

***HIGH COURT OF ANDHRA PRADESH :: AMARAVATI**

+WRIT PETITION No.12443 of 2020

Between:

#Gunji Dhanamma,

...PETITIONER

AND

\$Andhra Pradesh State Road Transport Corporation
APSRTC and Others

...RESPONDENT(S)

JUDGMENT PRONOUNCED ON **07.03.2025**

THE HON'BLE DR.JUSTICE K. MANMADHA RAO

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? - Yes -
2. Whether the copies of judgment may be marked to Law
Reporters/Journals - Yes -
3. Whether Their Ladyship/Lordship wish to see the fair
copy of the Judgment? - Yes -

DR.JUSTICE K. MANMADHA RAO

* THE HON'BLE DR.JUSTICE K. MANMADHA RAO

+WRIT PETITION No.12443 of 2020

% 07.03.2025

Between:

#Gunji Dhanamma

...PETITIONER

AND

\$ Andhra Pradesh State Road Transport Corporation
APSRTC and Others

...RESPONDENT(S)

! **Counsel for the Petitioner :** Sri M.Pitchaiah

! Counsel for Respondents: Sri Sanisetty Venkateswarlu

<Gist :

>Head Note:

- ? Cases referred: 1. 1985 LAB I.C. 729
2. 1983 LAB I.C. 1909
3. AIR 1963 SC 1723
4. (2015) 2 SCC 610

APHC010192792020



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

[3310]

FRIDAY ,THE SEVENTH DAY OF MARCH
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE DR JUSTICE K MANMADHA RAO

WRIT PETITION NO: 12443/2020

Between:

Gunji Dhanamma

...PETITIONER

AND

Andhra Pradesh State Road Transport Corporation
Apsrtc and Others

...RESPONDENT(S)

Counsel for the Petitioner:

1.M PITCHAIAH

Counsel for the Respondent(S):

1.SOLOMON RAJU MANCHALAFOR (APSRTC)

The Court made the following Order:

The Writ Petition is filed under Article 226 of the Constitution of India,
seeking the following relief:

“..... to issue a writ order or direction more particularly one in the nature of Writ of Mandamus declaring the Order, dt.26.04.2012 of the 3rd respondent as confirmed in 2nd respondent order, dt.15.07.2012 imposing the punishment of postponement of 2 Annual Grade Increments with cumulative effect besides treating the period from the date of removal till the date of reinstatement as Not on Duty, as arbitrary, violative of

Articles 14, 16 and 21 of the Constitution of India and APSRTC Employees CCA Regulations, 1967 to the extent the impugned order is against me by modifying the same and consequently direct the respondents to pay back salary, incremental arrears with interest @ 12% p.a. and grant costs of the proceedings....”

2. Brief facts of the case are that the petitioner was appointed as Conductor in APSRTC on 01.01.2010 and worked at the Addanki Depot for some time. Thereafter, the petitioner was transferred to Chirala Depot, where she worked up to 20.10.2010, on which date she was placed under suspension. The 4th respondent issued a charge sheet, dated 20.10.2010 alleging that the petitioner failed to observe the rule issue correct tickets to the passengers and close the S.R. with correct denomination tickets and having collected an amount of Rs.70/- from two passengers, who boarded the bus at Narsaraopet and bound for Chirala and issued less tickets worth of Rs.62/- instead of Rs.70/- and closed all denomination tickets, which in the opinion of the 4th respondent, constituted misconduct under Regulation-28, Clauses (xxxi) and (xxv) of APSRTC Employees (Conduct) Regulations, 1963. The petitioner has submitted his explanation denying the charged levelled against her. Without considering the same, a domestic enquiry was conducted and the enquiry officer gave his findings. Based on the findings, the 4th respondent issued a Show-Cause Notice dated 03.11.2011, asking the petitioner to show cause as to why she should not be removed from service as the charges levelled against her are proved. The petitioner submitted his explanation

denying the charges levelled against him. Without considering the same, the 4th respondent issued proceedings vide proceedings No.O2/95(53)/2010, dated 14.11.2011, removing the petitioner from service. Aggrieved by the same, the petitioner preferred appeal to the 3rd respondent on 21.12.2011. The 3rd respondent issued proceedings vide No.St.19(92)/2012-Dy.CTM, dated 26.04.2012 setting aside the order of removal and reinstating the petitioner into service, but, however, postponed two increments on permanent basis and treating the interregnum period as 'Not on Duty'. Aggrieved by the same, the petitioner filed Review Petition before the 2nd respondent on 28.11.2016 and the same was rejected mechanically vide proceedings No.PA/675(99)/2016, dated 15.07.2017. Thereafter, the petitioner moved an application before the Conciliation Officer-cum-Assistant Commissioner of Labour, Ongole through APSRTC Employees Union and the same was returned by the said authority on 13.02.2020, stating that the petitioner's application filed is not covered under the provisions of I.D.Act, 1947. Aggrieved by the order of the 3rd respondent dated 26.04.2012, the present writ petition has been filed.

3. The respondents filed counter affidavit denying the allegations made in the writ petition and stated that, on 08.10.2010, the checking officials of Regional Enforcement Squad, APSRTC, Guntur have exercised a check on Bus No.AP27X7049 of Chirala Depot at Parchur, it was detected that the

petitioner had collected an amount of Rs.70/- from a batch of two passengers who boarded at Narasaraopet and bound for Chirala and issued tickets worth Rs.62/- only @ Rs.31/- each. The petitioner has closed the SR of all denominations without issuing correct denomination of tickets to the above said passengers even after collecting the requisite fare and hence the checking officials made the petitioner to issue tickets worth Rs.8/- each worth Rs.4/- denomination from the hand tray of the petitioner. It is further stated that the checking officials have collected spot explanation of the petitioner and spot statement of the concerned passengers. The petitioner in her spot explanation accepted as having collected the requisite fare of Rs.70/- @ Rs.35/- each from a batch of two passengers for their journey from Narasaraopeta to Chirala and issued tickets worth of Rs.62/- @ Rs.31/- each. The concerned passengers have given their spot statement that they gave Rs.70/- to the petitioner towards their ticket fare and the TTIs detected at the time of check only tickets worth Rs.62/- were issued by the Conductor. Hence, a charge Memo dated 08.10.2010 was issued to the petitioner. Based on the charge sheet, as the irregularities committed by the petitioner is serious in nature, the petitioner was placed under suspension with effect from 20.10.2010 vide order No.O2/95(33)/2010-CRL, dated 20.10.2020 since prima facie is established. After a decade, the petitioner has filed this writ petition, which is liable to be dismissed. Therefore, prays to dismiss the writ petition.

4. Heard Mr.M.Pitchaiah, learned counsel for the petitioner and Mr.Sanisetty Venkateswarlu, learned Standing Counsel for the respondents.

5. On hearing, learned counsel for the petitioner while reiterating the contents urged in the writ petition, submits that, the alleged misconduct attributed against the petitioner is not a codified misconduct under any of the Regulations of APSRTC Employees (Conduct) Rules, 1963. He further submits that once it is shown that it is not an enumerated misconduct, it is well settled law that the employer has no power to initiate disciplinary action against an employer for an un-enumerated misconduct in his Service Rules or Regulations or Standing orders or Bye-Laws, as the case may be of the employer. As such, the whole disciplinary action taken by the respondents against the petitioner is without any authority of law. He further submits that the 3rd respondent did not supply the copies of petitioner's spot explanation, spot statements of passengers, copy of S.R. and 43R, TTI Special Reports and other material documents which formed the basis for initiating disciplinary action against the petitioner. The Enquiry Officer did not give any reason as to why he agreed with the version of Checking Official and did not agree with the petitioner. He further submits that the respondents 2 and 3 ought to have seen that when the petitioner was issuing tickets on 08.10.2010, a woman CAT Card holder picked-up an argument with the petitioner and when this was going on, the passengers in question intervened and asked the petitioner to

give those two tickets and the petitioner while thinking that they were also CAT Card holders, issued ticket worth of Rs.31/- each and remaining change was to be given to them at the time of alighting and as such, there was no misconduct in the whole transaction. He further submits that the punishment is shockingly disproportionate the charges levelled against the petitioner having regard to the fact that the petitioner having 25 years of remaining service and loss of two increments would mean thousands of rupees will be lost in remaining years of service. He further submits that the respondents 2 and 3 have no power to impose punishment for a single set of charge.

6. To support his contention, learned counsel for the petitioner has placed reliance upon the decision of the Hon'ble Supreme Court reported in ***Rasiklal Vaghajibhai Patel vs. Ahmedabad Municipal Corporation and another***¹, wherein the Hon'ble Apex Court held as follows:

“4. The High Court while dismissing the petition held that even if A the allegation of misconduct does not constitute misconduct amongst those enumerated in the relevant service regulations yet the employer can attribute what would otherwise per se be a misconduct though not enumerated and punish him for the same. This proposition appears to us to be startling because even though either under the Certified Standing Orders or service regulations, it is necessary for the employer to prescribe what would be the misconduct so that the workman/employee knows the pitfall he should guard against. If after undergoing the elaborate exercise of enumerating misconduct, it is left to the unbridled discretion of the employer to dub any conduct as misconduct, the workman will be on tenterhooks and he will be punished by ex post facto determination by the employer. It is a well- settled canon of penal jurisprudence-removal or dismissal from service on account of the misconduct constitutes penalty in law-that the workmen sought to be charged for misconduct must have adequate advance notice of what section or what conduct would constitute misconduct. The legal proposition as stated by the High Court would have necessitated in depth examination, but for a

¹ 1985 LAB I.C. 729

recent decision of this Court in *Glaxo Laboratories vs. The Presiding Officer, Labour Court Meerut & Ors.*(1) in which this Court specifically repelled an identical contention advanced by Mr. Shanti Bhushan, learned counsel who appeared for the employer in that case observing as under:

"Relying on these observations, Mr. Shanti Bhushan urged that this Court has in terms held that there can be some other misconduct not enumerated in the standing order and for which the employer may take appropriate action. This observation cannot be viewed divorced from the facts of the case. What started in the face of the court in that case was that the employer had raised a technical objection ignoring the past history of litigation between the parties that application under Sec. 33A was not maintain able. It is in this context that this Court observed that the previous action might have been the outcome of some misconduct not enumerated in the standing order. But the extracted observation cannot be elevated to a proposition of law that some misconduct neither defined nor enumerated and which may be believed by the employer to be misconduct ex post facto would expose the workman to a penalty. The law will have to move two centuries back ward to accept such a construction. But it is not necessary to go so far because in Salem Erode Electricity Distribution Co. Ltd. v. Salem Erode Electricity Distribution Co. Ltd. Employees Union, this Court in terms held that the object underlying the Act was to introduce uniformity of terms and conditions of employment in respect of workmen belonging to the same category and discharging the same or similar work under an industrial establishment, and that these terms and conditions of industrial employment should be well-established and should be known to employees before they accept the employment. If such is the object, no vague undefined notion about any act, may be innocuous, which from the employer's point of view may be misconduct but not provided for in the standing order for which a penalty can be imposed, cannot be incorporated in the standing orders. From certainty of conditions of employment, we would have to return to the days of hire and fire which reverse movement is hardly justified. In this connection. we may also refer to Western India Match Company Ltd v. Workmen in which this Court held that any condition of service if inconsistent with certified standing orders, the same could not prevail and the certified standing orders would have precedence over all such agreements. There is really one interesting observation in this which deserves noticing Says the Court:

"In the sunny days of the market economy theory people sincerely believed that the economy law of demand and supply in the labour market would settle a mutually beneficial bargain between the employer and the workman Such a bargain, they took it for granted, would secure fair terms and conditions of employment to the workman. This law they venerated as natural law. They had an abiding faith in the verity of this law. But the experience of the working of this law over a long period has belief their faith."

Lastly we may refer to Workmen of Lakheri Cement Works Ltd. Associated Cement Companies Ltd. This Court repelled the contention that the Act must prescribe the minimum which has to be prescribed in an industrial establishment, but it does not exclude the extension otherwise. Relying upon the earlier decision of this Court in Rohak Hissar District Electricity Supply Co. Ltd. v. State of Uttar Pradesh & Ors, the Court held that everything which is required to be prescribed with precision and no argument can be entertained that something not prescribed can yet be taken into account as varying what is prescribed. In short it cannot be left to the vagaries of management to say ex post facto that some acts of omission or commission nowhere found to be enumerated in the relevant standing order is none-the-less a misconduct not strictly falling within the enumerated misconduct in the relevant standing order but yet a misconduct for the purpose of imposing a penalty. Accordingly, the contention of Mr. Shanti Bhusan that some other act of misconduct which would per se be an act of misconduct though not enumerated in S.O. 22 can be punished under S.O. 23 must be rejected. It is thus well-settled that unless either in the Certified Standing Order or in the service regulations an act or omission is prescribed as misconduct, it is not open to the employer to fish out some conduct as misconduct and punish the workman even though the alleged misconduct would not be comprehended in any of the enumerated misconduct.”

7. Learned counsel for the petitioner has further placed reliance upon the decision of the Hon'ble Supreme Court reported in ***M/s. Glaxo Laboratories Limited vs. Presiding Officer, Labour Court, Meerut and others***², wherein the Hon'ble Apex Court held as follows:

“23(a)..... The statutory obligation is to prescribe with precision in the standing order all those acts of omission or commission which would constitute misconduct. In the fact of the statutory provision it would be difficult to entertain the submission that some other act or omission which may be misconduct though not provided for in the standing order would be punishable under standing order.

.....In short it cannot be left to the vagaries of management to say ex post facto that some acts of omission or commission nowhere found to be enumerated in the relevant standing order is nonetheless a misconduct not strictly falling within the enumerated misconduct in the relevant standing order but yet a misconduct for the purpose of imposing a penalty. Accordingly, the contention of Mr. Shanti Bhusan that some other act of misconduct which would per se be an act of misconduct though not enumerated in S.O. 22 can be punished under S.O. 23 must be rejected.”

Therefore, learned counsel for the petitioner while relying upon the above judgments, prays to pass appropriate orders.

² 1983 LAB I.C. 1909

8. Per Contra, learned Standing Counsel while reiterating the contents made in the counter affidavit, submits that, it is the bounden responsibility of the petitioner being the service conductor to issue appropriate tickets to the passenger duly collecting the requisite fare and tallying the ticket issues with the SR of service. The petitioner did not produced any valid record or evidence to substantiate to the petitioner's version as stated in the enquiry and it is nothing but an afterthought to cover the petitioner's lapse by taking shelter on a false plea by fabricating concoct able stories. The petitioner had failed to endorse on tickets the change due of Rs.8/- to the two passengers which shows that the petitioner had no intention to give the change due. Thus, the charges levelled against the petitioner were held proved. In the enquiry, the petitioner was provided with all opportunities but the petitioner failed to put forth any valid reasons in support of petitioner's statement. He further submits that there are no justifiable grounds in the writ petition and prays to dismiss the writ petition.

9. Learned Standing Counsel has placed reliance upon the decision of the Hon'ble Supreme Court reported in ***State of A.P. vs. S.Sree Rama Rao***³, wherein the Hon'ble Apex Court dealt with powers of the High Court under Article 226 of the Constitution of India in respect of departmental enquiries and held as follows:

³ AIR 1963 SC 1723

“21. The High Court is not constituted in a proceeding under Art.226 of the Constitution a Court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: iris 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 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 Art.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 Art.226 of the Constitution.”

10. Learned Standing Counsel has further placed reliance upon the decision of the Hon’ble Supreme Court reported in ***Union of India vs. P.Gunasekaran***⁴, wherein the Hon’ble Apex after enunciating the relevant legal position, codified the powers of 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. reappreciate 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.

⁴ (2015) 2 SCC 610

- 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."*

Therefore, learned Standing Counsel while relying upon the above judgments, prays to dismiss the writ petition.

11. Perused the record.

12. On a perusal of the material on record, this Court observed that, the 3rd respondent has passed the impugned order dated 26.04.2012 after following the due procedure in accordance with law and that there has been no violation of principles of natural justice or any other statutory provision in vogue. In fact, the petitioner was given full opportunity to defend herself. It is the responsibility of the petitioner to collect the correct fare from the passengers, issue the ticket and remit the same to the respondent corporation credit. But in the present case, the petitioner failed in discharging her duties. Not issuing correct fare of ticket, after collecting the amount from the petitioner constitutes serious misconduct and the petitioner was found guilty of breaching the trust of the respondent corporation.

13. It is relevant to mention that, 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 has closed the S.R. of all denominations without issuing correct denomination of tickets to the

passengers even after collecting the requisite fee. Thus, the petitioner has violated the rules of the respondent corporation.

14. Having regard to the facts and circumstances of the case and on considering the submissions of both the learned counsels and upon perusing the entire material on record, this Court is of the opinion that, the action of the petitioner in not issuing correct denomination of tickets even after collecting the requisite fare is not proper on the part of the petitioner. Further, the Hon'ble 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 corruption/misappropriation is uncalled and opposed to public interest, regardless of the amount of money involved.

15. In view of the foregoing discussion, this Court found no merit in the instant writ petition and devoid of merit and the same is liable to be dismissed.

16. Accordingly, the Writ Petition is dismissed. There shall be no order as to costs.

17. As a sequel, miscellaneous applications pending, if any, shall stand closed.

Dr. K. MANMADHA RAO, J

Date : 07-03-2025
BMS