

THE HONOURABLE SRI JUSTICE G. CHANDRAIAH

W.P. No.15534 of 2003

ORDER:

This writ petition has been filed seeking for issuance of *Writ of Certiorari* and after calling for the records in respect of I.D. No.77 of 2002 dated 18.03.2003 on the file of the 1st respondent, Industrial Tribunal-cum-Labour Court, Godavarikhani, in so far as not granting any relief to the petitioner, declare as illegal, arbitrary and unjust and consequently quash the award dated 18.03.2003 by granting reinstatement with continuity of service, attendant benefits and back wages to the petitioner.

The case of the petitioner, in brief, is that he was appointed as a Conductor in the 2nd respondent's Corporation on 01.10.1983 and he was posted at Godavarikhani depot. The petitioner was performing his duty on the route from Mumbai to Dharmapuri.

The petitioner reached the Mumbai point on 05.03.2002 and made night halt and on 06.03.2002 he again started return journey to Dharmapuri on bus bearing No.9757. While so, the checking officials exercised the check at stage No.47. Though there was no irregularity on the part of the petitioner, the checking officials alleged certain cash and ticket irregularities and issued a charge memo. Based upon the said allegations, the petitioner was issued with a charge sheet dated 27.03.2002 with the following charges:

“For having collected an amount of Rs.1,635-00
from five (5) passengers @ Rs.327/- each at the

boarding point itself, who boarded your bus at Mumbai and bound for Jagtial, Ex-stages 70 to 18 and issued with the following ticket Nos.028/114466 to 478 of Rs.100/- denomination Ex.13. ticket Nos.489/477691 to 695 of Rs.20/- denomination E.5 and ticket Nos.287/729193 to 197 of Rs.7/- denomination E.5. total Rs.1,435-00. Thus issued lower denomination tickets worth of Rs.200/- which constitutes misconduct under Regulation No.28(xxv) of APSRTC., Employees (conduct) Regulations, 1963.”

The petitioner gave his explanation to the charge sheet denying the charges. However, the 2nd respondent without considering the same, appointed an Enquiry Officer to conduct enquiry into the charges. The Enquiry Officer conducted enquiry without following the principles of natural justice and made the petitioner guilty of the charges in his enquiry report dated 03.05.2002. Based upon the enquiry report, the 2nd respondent issued show cause notice of removal dated 11.06.2002, and finally the 2nd respondent issued proceedings dated 25.06.2002 terminating the petitioner from his services. Aggrieved by the said termination order, the petitioner filed an appeal to the appellate authority and the same was rejected on 31.07.2002. Assailing the same, the petitioner raised industrial dispute in I.D. No.77 of 2002 and the same was ended with the confirmation of termination of the petitioner passed by the 2nd respondent. Aggrieved by the same, the petitioner filed the present writ petition.

On behalf of the 2nd respondent Corporation, filed its counter supporting the impugned order and denied the averments of the petitioner.

The learned counsel for the petitioner submitted that the petitioner was no way concerned with the issuance of tickets.

The petitioner issued tickets to the agent and in turn the agent handed over the tickets to the passengers. The petitioner issued tickets to the

agent equivalent to the money paid to him as per the requirement. Therefore, his contention is that on the ground which the petitioner was removed from the service, was not tall correct. It is also submitted that during the domestic enquiry, no proper enquiry was conducted by giving opportunity to the petitioner. Without considering the contentions of the petitioner, the learned Tribunal passed the impugned award mechanically and simply marked the documents and the learned Tribunal did not discuss about those documents and has not applied its mind. The learned counsel for the petitioner placed reliance on the judgment rendered by this Court in W.P. No.24815 of 2000 passed on 15.11.2008 and submitted that since the learned Tribunal has not considered merits of the case, in accordance with law, the matter needs to be remitted to the learned Tribunal for fresh consideration, in accordance with law, otherwise, the petitioner will be put to irreparable loss.

On the other hand, the learned standing counsel appearing for the Corporation submitted that the matter may be remitted to the learned Tribunal for fresh consideration.

Heard the learned counsel on either side and perused the material on record.

The W.P. No.24815 of 2000 was filed by the petitioner therein aggrieved by the award dated 04.09.2000 passed by learned Tribunal in I.D. No.153 of 1996 confirming the order of removal passed by the Corporation against the petitioner, who was working as conductor prior to his removal. On considering the facts and circumstances of the case and placing reliance of the judgment of the Apex Court, this Court held that the Tribunal, under Section 11-A of the Industrial Disputes Act, 1947 is empowered to set aside the order of discharge or dismissal and direct re-instatement of the workman on such terms and

conditions as it thinks fit, or give such other relief to the workman including the award of any less punishment in lieu of discharge or dismissal as the circumstances of the case may require. In order to exercise the discretionary jurisdiction under Section 11-A of the Act, it is incumbent upon the Tribunal to appreciate the evidence available on record. Further, it is also held that the Tribunal shall first decide the validity of the domestic enquiry and further by

re-evaluating the evidence, which was adduced before the disciplinary authority and by giving sufficient reasons, has to record findings thereof and then only it can be said that proper adjudicating procedure has been followed. On the contrary, if the Tribunal by not framing appropriate issues and without any discussion on the disputed issues, and only by noting the exhibits marked and the contents therein, holds the workman guilty,

it cannot be said that the Tribunal has followed the procedure and it is an incomplete exercise in haste and in utter disregard to the fundamental rights of the parties guaranteed under the Constitution of India. Eventually, the impugned award therein was set aside and the matter was remitted to the Tribunal to dispose of the same afresh, within a period of three months from the date of receipt of a copy of order.

In the instant case also the learned Tribunal did not exercise its powers as contemplated under Section 11-A of the Industrial Disputes Act, 1947. Further, as could be seen from the impugned award, the learned Tribunal though as many as Exs.M-1 to M-31 were marked, there was no discussion about those documents to arrive at a conclusion that the charges leveled against the petitioner were proved. In the absence of the same, non-considering the evidence on record, is in violation of principles of natural justice. It is the specific contention of the petitioner that the petitioner is not at all responsible for non issuance of tickets. The

Corporation itself appointed the agents at Bombay, who will in advance purchase the tickets from the Conductor and in turn these tickets will be handed over to the passengers. Therefore, the question of non issuance of tickets to the passenger does not arise. This aspect is not at all discussed by the learned Tribunal.

Having regard to the facts and circumstances of the case and the submissions made by the learned counsel on either side, following the judgment referred to above, I deem it appropriate to set aside the impugned award dated 18.03.2003 passed in I.D. No.77 of 2002 and to remit the matter to the learned Tribunal for fresh consideration.

Accordingly, the writ petition is disposed of setting aside the impugned award and the matter is remitted to the learned Tribunal for fresh consideration and to pass the appropriate orders, in accordance with law, within a period of four months, from the date of receipt of a copy of this order. There shall be no order as to costs.

JUSTICE G. CHANDRAIAH

Date: 30.04.2010.

LSK