

V. Ramana Vs. Apsrtc and Others

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Court : Andhra Pradesh

Decided On : Aug-14-2001

Reported in : 2001(5)ALD427; 2001(5)ALT180; [2002(92)FLR247];
(2001)IILLJ1708AP

Judge : Satya Brata Sinha, C.J., ;Goda Raghuram and ;V.V.S. Rao, JJ.

Acts : [Constitution of India](#) - Articles 14, 226 and 309; Industrial Dispute Act -
Sections 11-A

Appeal No. : WP No. 4968 of 2000

Appellant : V. Ramana

Respondent : Apsrtc and Others

Advocate for Def. : Mrs. Nanda R. Rao, ;SC for APSRTC

Advocate for Pet/Ap. : Mr. S.M. Subhan, Adv.

Disposition : Appeal allowed

Judgement :

ORDER

S.B. Sinha, C.J.

1. This matter has been listed before us on the reference made by a learned single Judge of this Court for resolving the following questions of law:

1. In case where there has been no criminal prosecution resulting in conviction whether the quantum of amount misappropriated or embezzled by a delinquent official can be taken into consideration in deciding the adequacy or otherwise of the punishment?

2. If the amount embezzled or misappropriated is too meager and the punishment given is removal from service, which is the ultimate punishment, can it be termed as shockingly disproportionate?

2. Before advertng to the aforesaid questions, the fact of the matter may be noticed.

3. The petitioner herein had been working as a Conductor in the organization of the respondents herein. Certain charges were framed against him, which are in the following terms:

Charge-I :--For having collected an amount of Rs.35/- instead of Rs.46/- from a batch of 23 passengers at the boarding point itself and failed to issue tickets who boarded the bus at Gangavaram and found alighting without tickets at Dibbalapalem (Ex.stages 2 to 1), while conducting the bus bearing No.AEZ 5847 on route No.65 on 10-1-1999, which constitutes misconduct on your part in terms of Reg 28(x) of APSRTC employees' (Conduct) Reg. 1963.

Charge-II:--For having failed to collect the fare and issue tickets to 5 individual passengers, who boarded the bus at Gangavaram and found alighting at Dibbalapalem (Ex.Stages 1 to 1), while conducting the bus bearing No.AEZ 5847 on route No.38 on 10-1-1999, which constitutes misconduct on your part in terms of Rg.28 (vi) (a) of APSRTC Employees' (Conduct) Reg. 1963.

Charge III:--For having closed the S.R. of all denominations except Rs. 2-00 at stage No.7 to 1, while conducting the Bus bearing No.AFZ 5847 on route No.65 on 10-1-1999 which constitute misconduct on your part in terms of Reg.28 (XXXII) of APSRTC Employees' (Conduct) Reg. 1963.

4. As the explanation of the petitioner to the said charges was not found satisfactory, a disciplinary proceeding was initiated against him and the enquiry officer found him guilty of the charges levelled against him. The petitioner, upon giving an opportunity of hearing as regards the quantum of punishment, was imposed with the punishment of removal from service. Questioning the said order, the present writ petition is filed.

5. The learned single Judge having regard to the decisions of this Court in *J. Venkatasubbaiah v. The Labour Court, Ananthapur*, 1991 (1) An.W.R 610, *G.V.M. Reddy v. APSRTC*, : (1993)ILLJ549AP , and in *Y.R. Shetti v. Depot Manager, APSRTC*, 1996 (1) ALD 516, (Division Bench) on one hand and the decision of a learned single Judge of this Court in *P. Maheswar Rao v. Presiding Officer*, 1997 (1) ALD 758, wherein the decisions of the Apex Court in *Municipal Committee Bahadurgarh v. Krishnan Behari*, : [1996]2SCR827 , and *State of Tamilnadu v. K. Guruswamy*, : (1996)7SCC114 , were relied upon, on the other hand, and recent decisions of the Apex Court in *U.P. State Road Transport Corporation v. Mahesh Kumar Mishra*, 2000 (2) Supreme 309, and *U.P. State Road Transport Corporation v. Subhash Chandra Sharma*, : (2000)ILLJ 1117 SC , opined that a larger Bench should consider the matter.

6. For the purpose of answering the questions referred to by the learned Judge, we are of the opinion that the matter has to be considered from the point of view that this Court in such matters has a limited role to play. In terms of Section 11-A of the Industrial Disputes Act, the Labour Court/ Industrial Tribunal has been conferred wide power to consider as to whether the punishment imposed upon a delinquent-workman is legal or justified or not but has also been conferred with power to award a lesser punishment in the event it is held that the punishment imposed is not proportionate to the gravity of misconduct charged against the delinquent-workman. However, the jurisdiction of the High Court to interfere with the quantum of punishment is limited. In *Tata Cellular v. Union of India*, JT 1994 (4) SC 52 = (1994) 6 SCC 651, relying upon the decision in *Council of Civil Service Unions v. Minister for Civil Service*, (1984) 3 All.ER 935, the Apex Court while holding that the Court can interfere only when there was illegality, irrationality or procedural impropriety on the part of the authorities in its decision making

process, however, had not expressed any opinion about the development of the law in the field of doctrine of proportionality. The said question came up for consideration before the Apex Court in *Union of India v. G. Ganayutham*, : (2000) ILLJ 648 SC . The Apex Court held that the doctrine of proportionality is at par with the doctrine of *Wednesbury's* unreasonableness and unless it is held that the punishment imposed upon the delinquent officer is so irrational as to shock one's conscience and that no reasonable man while reasonably exercising his power would impose the same, the High Court cannot interfere therewith. It was stated:

In such a situation, unless the Court/ Tribunal opines in its secondary role, that the administrator was, on the material before him, irrational according to *Wednesbury* or *CCSU* norms, the punishment cannot be quashed. Even then, the matter has to be remitted back to the appropriate authority for reconsideration. It is only in very rare cases as pointed out in *B.C. Chaturvedi* case that the Court might - to shorten litigation - think of substituting its own view as to the quantum of punishment in the place of the punishment awarded by the competent authority.

7. Yet again in *State of Karnataka v. H. Nagaraj*, : (1999) ILLJ 1124 SC , Apex Court observed:

We fail to see how the Tribunal, when it upheld the enquiry could have interfered with the quantum of punishment in this fashion. As far back as in 1989, this Court in the case of *Union of India v. Parmanand Nanda*, (1989) SCC (L&S;) 303, held that the jurisdiction of the Tribunal to interfere with disciplinary matters and punishment cannot be equated with appellate jurisdiction. The Tribunal cannot interfere with the findings of the Enquiry Officer or the Competent Authority where they are not arbitrary or utterly perverse. The Court said:

It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of Legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority.

The same view has been reiterated in a more recent decision of the Court in *Union of India v. G. Ganayutham*. This Court has held that the principle of proportionality can be invoked regarding punishment only in a case where the punishment was totally irrational in the sense that it was in outrageous defiance of logic or moral standards.

8. The matter also came up for consideration before this Court in *V. Srinivas v. Superintendent of Police, Medak District*, : 2001(2)ALD44 , and in *G.M. Ordinance Factory v. Central Administrative Tribunal*, : 2001(3)ALD94 . The Apex Court in *Om Kumar and others v. Union of India*, JT 2000 (Supp) 3 SC 92, wherein upon taking into consideration the decision in *Union of India v. Ganayutham* evolved the doctrine of primary review and secondary review. It was held that when an action taken by the State is under challenge; the same can be interfered with only if it is found to be arbitrary so as to attract the wrath of Article 14 of the [Constitution of India](#). It was observed having regard to the decision of the Apex Court in *E.P. Royappa v. State of Tamil Nadu*, : (1974)ILLJ172SC , that arbitrariness strikes at the equality doctrine adumbrated in Article 14 of the [Constitution of India](#), the same principles will have to be applied while applying the doctrine of proportionality. The State action, therefore, was held to be amenable to the writ jurisdiction. It was further observed that although such power could be exercised on the touchstone of doctrine of proportionality, but the Court can interfere only in the event if it is held to be so irrational or unreasonable so as to attract the principle of *Wednesbury's Unreasonableness*.

9. A conductor holds a position of trust. A person guilty of breach of trust should normally be imposed with the punishment of removal from service. The question came up for consideration before the Apex Court again in *KSRTC v. B.S. Hullikatti*, : [2001]1SCR1068 , wherein for commission of misconduct as regards less value of ticket given, the punishment of removal was upheld. The Apex Court observed:

On the facts as found by the Labour Court and the High Court, it is evident that there was a short-charging of the fare by the respondent from as many as 35 passengers. We are informed that the respondent has been in service as a Conductor for nearly 22 years. It is difficult to believe that he did not know what

was the correct fare which was to be charged. Furthermore, the appellant had during the disciplinary proceedings taken into account the fact that the respondent had been found guilty for as many as 36 times on different dates. Be that as it may, the principle of *res ipsa loquitur*, namely, the facts speak for themselves, is clearly applicable in the instant case. Charging 50 paise per ticket less from as many as 35 passengers could only be to get financial benefit by the Conductor. This act was either dishonest or was so grossly negligent that the respondent was not fit to be retained as a Conductor because such action or inaction of his is bound to result in financial loss to the appellant-Corporation.

It is misplaced sympathy by the Labour Courts in such cases when on checking it is found that the Bus Conductors have either not issued tickets to a large number of passengers, though they should have, or have issued tickets of a lower denomination knowing fully well the correct fare to be charged. It is the responsibility of the Bus Conductors to collect the correct fare from the passengers and deposit the same with the Company. 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.'

10. In *Janatha Bazaar v. Secretary, Sahakari Noukarara Sangh*, : (2000)IILLJ 1395 SC , the Apex Court while dealing with a case of misappropriation held:

As stated above, the learned single Judge and the Division Bench in writ appeals confirmed the findings given by the labour Court that charges against the workmen for breach of trust and misappropriation of funds entrusted to them for the value mentioned in the charge-sheet had been established. After giving the said findings, in our view, the Labour Court materially erred in setting aside the order passed by the Management removing the workmen from the service and reinstating them with 25% back wages. Once act of misappropriation is proved, may be for a small or large amount, there is no question of showing uncalled for sympathy and reinstating the employees in service. Law on this point is well settled. (*Re: Municipal Committee, Bhadurgarh v. Krishnan Behari*, : [1996]2SCR827). In *UP State Road Transport Corporation v. Basudeo Chaudhary*, : (1997)11SCC370 , this Court set aside the judgment passed by the High Court in a case where a

Conductor serving with the U.P State Road Transport Corporation was removed from service on the ground that alleged misconduct of the Conductor was attempt to cause loss of Rs.65/- to the Corporation by issuing tickets to 23 passengers for a sum of Rs.2.35 but recovering @ Rs.5.35 per head and also by making entry in the way bill as having received the amount of Rs.2.35, which figure was subsequently altered to Rs.2.85. The Court held that it was not possible to say that Corporation removing the conductor from service has imposed a punishment which is disproportionate to his misconduct. Similarly in Punjab Dairy Development Corporation Limited v. Kala Singh : (1997)IILLJ 1041 SC , this Court considered the case of a workman who was working as a Dairy Helper-cum-Cleaner for collecting the milk from various centers and was charged for the misconduct that he inflated the quantum of milk supplies in milk centers and also inflated the quality of fat contents where there were less fat contents. The Court held that 'inview of proof of misconduct a necessary consequence will be that Management has lost confidence that the workman would truthfully and faithfully carry on his duties and consequently the Labour Court rightly declined to exercise the power under Section 11-A of the ID Act to grant relief with minor penalty.'

11. Yet again in U.P. State Road Transport Corporation v. A.K. Parul, : AIR 1999 SC1552 , in a case where the passengers were found without tickets, the Apex Court refused to interfere with the punishment imposed on the ground that the same was commensurate with the gravity of the charge.

12. Recently in G.M. Ordinance Factory v. Central Administrative Tribunal, Hyderabad (supra) a Division Bench of this Court, upon taking into consideration the decision of the Apex Court in B.C. Chaturvedi v. Union of India, : (1996)ILLJ 1231 SC , Municipal Committee, Bahadurgarh v. Krishnan Behari and the decision in Ganayutham, observed:

Theft or misappropriation even of a small amount may have to be viewed seriously. Nay, in a case of this nature if the employer takes a strict view, the same cannot be termed to be so irrational so as to attract the principles of Wednesbury Unreasonableness. In Om Kumar and others v. Union of India the Apex Court upon taking into consideration its earlier decision in Union of India v. Ganayutham

held that the action on the part of the State authority can be tested on the touchstone of doctrine of proportionality, but the Court will interfere therewith only in the event it is held to be so irrational or unreasonable so as to attract the principles of Wednesbury unreasonableness or Article 14 of the [Constitution of India](#).

13. Referring to the decisions of the Apex Court in State of Tamil Nadu v.K. Guruswamy (supra) and B.C. Chaturvedi v. Union of India, (supra), this Court observed:

It is, therefore, evident from the aforementioned decision that only in exceptional and rare cases the Court or the Tribunal would interfere with the punishment imposed by the employer and impose appropriate punishment with cogent reasons in support thereof. The learned Tribunal, therefore, was not correct in coming to the conclusion that a compassionate approach can be taken in the matter of quantum of punishment placing reliance on the B.C. Chaturvedi. The learned Tribunal merely held:

In the case before us, the value of the article which was the subject-matter of the inquiry may be quite insignificant but the factor which heavily weigh against the applicant is the theft of Government property which cannot be viewed leniently. It is the bent of mind of the delinquent which prevails over the value of the stolen article.'

The approach of the learned Tribunal was to show sympathy and compunction which cannot be said to be synonymous with irrationality. For the purpose of considering the quantum of punishment what may be material is the nature of misconduct and not the amount involved therein.

14. In Sanchalakshri v. Vijaya Kumar Raghvirprasad Mehta, : (1999)ILLJ343SC , a three Judge Bench of the Apex Court held that punishment of removal of a teacher for forging the signatures of the authorities in his Service Register to get his revised scales of pay is a serious misconduct and despite the fact that the petitioner therein did not enjoy the benefit thereof, the order of removal was not held to be shockingly disproportionate. In Municipal Committee Bahadurgarh's

case it was clearly held that in a case of corruption or misappropriation, the quantum of amount is not relevant.

15. In *Union of India v. A. Nagamalleswar Rao*, : AIR 1997 SC4065 , removal of a telephone operator on the ground of wrong declaration of SSC marks memo was held to be justified by the Apex Court.

16. It is not a well settled principle of law that the High Court while exercising its jurisdiction under Article 226 of the [Constitution of India](#) cannot sit in appeal over an order of the disciplinary authority. -The High Court is not concerned with the adequacy or reliability of the evidence. In *High Court of Judicature v. Shashikant S. Patil*, : 2000(67)ECC16 , the Supreme Court held that if there is some legal evidence on which findings can be based, then adequacy or even reliability of that evidence is not a matter to be canvassed before the High Court under Article 226 of the [Constitution of India](#).

17. In *R.S. Saini v. State of Punjab*, : (1999)11LLJ 1415 SC , the Apex Court clearly held that sufficiency of evidence cannot be looked into by the High Court while exercising its jurisdiction under Article 226 of the [Constitution of India](#) nor can it review the same. Furthermore, an order of acquittal passed by a Criminal Court alone would not be conclusive in the departmental proceedings and the same would not be a bar to the disciplinary action. It is further trite that the nature of proof in a criminal case is different from that of a departmental enquiry; while in the former, proof beyond any reasonable doubt is necessary, in the latter the doctrine of preponderance of evidence is only required to be the standard of proof.

18. In *V. Srinivas v. Superintendent of Police, Medak District (supra)* a Division Bench of this Court upon referring to the decisions of the Apex Court in *M. PaulAnthony v. Bharat Gold Mines Limited*, 1999(3) SCW 4361, and the decision of this Court in *K. Raghurambabu v. RPF*, SCR, 2000 (1) ALT 131, observed:

It is further well settled that even in a case where the criminal trial ends in acquittal in favour of the delinquent employee, there does not exist any embargo on the part of the disciplinary authority in initiating disciplinary proceedings on the selfsame charges. As noticed hereinbefore, in Paul Anthony's case the Supreme Court itself

has categorically held that it is possible that a person can be found guilty of commission of misconduct despite his acquittal in the criminal trial. The learned Counsel for the petitioner, however, would urge that as in the instant case the criminal trial and the department proceedings are based on the same set of facts and the evidence adduced before the criminal Court and the disciplinary authorities being the same without any variance, exception to the aforementioned rule; would be attracted.

19. For the reasons aforementioned, we are of the opinion that the quantum of amount misappropriated or embezzled by a delinquent official may not be taken into consideration in deciding the adequacy or otherwise of the punishment and the punishment of removal from service for such embezzlement or misappropriation cannot be termed as shockingly disproportionate.

20. The questions are answered accordingly.

21. Consequently, the writ petition is also dismissed.