

(2002) 08 AP CK 0023

Andhra Pradesh High Court

Case No: Writ Appeal No. 1371 of 2000

The Andhra Pradesh State Road
Transport Corporation

APPELLANT

Vs

Mudidina Krishna Moorthy and
Another

RESPONDENT

Date of Decision: Aug. 29, 2002

Acts Referred:

- Constitution of India, 1950 - Article 226
- Industrial Disputes Act, 1947 - Section 11A

Citation: (2003) 1 ALD 143 : (2003) 2 ALT 624 : (2002) 3 APLJ 89 : (2003) 96 FLR 426 : (2003) 1 LLJ 614

Hon'ble Judges: S.R. Nayak, J; Dubagunta Subrahmanyam, J

Bench: Division Bench

Advocate: K. Harinath, for Nanda R. Rao, for the Appellant; P. Govinda Reddy, G.P. for Labour, for the Respondent

Final Decision: Allowed

Judgement

S.R. Nayak, J.

This appeal by the management of the A.P. State Road Transport Corporation is directed against the order of the learned single Judge dated 17.8.2000 in Writ Petition No. 21615 of 1996.

2. The above writ petition was filed by the first respondent-delinquent employee calling in question the award passed by the Industrial Tribunal-cum-Labour Court, Visakhapatnam dated 18.12.1995 in I.D. No. 148 of 1992.

3. The background facts leading to filing of the writ petition are briefly noted as under: While the petitioner was serving as Conductor in a casual leave vacancy at Palasa Depot of the Road Transport Corporation in Srikakulam District, a charge memo containing three charges was issued to him alleging misconduct under the

A.P. State Road Transport Corporation (Conduct) Regulations. The first charge being that he failed to observe the mandatory rule of "issue and start"; the second charge that he re-issued nine tickets of Re.1/- denomination to a batch of nine passengers and the third charge that he closed all denominations in SR, except Re.1/- denomination up to stage No. 5. The enquiry officer appointed by the disciplinary authority after conducting enquiry against the petitioner found all the charges proved by substantive evidence. The disciplinary authority on a consideration of the findings recorded by the enquiry officer and after due application of mind thought it appropriate to remove the petitioner-delinquent from service to enforce discipline in the work force. Accordingly, the petitioner was removed from service by the disciplinary authority. Being aggrieved by the said action of the disciplinary authority, the petitioner instituted I.D. No. 148 of 1992 in the Industrial Tribunal-cum-Labour Court, Visakhapatnam. The Labour Court on re-appraisal of the entire evidence on record sustained the findings recorded by the enquiry officer and accepted by the disciplinary authority. The Labour Court further exercising discretion u/s 11-A of the Industrial Disputes Act, 1947 (for short "the Act"), did not think it just and proper to interfere with the quantum of punishment imposed on the delinquent employee. The result was that the I.D. filed by the petitioner was dismissed. That led to the petitioner filing the above writ petition in this Court.

4. The learned single Judge has not recorded any finding which is at variance with the findings recorded by the enquiry officer or the Industrial Tribunal-cum-Labour Court. On the other hand, even the learned single Judge, as could be seen from the judgment, has recorded that the charges are proved. However, before the learned single Judge, it was contended on behalf of the delinquent-employee that the punishment of removal imposed on the petitioner is disproportionate to the gravity of the misconduct committed by the petitioner. The learned single Judge by the order under appeal disposed of the writ petition directing reinstatement of the petitioner into service without back wages and other attendant benefits. The management of the Road Transport Corporation being aggrieved by the order of the learned single Judge has come up by way of this writ appeal.

5. We have heard Sri K. Harinath, learned Standing Counsel for the Road Transport Corporation. The learned counsel contended that the charges levelled and proved against the petitioner are grave in nature touching the moral turpitude of the petitioner/delinquent and therefore the disciplinary authority was fully justified in imposing the penalty of removal on the delinquent and there was absolutely no justification for the learned single Judge to grant the relief of reinstatement to such an employee.

6. The law relating to the scope of judicial review of disciplinary action taken by a disciplinary authority is very much circumscribed and limited by a catena of decisions of the Apex Court and the High Court. Judicial review essentially deals with the manner in which the decision is made and not review of the decision on merit as

a Court of Appeal. In *H.B. Gandhi v. Gopinath*¹, the Supreme Court held that the judicial review is not against the decision as such, but against the decision-making process. The power of the High Court under Article 226 of the Constitution is supervisory and not appellate. The High Court can interfere with the findings of the Labour Court or Tribunal only if it finds the findings recorded by the Labour Court or Tribunal are perverse or based on surmises and conjectures and not otherwise. The High Court cannot go into the question of adequacy or sufficiency of evidence on the basis of which findings are recorded. It is equally well settled by a catena of decisions of the Supreme Court and this Court (See: *Municipal Committee v. Krishnan Behari*², *State of U.P., v. Nand Kishore Shukla*³, *Bonda Devesu v. State of A.P.*⁴, to cite a few) that in cases of corruption, misappropriation, pilferage of public funds, the minimum penalty is removal from service. It is quite often said and reiterated by this Court that every Conductor in the service of the Road Transport Corporation should be regarded as a trustee of the public fund and high standard of rectitude and integrity is expected of him and if such a conduct is not insisted, there is every possibility of pilferage or siphoning off valuable revenue of the public day-in and day-out. Be that as it may, it is equally well settled that the discretion exercised by the Judge of the Industrial Court should not lightly be interfered with by the High Court under Article 226 of the Constitution of India, unless the High Court finds that the exercise of discretionary power u/s 11-A of the Act is fanciful and totally arbitrary having regard to the facts and circumstances of the case. We find from the order under appeal that the learned single Judge has not stated any reason, which weighed with his lordship, to invoke the discretionary power vested in the Court u/s 11-A of the Act to grant relief to the petitioner except stating that he had taken into consideration the totality of the circumstances.

7. In the result, the writ appeal is allowed. The order of the learned single Judge is set aside and the writ petition is dismissed. No order as to costs.