while you were performing the service Bhimavaram-T.P. Gudem on 2.9.03 which constitutes serious misconduct vide Reg. 8 (x), (vi) (a) of APSRTC Employees Conduct Reg. 1963.
- 3) For having closed the ticket Nos. of all denominations upto the stage No.3 without completing the ticket issues, which constitutes misconduct vide Reg. 28 (xxxi) of APSRTC Employees (conduct) Reg. 1963”.

4. It is the case of the petitioner that, he has submitted an explanation to the said charges, but the Enquiry Officer without perceiving the same, held the petitioner guilty. Based upon the enquiry report, the petitioner was terminated from the service *vide* orders dated 31.12.2005. The said removal orders were challenged by the petitioner, but the Appellate authority as well as reviewing authority rejected the same respectively, *vide* its orders dated 10.02.2006 and 29.04.2006. Thus, the removal orders were confirmed concurrently.

5. The petitioner approached the 2nd respondent Labour Court, Guntur by invoking the provisions under Section 2 A (2) of Industrial Disputes Act, through I.D No.71 of 2006, and the same was dismissed *vide* order dated 15.09.2008 by the Industrial Tribunal Cum Labour Court, Guntur. Being aggrieved by the same, petitioner has approached this Court by way of filing the present writ petition, invoking the powers vested in this Court under Art. 226 of the Constitution of India.

Brief case of the respondent-Corporation:-

6. The counter-affidavit is filed by the respondent Corporation denying the case of the petitioner. Respondent Corporation Authorities states that, during a surprise check conducted on 02.09.2005 and the petitioner was found to have failed in discharging his duties, which constitutes a gross violation of APSRTC Employees (Conduct Registration Rules, 1963). Consequently, the Respondent Corporation appointed an Enquiry Officer to conduct a domestic enquiry, and the petitioner was provided with a reasonable opportunity to defend his case. It is further submitted by the respondent Corporation that, as per petitioner's service record, he had been removed from the service on two previous occasions, including the recent case involving in cash & ticket irregularities. Additionally, had been censured on three occasions and his annual increments were deferred twice due to illegal methods adopted by him. Finally, based on the enquiry report, the respondent Corporation removed the petitioner from his duties on 31.12.2005.

7. In nutshell, the respondent Corporation claims, that the removal orders were confirmed by both the appellate and reviewing authorities, who concurrently held against the petitioner by arriving unequivocal findings.

8. Heard Sri P. Narasimha Murthy, learned counsel for the petitioner and learned counsel for the respondent Corporation Sri Tarlada Vinod Kumar.

Contentions:-

9. The learned counsel for the petitioner Sri P. Narashima Murthy while reiterating writ averments, contended that the Labour Court did not perceive the facts of the case in right perspective. He further argued that, the Labour Court did not take into consideration of fact that, the passengers were under the influence of Alcohol. Mainly, he contended that factual aspects were not appreciated in the lis. At last, he sought for setting aside the award passed by the Industrial Tribunal cum Labour Court.

10. The learned counsel for the Respondent Sri Tarlada.Vinod Kumar, vehemently asserted that, the writ petitioner did not disclose the true facts which are within in his knowledge namely that, he was dismissed from service, awarded censure on three occasions, and had his annual increments deferred twice. Further it is stated that, the Respondent Corporation authorities, by following the principles of Natural Justice provided the petitioner with reasonable opportunity at all stages, right from enquiry officer to Appellate and Review authorities. He also contends that the Writ Petitioner seeks to set aside the finding of facts which are arrived by the appellate and Review authorities, which were affirmed by the

Industrial Tribunal cum Labour Court, on the basis of sound reasoning, and that such interference is not permissible under the Article 226 of the Constitution of India .

Consideration of the Court:

11. Upon hearing the learned counsel on both sides, the moot point to be determined in the present lis is, whether the orders made in the I.D No.71/2006 on the file of Industrial Tribunal-cum-labour Court, Guntur, dt:15.09.2008 is legally sustainable or not?

12. In this context, it is apt to refer the well settled legal principle, which is just and essential in order to take the lis to its logical end. In ***State of A.P vs S. Sree Rama Rao***¹, the Hon'ble Supreme Court of India dealt with powers of the High Court under Art.226 of the Constitution of India in respect of departmental enquiries and held as follows:-

“21. The High Court is not constituted in a proceeding under Article 226 of the Constitution as a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may

¹ AIR 1963 SC 1723

reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations Or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution....”

13. Further, in ***Union of India & ors Vs P.Gunasekaran***², the Apex Court after enunciating the relevant legal position, codified the powers of

² (2015) 2 SCC 610

the Hon'ble High Courts under Articles 226/227 of the Constitution of India pertaining to Labour Court awards and held as follows:

“13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

i) reappraise the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has

been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience.”

14. Thus the above legal position makes it clear that, in disciplinary proceedings, the High Court does not act as an appellate authority and has a limited scope of interference in the Labour Court's award, particularly with respect to factual aspects.

15. Evidently, in the case on hand the writ petitioner merely stated his version in I.D No.71/2006 claiming that, the Respondent corporation did not consider his case. But at this juncture, it is important to note that, the writ petitioner who is the claimant in I.D No.71/2006, failed to substantiate

his own case and did not even submit a single piece of paper to prove his claims. In contrast, the Respondent Corporation authorities got marked Ex.M1 to Ex.M.23 which crystal clears and substantiates the case of respondent Corporation. In the absence of plausible evidence, merely asserting for the sake of argument in relation to passengers being under the influence of alcohol has no legal significance and cannot withstand judicial scrutiny.

16. It is trite to mention that, the Labour Court has considered the instant lis at length and came to unequivocal findings in respect of facts in the issue. It opined that the enquiry was conducted strictly in accordance with law and that there has been no violation of the principles of natural justice or any other statutory provision in vogue. In fact, the Writ Petitioner was given full opportunity to defend himself. The Industrial Tribunal cum Labour Court has rightly appreciated the evidence and found the charges proved.

Conclusion:

17. It is apt to mention that the conductor, in this case the Writ Petitioner, is bound with the responsibility to collect the correct fare from the passenger, issue the ticket and remit the same amount into the Respondent corporation credit. But, in the instant case the Writ Petitioner grossly failed in discharging his duties. Failing to issue the ticket after collecting the amount from the passenger constitutes serious misconduct

and the petitioner was found guilty of breaching the trust of the Respondent Corporation. In such a case, it would be inappropriate for this Court to show leniency by interfering with the well considered Award dt:15.09.2008 and setting it aside, where it is found that the bus conductor had failed to issue ticket to passenger.

18. It is relevant to mention that, the respondent Corporation is a public utility service and the very appointment of the petitioner was to abide by the mandatory rules and regulations. The mandatory rules stipulate that, the petitioner should complete the issuance of tickets correctly at the boarding point itself, then move the bus for further journey and close the S.R. before the arrival of next fare stage. However, the petitioner herein violated the same by moving the bus without completing the pre-requisites and reached the next stage without ensuring the issuance of a valid ticket to the passenger on board. Thus, the petitioner has violated the Rule of “Issue and Start” of the Respondent Corporation.

19. In the case of ***U.P State Transport Corporation Vs. Suresh Chand Sharma***³, the Supreme Court while dealing with the Labour Court Awards more particularly, regarding the irregularities committed by the conductor in not issuing the tickets even after receiving the amount, has taken a serious note and held that showing sympathy in the cases of

³ (2010) 6 SCC 555

corruption/misappropriation is uncalled and opposed to public interest, regardless of the amount of money involved.

20. In the light of the reasons arrived supra and the settled legal position, this Court finds that the Award of the Tribunal does not suffer from any impunity. Therefore, the writ petition is devoid of merit and is liable to be dismissed.

The writ petition is accordingly, dismissed. No costs. The miscellaneous applications pending, if any, shall stand closed.

JUSTICE MAHESWARA RAO KUNCHEAM

Date: 20.12.2024
GVK

THE HON'BLE SRI JUSTICE MAHESWARA RAO KUNCHEAM

WRIT PETITION No.28120 of 2008

Date:20.12.2024

GVK