

IN THE HIGH COURT OF TELANGANA AT HYDERABAD**W.P. No. 29921 of 2017****Between:**

K.Manyam Konda

... Petitioner

And

TSRTC and others

... Respondents

JUDGMENT PRONOUNCED ON: 29.01.2024**THE HON'BLE MRS JUSTICE SUREPALLI NANDA**

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

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No. 29921 of 2017****% 29.01.2024****Between:**

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< Gist:

> Head Note:

!Counsel for the Petitioner: Mr V.Narsimha Goud

^ Standing Counsel for Respondents 1 to 3 :

Mr B.Mayur Reddy,

? Cases Referred:

1. (2010) 2 SCC 772
2. (2007) 10 SCC 385

HON'BLE MRS JUSTICE SUREPALLI NANDA

W.P. No. 29921 of 2017

ORDER:

Heard Mr V.Narsimha Goud, learned counsel appearing on behalf of the petitioner and heard the learned standing counsel Mr B.Mayur Reddy, appearing on behalf of respondents 1 to 3.

2. **The petitioner approached the Court seeking prayer as under:**

"to issue an appropriate writ or direction, particularly one in the nature of Writ of Certiorari quash the impugned award dated 15.09.2016 passed in I.D.No.43 of 2013, published on 10.05.2017 for not granting any relief as well as the order passed on 08.02.2016 holding the domestic enquiry conducted as valid on the file of the Labour Court-III, Hyderabad as arbitrary, unjust and in violation of Articles 14, 16, and 21 of the Constitution of India."

PERUSED THE RECORD.

3. **The relevant portion of the impugned award dated 15th September, 2016 passed in I.D.No.43 of 2013 on**

the file of Labour Court-III, A.P., Hyderabad (last three paras of the said Award), read as under:

“In the domestic enquiry the petitioner has not submitted any document in support of his claim. As the initial burden on the respondents to prove the case in the domestic enquiry was successfully discharged, hence the burden is on the petitioner to prove that the certificate produced by him is a genuine one. It is to be noted that the petitioner neither produced Transfer Certificate from his High School nor produced any date of birth certificate and SSC Memo in support of his contention. The case on hand, the petitioner has not filed any document. To rebut the evidence of the respondents, respondents filed the proceedings issued by the Addl. Joint Secretary to the Director of Government Exams, A.P, Hyderabad, which was marked by consent of both the parties. Therefore the burden is on the petitioner to show that verification particulars issued by the Addl. Joint Secretary to the Director of Government Exams, A.P, Hyderabad is not correct. But the petitioner has not filed any document in support of his contentions and he admitted about malpractice and this Court held the domestic enquiry is valid.

In view of the above discussions, the petitioner has miserably failed to prove that the verification of his SSC Marks certificate is not properly done and it is not correct. On the other hand, respondents proved that on

verification of the SSC Marks Certificate by the Addl. Joint Secretary to the Director of Government Exams, A.P, Hyderabad, categorically held that the Xerox copy of the memorandum of marks certificate submitted by the petitioner is not tallying with the particulars mentioned in the office record. The enquiry officer relied on the verification certificate issued by Addl. Joint Secretary to the Director of Government Exams, A.P., Hyderabad and admission of petitioner before the enquiry officer that Ex.M6 is not genuine, held that the charge against the petitioner is proved. Petitioner has not filed any rebuttal evidence to disprove the document. Hence there is no need to interfere with the findings of the enquiry officer.

Whether the punishment imposed by the respondents is proportionate one or not? It is to be noted that as per the case of the respondents the petitioner cheated the APSRTC by producing fake SSC Marks certificate. Petitioner not only cheated the APSRTC, he has also grabbed the opportunity of the genuine competitor who seeks employment. Hence the punishment imposed by the respondent against the petitioner is proportionate one."

4. The counter affidavit filed by the respondents, in particular, paras 3 to 7 read as under:

"3. It is respectfully submitted that the petitioner was appointed in the post of Conductor on contract basis and subsequently the services of the petitioner were

regularized w.e.f. 01.12.2011 at Gadwal Depot. Subsequently, the petitioner was removed from service vide proceedings No.P.2/101(3)/2013-GDL, dated 19.10.2013 following due process on the charge that he has produced fake SSC marks Certificate.

4. I respectfully submit that the petitioner has been served with a Charge Sheet Dt: 26-06-2013 for having produced fake SSC marks certificate in the name of Sri. K. Manyamkonda konda 8/ K Alsfullah bearing No.PC/25/03522110/9 with Roll No 1083056 to a total of marks 423 excluding Hindi second language and for having secured conductor job in APSRTC duly cheating the officials

5. I respectfully submit that the Addl. Joint Secretary to the Director of Govt. Exams of A.P. Hyderabad vide his Lr. No. RC. No.96/D40-5/2012, De 18-07-2012 has informed that the SSC marks certificate with roll no.1083056/March-1996 is not tallied with their office records. Accordingly. based on the report of Addl. Joint Secretary of Govt, exams, a charge sheet has been issued to the petitioner duly calling his explanation on the charge levelled against him. **The Letter No. RC. No.96/D40-5/2012, D: 18-07-2012 stands for material evidence as he produced the fake SSC marks certificate at the time of recruitment.**

6. I respectfully submit that the explanation submitted by the petitioner to the charge sheet is not convincing

and the explanation did not warrant any valid reasons to consider the case. Accordingly the case was entrusted to the Assistant Manager(Enquiry)/MBNR to conduct detailed enquiry and to submit the report. The enquiry report submitted by the Assistant Manager(Enquiry)/MBNR reveals that the petitioner has produced a fake SSC marks certificate at the time of recruitment and secured job as a conductor in the Corporation duly cheating the Corporation officials. Based on the enquiry report the petitioner was served a Show Cause Notice for removal from the services of the Corporation. The explanation submitted by the petitioner to the Show Cause Notice was not convincing and did not advert to any valid reasons to consider the case. Moreover the petitioner was provided with all opportunities to defend the case himself. **Thus the principles of natural justice are followed. Based on the evidences available on record the petitioner was removed from services of the Corporation vide this Office Proceedings No.P2/101(3)/2013-GDWL, Dt: 19-10-2013.**

7. I respectfully submit that the Enquiry Officer relied on the verification certificate issued by the Director of Govt. Exams, A.P. Hyderabad and admissions made by the petitioner that he has not secured 423 marks and held that the charge against the petitioner is proved. Petitioner has not filed any rebuttal evidence to disprove the documents.

5. The order dated 08.02.2016 passed in I.D.No.43 of 2013 by the Labour Court-III, A.P., Hyderabad and in particular, the relevant portion, read as under:

"1. Petitioner questioned the validity of domestic enquiry on the ground that documents were not served to the petitioner as sought for by him.

Respondent contended that the documents as sought by the petitioner were supplied and acknowledgment was also obtained to that effect.

2. Heard, Perused the record and the documents filed by respondent. It shows that the petitioner sought for documents by way of representation and the documents were submitted and the petitioner acknowledged the same. Therefore, the contention of the petitioner that the respondent has not furnished the documents and he lost the opportunity to defend that case before the enquiry officer is not correct.

3) In the result, domestic enquiry is held valid. Posted for enquiry. Call on 08.03.2016."

6. The case of the petitioner, in brief, is as follows:

The petitioner herein is an applicant in I.D.No.43 of 2013 on the file of the Labour Court and the petitioner joined the service of the respondent's corporation as conductor on 6.07.2009 after undergoing

the due process of selection. The petitioner continuously worked under the control of the 3rd respondent till the petitioner was removed from service on 19.10.2013 questioning the same the petitioner raised I.D.No.43 of 2013 before the Labour Court, mainly raising the following grounds:

- i) The petitioner was working under the control of the 3rd respondent, the petitioner was issued a charge sheet dated 26.06.2013 alleging that the petitioner had produced fake SSC marks certificate bearing No.PC/25/03522110/9, Roll No.1083056 with a total marks 483 (excluding second language Hindi) and secured the job in A.P.S.R.T.C as Conductor on contract basis in Mahabubnagar Region during the selection by cheating the APSRTC which is a misconduct under VC and MD Circular No.PD-05/2009, dated 23.07.2009.
- ii) The petitioner submitted explanation explaining that the petitioner had not submitted any fake certificate as alleged.
- iii) While serving the above charge sheet, the petitioner was also not furnished with the relevant documents on which basis the said charge was framed inspite of asking for it and hence, the petitioner was denied the reasonable opportunity to defend the petitioner's case.

iv) The petitioner however, submitted explanation to the charge sheet denying the charge framed against the petitioner.

v) Therefore, the proceedings as initiated by the 3rd respondent are invalid and in clear violation of principles of natural justice.

vi) The 3rd respondent had ordered an enquiry into the charge and during the course of enquiry neither witness nor any documents were marked on behalf of the respondent No.3. Hence, the charge levelled against the petitioner is not proved.

vii) The petitioner was examined in petitioner's defence wherein the petitioner denied the charge.

vii) The Enquiry Officer has held the charges as proved by considering the various documents without marking them and without confronting.

viii) Hence, the action of the Enquiry Officer is in violation of principles of natural justice and hence liable to be set aside.

ix) In spite of the valid grounds raised by the petitioner in I.D.No.43 of 2013 before the Labour Court passed the impugned Award granting no relief. Aggrieved by the same, the petitioner filed the present writ petition.

7. The learned counsel Mr C.V.Narsimha Goud appearing on behalf of the petitioner mainly puts forth the following contentions:

- i) The Labour Court had committed an error in upholding the charge in the absence of any evidence from the respondents 1 to 3 in domestic enquiry supporting the charge.
- ii) The Court below committed a serious error which is apparent on the case of the record and the petitioner had been denied the reasonable opportunity to cross examine the Additional Joint Secretary, since the order of removal from service had been based on the letter addressed by the Additional Joint Secretary which was neither served to the petitioner nor the said Joint Secretary was examined in the domestic enquiry.
- iii) The Court below committed a serious error in not granting the relief as sought for by the petitioner.
- iv) On the basis of the above said submissions and placing reliance on the decisions passed in W.P.No.26007 of 2012, 21093 of 2012 and 24231 of 2001, learned counsel for the petitioner contended that the petitioner is entitled for the relief as prayed for before the Labour Court III, A.P. Hyderabad and hence, the writ petition should be allowed as prayed for.

8. The learned standing counsel appearing on behalf of respondents 1 to 3 mainly put forth the following submissions:

1. The judgments relied upon by the petitioner do not apply to the facts of the present case since the proceedings issued by the Additional Joint Secretary to the Director of Government Exams, A.P. Hyderabad was marked by consent and the petitioner admitted about falsification of Ex.M.6.

2. In the domestic enquiry the petitioner had not submitted any document in support of the petitioner's case.

3. The burden was on the petitioner to prove that the certificate produced by the petitioner is genuine one.

4. The petitioner had not filed any document to rebut the evidence of the respondents, neither the transfer certificate from the petitioner's High School had been produced nor any date of birth certificate nor any SSC Memo in support of petitioner's contention.

5. The petitioner had failed to prove that the verification of petitioner's SSC Marks certificate is not properly done.

6. The respondents proved that on verification of the SSC Marks certificate by the Additional Joint Secretary to the Director of Government Exams, A.P., Hyderabad, it was categorically held that the Xerox copy of the Memorandum of Marks Certificate submitted by the petitioner is not tallying with the particulars mentioned in the office records.

7. The Enquiry Officer relied on the verification certificates issued by the Additional Joint Secretary to the Director of Government Exams,

A.P., Hyderabad and admission of the petitioner before the Enquiry Officer that Ex.M.6 is not genuine and held that that the charge against the petitioner is proved.

8. The petitioner has not filed any rebuttal evidence to disprove the document.

9. The punishment imposed by the respondents is proportionate since as per the case of the respondent the petitioner cheated the APSRTC by producing fake SSC marks certificate and thereby grabbed opportunity of genuine competitor, who had sought employment.

10. The punishment imposed by the respondents against the petitioner is proportionate.

Basing on the above said submissions, Learned standing counsel appearing on behalf of respondents 1 to 3 contended that the writ petition deserves no consideration and hence, needs to be dismissed.

DISCUSSION AND CONCLUSION

DISCUSSION

9. **The charge framed against the petitioner as per**

Charge Sheet dated 26.06.2013, reads as under:

“For having produced Fake SSC Certificate in the name of Sri R.Shiva Kumar S/o R.Gowrishankar bearing No. PC/25/03522110/9, Roll No.1083056 with a total Marks

483 (excluding second language Hindi) and secured the Job in APSRTC as conductor on contract basis in Mahabubnagar Region during the selection by cheating the APSRTC, which is a misconduct under VC &MD Circular No.PD0053009, dated 23.07.2009."

10. A bare perusal of the explanation dated 03.07.2013 of the petitioner addressed to the Depot Manager, RTC, Bus Depot, Gadwal, in response to the charge sheet dated 26.06.2013 issued to the petitioner clearly indicates that the specific plea taken by the petitioner is that the charge framed against the petitioner is based on documents referred to in the reference of the said document, but the said proceedings dated 29.04.2009 and 29.06.2012 had not been furnished to the petitioner inspite of petitioner's specific request.

11. Learned counsel appearing on behalf of the petitioner placed reliance on the judgment of the Apex Court dated 02.02.2010 reported in (2010) 2 SCC 772 in State of Uttar Pradesh and others v Saroj Kumar Sinha, in particular paras 6, 7, 8, 28, 29, 30 and 39, which read as under:

"6. Sub-rule (v) of Rule 7 of the 1999 Service Rules mandate that the copies of the documentary

evidence mentioned in the charge-sheet has to be served on the government servant along with the charge-sheet. The aforesaid sub-rule is as under:

"7. (v) The charge-sheet, along with the copy of documentary evidences mentioned therein and list of witnesses and their statements, if any shall be served on the charged government servant personally or by registered post at the address mentioned in the official records in case the charge-sheet could not be served in aforesaid manner, the charge-sheet shall be served by publication in a daily newspaper having wide circulation: econ Provided that where the documentary evidence is voluminous, instead of furnishing its copy with charge-sheet, the charged government servant shall be permitted to inspect the same before the inquiry officer."

A perusal of the aforesaid rule would clearly show that the disciplinary authority is duty-bound to make available all relevant documents which are sought to be relied upon against the government servant in proof of the charges. It is only when the charge-sheet together with documents is supplied that the government servant can be said to have had an effective and reasonable opportunity to present his written statement of defence.

7. Keeping in view the mandate of the aforesaid sub-rule the respondent made a written request to the appellant demanding copies of the documents relied upon in the charge-sheet. This representation was dated 10-6-2001. In spite of the mandate of the 1999 Rules neither the disciplinary authority nor the enquiry officer made the documents available to the respondent rather

a reminder was issued to him by the inquiry officer on 15.6.2001 to submit the reply to the charge-sheet.

8. Apprehending that the inquiry officer may be biased, the respondent submitted a representation on 19-6-2001 to the Government for change of the inquiry officer. This request of the respondent was accepted by the Government by Office Memo dated 22-9-2001. It later transpired that the Inquiry Officer, Mr I.D. Singhal, had already completed the inquiry report on 3-8-2001 whereas the new Inquiry Officer, G.S. Kahlon was appointed on 22-9-2001. The respondent only came to know about the existence of inquiry report dated 3-8-2001 in the month of April 2003.

28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. **Since no oral evidence has been examined the documents have not been proved and could not have been taken into consideration to conclude that the charges have been proved against the respondents.**

29. Apart from the above, by virtue of Article 311(2) of the Constitution of India the departmental enquiry had to be conducted in accordance with the rules of natural justice. It is a basic requirement of the rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceedings which may culminate in punishment being imposed on the employee.

30. When a departmental enquiry is conducted against the government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The inquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service

39. The proposition of law that a government employee facing a departmental enquiry is entitled to all the relevant statements, documents and other materials to enable him to have a reasonable opportunity to defend himself in the departmental enquiry against the charges is so well established It need any further reiteration, Nevertheless given the case we may re-emphasise the law as stated

**by this Court in State of Punjab v. Bhagat Ram
(SCC p. 156, paras 6-8) facts of this case:-**

"6. The State contended that the respondent was not entitled to get copies of statements. The reasoning of the State was that the respondent was given the opportunity to cross-examine the witnesses and during the cross-examination the respondent would have the opportunity of confronting the witnesses with the statements. It is contended that the synopsis was adequate to acquaint the respondent with the gist of the evidence.

7. The meaning of a reasonable opportunity of showing cause against the action proposed to be taken is that the government servant is afforded a reasonable opportunity to defend himself against charges on which inquiry is held. The government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so when he told what the charges against him are. He can do so by cross-examining the witnesses produced against him. The object of supplying statements is that the government servant will be able to refer to the previous statements of the witnesses proposed to be examined against the government servant. Unless the statements are given to the government servant he will not be able to have an effective and useful cross examination.

8. It is unjust and unfair to deny the government servant copies of statements of witnesses examined during investigation and produced at the inquiry in support of the charges levelled against the government servant. A synopsis does not satisfy the requirements of giving the government servant a reasonable opportunity of showing cause against the action proposed to be taken."

12. It is the specific case of the petitioner that the petitioner joined services of the respondent corporation as conductor on 06.07.2009 after undergoing due process of selection and in fact the petitioner had passed X Class and further that the petitioner did not produce any fake certificate muchless the SSC certificate as mentioned in the charge.

13. A bare perusal of the comments dated 14.08.2013 submitted by the petitioner on the Enquiry Report served on the petitioner, clearly indicate that the petitioner specifically pleaded that during course of the enquiry no witness was examined in support of the charge and therefore, the charge levelled against the petitioner is not proved with any valid or legal evidence and when there was no evidence in support of the charge the petitioner could not be held guilty by the Enquiry Officer.

14. A bare perusal of the impugned Award dated 15.09.2016 vide I.D.No.43 of 2013 indicates that the Enquiry Officer relied on the verification certificate issued by the Additional Joint

Secretary to the Director of Government Exams, A.P, Hyderabad and admission of the petitioner before the Enquiry Officer that Ex.M.6 is not genuine and held that the charge against the petitioner is proved and further that the petitioner had not filed any rebuttal evidence to disprove the document and hence, there is no need to interfere with the findings of the Enquiry Officer.

15. Taking in to consideration the fact as borne on record that the Labour Court III upheld the charge in the absence of any evidence from the respondent Nos.1 to 3 in the domestic enquiry supporting the charge and further taking into consideration the observation as borne on record in the impugned Award that the Additional Joint Secretary to the Director of Government Examinations, AP, Hyderabad vide its letter dated 18.07.2012 had informed to the 1st respondent that SSC Marks certificate enclosed to the letter sent by the 1st respondent office cannot be verified since Roll Numbers and candidate particulars are not tallying with their official records and further the said proceedings had been marked by consent and petitioner admitted

about falsification of Ex.M.6, which is the Xerox copy of the SCC Marks Memo of the petitioner submitted by the petitioner at the time of selection is totally contrary to the contents in petitioner's explanation dated 02.07.2013 to the charge sheet dated 26.06.2013 addressed by the petitioner to the Depot Manager, APSRTC, Bus Depot Gadwal, and also the comments of the petitioner on the Enquiry Report dated 14.09.2013 addressed to the Depot Manager, APSRTC, Bus Depot Gadwal, which clearly indicate that the petitioner did not admit about falsification of Ex.M.6 as observed in the Award Impugned dated 15.09.2013, passed in I.D.No.43 of 2013 published on 17.03.2017 on the file of the Labour Court. Therefore, the order dated 08.02.2016 passed in I.D.No.43 of 2013 (referred to and extracted above) holding the domestic enquiry conducted as valid on the file of Labour Court-III, Hyderabad is unreasonable and unjust since the petitioner had been denied reasonable opportunity to defend petitioner's case.

16. The learned standing counsel appearing on behalf of the respondents 1 to 3 placed reliance on the judgment of the Apex Court dated 15.01.2007 reported in 2007(10) SCC 385 in Noida Entrepreneurs Association v Noida and others, and in particular, placed reliance of paras 11 and 16 of the said judgment on the point that the standard of proof required in departmental proceedings is not the same as required to prove a criminal charge and even if there is an acquittal in the criminal proceedings the same does not bar departmental proceedings. This Court opines that the same is not applicable to the facts of the present case since it is not petitioner's case nor even pleaded by the petitioner to drop the departmental proceedings on the ground that the same would prejudice the petitioner in his defence at the trial in criminal case, since the pleadings in the present case do not refer to any criminal case being registered against the petitioner.

17. Taking into consideration the aforesaid facts and circumstances of the case, and the fact as borne on record that the order of removal from service had been

based on the letter addressed by the Additional Joint Secretary, who was not examined in the domestic enquiry, the writ petition is allowed as prayed for. The impugned Award dated 15.09.2016 passed in I.D.No.43 of 2013 published on 17.03.2017 on the file of the Labour Court-III, Hyderabad published on 10.05.2017 and also the order passed on 08.02.2016 (referred to and extracted above) holding the domestic enquiry conducted as valid on the file of the Labour Court III, Hyderabad is quashed and the matter is remitted to the Labour Court at Hyderabad to reconsider the subject issue i.e. I.D.No.43 of 2003, afresh again taking into consideration the explanation dated 02.07.2013 of the petitioner submitted to the charge sheet dated 26.06.2013 and also duly considering the comments of the petitioner on the enquiry report dated 14.8.2013 addressed to the Depot Manager, APSRTC, Bus Depot Gadwal within a period of two months from the date of receipt of the copy of order and pass appropriate orders, in accordance to law, in conformity with the principles of natural justice duly examining the entire

material on record by providing reasonable opportunity to the petitioner duly taking into consideration the observations and also the view taken by the Apex Court in the judgment reported in 2010 (2) SCC 772, dated 02.02.2010 in State of Uttar Pradesh and others v Saroj Kumar Singh, in particular, at paras 28, 29, 30 and 39 (referred to and extracted above) and pass appropriate orders, the writ petition is disposed of accordingly with these observations. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

SUREPALLI NANDA, J

Dated: 29.01.2024

Note: L.R. copy to be marked

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