THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P. NO.10306 of 1998

DATED: 26.09.2007

Between:-

A.Satyanarayana.

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PETITIONER
AND

The Labour Court-III, Nampally, Hyderabad rep. By its Presiding Officer & another.

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RESPONDENTS

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.10306 of 1998

O R D E R

Aggrieved by the award of the Labour Court-III, Hyderabad, in I.D.No.68 of 1992 dated 12-01-1994, the present writ petition is filed by a Conductor of the A.P.S.R.T.C.

Facts, in brief, are that the petitioner joined the respondent-Corporation as a Conductor on 04-03-1983 and, pursuant to the check exercised on the bus on 16-08-1984, 15 passengers were found to be travelling without tickets. A charge sheet was issued to the petitioner. Pursuant to a departmental enquiry, wherein the charges levelled against the petitioner were held established, he was imposed the punishment of removal from service. Aggrieved thereby, he invoked the jurisdiction of the Labour Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (for short 'the Act'). The Labour Court, by order dated 29-09-1988, upheld the validity of the domestic enquiry. Thereafter the matter was taken up for consideration under Section 11-A of the Act. On re-appreciation of the evidence on record, the Labour Court noted the explanation of the petitioner, in reply to the charge memo in Exs.M.6 and M.9, that on 16-08-1984, students had started raising slogans due to the unseating of the then Chief Minister Late Sri N.T.Rama Rao from power, that at stage Nos.13 and 15, passengers had boarded the bus and though the bus was stopped for completing issuance of tickets, the slogan shouting by students coupled with the apprehension that the bus would be pelted with stones, had resulted in the driver starting the bus, the check was

exercised at stage No.14 within a distance of two Kilometres from stage No.13 and, as such, he could not issue tickets to all the passengers. The Labour Court noted the petitioner-workman's contention that there were 89 passengers in the bus at the time of check and that the passengers, in their statement in Ex.M.2, had unequivocally stated that they had neither paid the fare nor had purchased the tickets. The Labour Court also noted that, in the spot explanation, the petitioner had stated that he was in the process of issuing tickets and due to late running of the bus and due to the confusion caused by the passengers in payment of fare, he could not complete issuance of tickets before stage No.14 was reached. The Labour Court also noted that in the enquiry proceedings, the statements of the petitioner and the Travelling Ticket Inspector (T.T.I) was recorded in Exs.M.10 and M.11, that the T.T.I, in his cross-examination, stated that the passengers had created confusion and thereby there was difficulty in counting the passengers and that some of the passengers were in an intoxicated condition. Relying on Ex.M.2 statement i.e. the spot explanation, the Labour Court held that the subsequent explanations in Exs.M.6 and M.9 were an after thought, that Ex.M.2 statement of passengers bore the thumb impressions and the signatures of some of the passengers who were obviously not literate, and the contention that the passengers, who boarded the bus, were students and were raising slogans due to the political crisis had to be rejected. The Labour Court noted that, if the state of affairs were true, the petitioner would not have missed having stated the facts in his spot explanation and that the T.T.I, in cross-examination, had twisted the facts stating that there was confusion in counting the number of passengers. The Labour Court held that, if the circumstances were not favourable, Ex.M.2, statement of the passengers could not have been recorded at the place of check and it was borne out from the recorded evidence that at the time of

check there were 15 ticketless passengers, who were not issued tickets by the petitioner. The Labour Court held that failure on the part of the petitioner to issue tickets amounted to negligence and constituted misconduct and that the enquiry officer had rightly held that the charges were proved. The Labour Court was, however, of the view that since the misconduct attempted was to defraud the Corporation for a sum of Rs.10.50 ps. by way of ticket irregularities, in view of the mitigating circumstances that there was a load of 89 passengers in the bus, there was also the possibility of passengers avoiding purchasing tickets taking advantage of the heavy load in the bus, and as neither the disciplinary authority nor the appellate authority had given reasons for imposing the extreme punishment of removal from service, the punishment imposed was not justified and that the matter required sympathetic consideration. The Labour Court, while setting aside the impugned order of removal, directed the respondents to appoint the petitioner as a Conductor afresh and directed that his past service be counted only for the purpose of terminal benefits and that the question of awarding backwages and other benefits did not arise. Aggrieved thereby, the present writ petition.

The Corporation has chosen not to question the award and has complied with the directions of the Labour Court. It is the petitioner-workman who has invoked the jurisdiction of this Court under Article 226 of the Constitution of India, aggrieved both by the finding of guilt recorded and the punishment as substituted by the Labour Court.

Sri V.Narasimha Goud, learned counsel for the petitioner-workman, would make an elaborate analysis of the evidence on record to contend that the Labour Court had failed to take into consideration relevant material and that its conclusions were based on no evidence and were perverse. Learned counsel would submit that the award of the Labour Court was required to be

quashed and that this Court should mould the relief and direct reinstatement of the petitioner with full back wages and attendant benefits. Learned counsel would place reliance on the deposition of witnesses before the enquiry officer as also to the charge memo to contend that, even in his explanation to the charge memo, the petitioner had explained the circumstances which necessitated the bus being started without completion of issuing tickets. Learned counsel would submit that the enquiry officer had, in fact, agreed with the submission of the petitioner-workman in this regard and, while not faulting him for having started the bus without completing issuance of tickets, had merely observed that the bus should have been halted before stage No.14 and issuance of tickets could have been completed at that stage. Learned counsel would further submit that, while the bus was checked by two T.T.Is, the Corporation had chosen to examine only one of them i.e. Sri T.Subba Reddy and had not chosen to examine the other. Learned counsel would submit that

Sri T.Subba Reddy, in his cross-examination, had, in fact, stated the truth and the enquiry officer had also not disbelieved his version. Learned counsel would submit that, in case the evidence of Sri T.Subba Reddy was disbelieved, nothing prevented the Corporation from declaring him hostile and cross-examine him, or examine the other T.T.I. as a witness to disprove the admission made by Sri T.Subba Reddy during cross-examination. Learned counsel would contend that the admission of Sri T.Subba Reddy in cross-examination supported the petitioner's plea in his written statement filed in reply to the charge sheet and the evidence adduced by him in the departmental enquiry. Learned counsel would rely on **P.Maheshwar Rao v. Presiding Officer**[1] and **M.V.Bijlani v. Union of India**[2].

Sri K.Madhava Reddy, learned counsel for the Corporation, on the other hand, would contend that the disciplinary authority

had disbelieved the evidence of the T.T.I and had concurred with the conclusions of the enquiry officer that the charges were held established. Learned Standing Counsel would contend that the charge of '**issue and start**' had been proved and that the petitioner had himself admitted that the bus was started without completing issuance of tickets. Learned counsel would submit that, in certiorari proceedings under Article 226 of the Constitution of India, this Court would not sit in appeal over findings of fact recorded by Industrial Tribunals/Labour Courts nor would it re-appreciate the evidence to come to a conclusion different from that of the Labour Court. Learned counsel would submit that the Labour Court had, in fact, shown undue indulgence and sympathy in favour of the petitioner/workman and, for the charge held established of having failed to issue tickets worth Rs.10.50 ps., had substituted the punishment of removal with that of appointment as a Conductor afresh and, in addition, his past service was directed to be counted for the purpose of terminal benefits. Learned Standing Counsel would submit that the Corporation had chosen to abide by the award of the Labour Court and had not challenged it before this Court despite the fact that undue lenience and indulgence was shown by the Labour Court in this regard. Learned Standing Counsel would submit that the rule of '**issue and start**' has been upheld by this Court in **P.Maheshwar Rao**[1] to be mandatory and, since the petitioner had failed to complete issuance of tickets to all 89 passengers before starting the bus, the action of the respondents in holding him guilty of the charges did not necessitate interference.

In **Sri P.Maheswara Rao**[1], this Court while holding that the requirement of '**issue and start**' was mandatory, however, held there could be situations wherein it may be totally irrational for the Corporation to insist that the rule should be adhered to at all times

without any exception. This Court, in fact, gave an example of a situation where a group of gangsters, fully armed with weapons, board the bus at a stop and administer threat of violence and direct the crew of the bus to move the bus without purchasing tickets and, under such threat, if the Conductor allows the bus to be started, the Corporation would not be justified in punishing such conductor for violation of the rule. This Court held that in such a situation and the like, the concerned Conductor could always explain the situation and no reasonable disciplinary authority in the Corporation would entertain disciplinary proceedings against such a Conductor.

In **M.V.Bijlani**[2], the Supreme Court held that merely because the evidence of the witnesses examined in the enquiry was against the department it did not mean that they had deposed falsely and, in case the department was of the view that they had deposed falsely, they had to be cross-examined. The Supreme Court further held that the enquiry officer performs a quasi judicial function and, on analysing the documents, must arrive at a conclusion whether, on preponderance of probabilities, the charges were proved on the basis of the material on record, that in doing so he cannot take into consideration irrelevant facts, refuse to consider relevant facts, limit the burden of proof, reject relevant testimony solely only on the basis of surmises and conjectures and that he cannot enquire into allegations which the delinquent officer has not been charged with.

It is well settled by a catena of judgments of the Supreme Court that Industrial Tribunals/Labour Courts are final courts of fact and the High Court, in certiorari proceedings under Article 226 of the Constitution of India, would not sit in appeal over such findings nor would it re-appreciate the evidence on record to come to a conclusion different from that arrived at by the Labour Court/Industrial Tribunal. It is also well settled that this Court

would not substitute its conclusions for that of the Labour Court/Industrial Tribunal and that interference would only be justified where there is error of law apparent on the face of the record. Findings based on no evidence or perverse findings constitute error of law apparent on the face of the record. This Court would also be justified in exercising its certiorari jurisdiction where the Labour Court/Industrial Tribunal, in exercise of its jurisdiction under Section 11-A of the Industrial Disputes Act, fails to take into consideration relevant material or takes into consideration irrelevant material in coming to its conclusions. It is within these limited parameters would the facts of the case on hand be required to be examined.

The petitioner, in his spot explanation marked as Ex.M.2, merely stated that the bus was running late by 1½ hrs. and hence he was issuing tickets while the bus was running and by the time stage No.14 had reached, 11 passengers were alighting from the bus and when he asked them about their tickets, they said “back and front” and “front and back”, due to which there was some delay. In the very same spot examination recorded from 15 passengers, two passengers affixed their thumb impressions and three others had put their signatures in addition to one Smt Jaylaxmi who had signed on behalf of a batch of 9 passengers. These passengers stated that they were a party of 15 passengers who were proceeding to Mominpet and that while 11 members had alighted at stage No.14, four members were proceeding further to Sadasivpet. All the 15 passengers stated that neither had they paid the fare to the Conductor nor were they given tickets.

It is evident from the spot explanation that it is not a case where the Conductor had collected the fare and had failed to issue tickets and had, thereby, misappropriated the funds of the Corporation. His defence was that since the bus was overcrowded carrying a load far beyond its capacity, as it was

running late by 1½ hrs. and due to unseating of late Sri N.T.Rama Rao from power, there was agitation by the students, who were indulging in sloganeering, and there was a threat of stones being pelted, the bus had necessarily to be moved without completing issuance of tickets. It is not in dispute that the bus was carrying passengers far in excess of its capacity. It is also evident from the evidence on record that the petitioner had issued tickets to 65 passengers from stage No.13 before the check was exercised at stage No.14. The enquiry officer, in his report, does not find fault with the petitioner for having moved the bus from stage No.13 and had merely held that he ought to have stopped the bus before the Burugupally stage (stage No.14) and completed issuing tickets instead of allowing the bus to reach stage No.14 where the check was exercised when the passengers were alighting from the bus. The enquiry officer also accepted the petitioner's contention that the bus was started before completion of issuing tickets because of the agitating public, that he was issuing tickets even at the time of the check and that the bus was overloaded with passengers. The enquiry officer merely relied on the statement of passengers to hold that the charges were established. Even though the enquiry officer did not disbelieve the admission of Sri T.Subba Reddy, T.T.I, in his cross-examination, curiously the disciplinary authority holds that the clarification given by the T.T.I, Sri T.Subba Reddy, did not appear to be convincing, that there was no evidence on record that the agitation at Mominpet had started on the afternoon of 16-08-1984 and that it was not corroborated by the statement of the passengers and spot explanation of the Conductor. However, the disciplinary authority also agreed that the bus was overcrowded at the time of check and that the petitioner had issued tickets to 65 passengers at stage No.13 itself. The finding of the Labour Court that Sri T.Subba Reddy the T.T.I, had twisted facts to favour the petitioner and his deposition,

that there was confusion in counting the passengers, must be an exaggeration runs contrary both to the findings of the enquiry officer and the disciplinary authority. This finding that the T.T.I. had twisted facts only to favour the petitioner and that his evidence was an exaggeration is based on no evidence and is perverse. It is necessary to note that the only evidence before the Labour Court is the evidence adduced in the departmental enquiry and that no further evidence was adduced before the Labour Court. There is no evidence on record contrary to what was deposed to by Sri T.Subba Reddy the T.T.I, and as a result neither the enquiry officer nor the disciplinary authority disbelieved his evidence. As noted above, the statements of merely 15 of the 89 passengers in the bus were recorded. Their spot explanation is only on the question whether they had paid the fare and whether they had been issued tickets. Neither were they asked nor did they state the circumstances in which tickets were not issued to them. There is no evidence on record as to the composition of the other 74 passengers and whether they were students or not. Consequently the findings of the Labour Court that the passengers did not appear to be students is also based on no evidence and is perverse. The Labour Court failed to notice that neither was Sri T.Subba Reddy declared hostile nor was the other T.T.I examined by the Corporation to disprove the version put-forth by Sri T.Subba Reddy, the T.T.I. The petitioner's evidence coupled with the evidence of Sri T.Subba Reddy is in conformity with his explanation to the charge memo. The only basis for the Labour Court not accepting the aforesaid evidence, is the spot explanation in Ex.M-2 wherein none of these details are forthcoming. While the spot explanation would certainly be a relevant piece of evidence to be taken into consideration by the Labour Court, the other evidence on record, i.e. the explanation to the charge memo, the evidence of the petitioner and the evidence of the T.T.I, who

was the sole witness examined on behalf of the prosecution ought also to have been taken into consideration and a conclusion arrived at thereafter by the Labour Court. The power conferred on the Labour Court to reappreciate the evidence on record does not justify its resorting to a selective consideration of the material evidence. The Labour Court is duty bound, while exercising its jurisdiction under Section 11-A of the Industrial Disputes Act, to consider the entire evidence on record and, thereafter, arrive at a conclusion whether the evidence on record necessitates holding the delinquent employee guilty of the charge. Since the award suffers from a patent error apparent on the face of the record, it is liable to be quashed.

Now the question of the relief to be granted.

Sri V.Narasimha Goud, learned counsel for the petitioner, would vehemently urge this Court to mould the relief instead of remanding the matter to the Labour Court since the dispute is long drawn and is pending for the past two decades. Learned counsel would contend that, with a view to shorten the litigation and to give a quietus to the dispute, this Court should mould the relief. Learend counsel would submit that the jurisdiction of the High Court under Article 226 of the Constitution of India is akin to the jurisdiction exercised by the Supreme Court under Article 142 of the Constitution of India and that the High Court, in appropriate cases, would have the power to substitute the punishment with a view to draw the curtains on the long drawn controversy. Learned counsel would place reliance on a judgment of this Court (W.P.No.294 of 2004 dated 14-11-2006) to contend that with a view to give quietus to a long drawn dispute, this Court should mould the relief.

I must express my inability to agree. It must not be lost sight of that the Labour Court/Industrial Tribunal has been conferred jurisdiction under Section 11-A of the Industrial Disputes

Act both to re-appreciate the evidence on record and, in case it comes to the conclusion that the charges levelled against the delinquent workman are established, then determine the appropriate punishment to be imposed for such proved acts of misconduct. In this case the findings of the Labour Court that the T.T.I. had falsely deposed only with a view to help the petitioner is not based on evidence and is perverse. That does not mean that this Court would take upon itself the task of re-appreciating the evidence on record and in arriving at a conclusion different from that of the Labour Court. Re-appreciation of the evidence on record is the function of the Labour Court under Section 11-A of the Industrial Disputes Act. Failure of the Labour Court to exercise its powers in accordance with law would not justify this Court, while exercising jurisdiction under Article 226 of the Constitution, to don the robe of the Labour Court and take upon itself the task of re-appreciating the evidence on record. Since the findings of the Labour Court, while brushing aside the evidence of the T.T.I, has been held to be perverse, the matter must necessarily be remanded to the Labour Court to re-appreciate the evidence on record afresh, consider the evidence in its entirety and, thereafter, arrive at a finding whether or not the charges levelled against the petitioner are held established. It is only on completion of this exercise, and in case the charges levelled against the petitioner are held established, would the question of imposition of punishment arise and at that stage, the Labour Court would necessarily have to consider the nature and extent of punishment to be imposed for the proved acts of misconduct. Even in a few cases where the Supreme Court and this Court have interfered with the quantum of punishment on recording a finding that the punishment as imposed is disproportionate, it was only with a view to draw the curtains on a long drawn litigation. While interference in proceedings under Article 226 of the Constitution of India, even

with regards the quantum of punishment cannot be as of course and can only be in exceptional circumstances, this question does not arise for consideration in the case on hand.

In the present case, it has been contended by the petitioner that the bus was running late by 1½ hrs, that as part of their agitation against the removal of late Sri N.T.Rama Rao, the then Chief Minster, from office, students who had boarded the bus had indulged in sloganeering and that there was a genuine apprehension that they would indulge in pelting of stones. These and other contentions are all matters for the Labour Court to consider. The Labour Court has, firstly, to re-appreciate the evidence on record afresh and determine whether or not the charges levelled against the petitioner are established. I consider it appropriate, therefore, to remand the matter back to the Labour Court for exercise of its jurisdiction under Section 11-A of the Industrial Disputes Act both in re-appreciating the evidence on record and in examining the appropriate punishment to be imposed, if it comes to the conclusion that the charges levelled against the petitioner are held established. Since the petitioner has already been reinstated, ends of justice would be met if status-quo as on today is directed to be continued till a fresh award is passed by the Labour Court. It is made clear that both parties are entitled to raise all such pleas before the Labour Court as are available to them in law. Since the dispute is more than two decades old, it is necessary that the Labour Court disposes of the matter, as expeditiously as possible, in any event not later than four months from the date of receipt of a copy of this order.

The Writ Petition is allowed. However, in the circumstances, without costs.

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26.09.2007

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[1] 1997(1) ALD 758
[2] 2006(5) SCC 88