

**THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND**

THE HON'BLE MRS. JUSTICE ANIS

WRIT APPEALS No. 327 AND 452 OF 2015

COMMON JUDGMENT: *(per Hon'ble Sri Justice Nooty Ramamohana Rao)*

These two Writ Appeals, since are directed against the order passed by the learned Single Judge, are heard together and they stand disposed of by this judgment.

The appellant in Writ Appeal No. 327 of 2015 was employed as a driver with the Andhra Pradesh State Road Transport Corporation (henceforth referred to as 'the Corporation'). The Corporation earns its revenue by operating its services essentially for ferrying passengers from one destination to the other and also by transporting commercial flight. The Corporation renders services by providing cost effective transportation to the general public. The services are run not with an essential motto to make profit but with a view to provide the requisite transportation to the general public. If a driver is to stay away from duty without securing proper sanction of leave or intimation of his absence from duty, it is bound to create any amount of difficulties to the manager of human resources as it may not always feasible to secure the services of an alternative driver. The deployment of staff, such as drivers and conductors is planned and organized well ahead. Drivers and conductors are liable to be booked for duty spanning normally not exceeding 8 hours duration on each day. They are also required to be provided a compulsory weekly paid off, so as to enable them to recuperate and keep their fatigue at bay. In these set of circumstances, when the workman- driver, who is the appellant in Writ Appeal No. 327 of 2015, stayed away from duty from 13.11.1995 without any intimation or without securing sanction of leave, in advance, he has been subjected to disciplinary control by the Corporation. The Depot Manager has recounted as to how the Traffic Inspector at Atmakur had faced difficulties in running the scheduled services all due to the absence of the workman-driver. He had to

cancel one rural service and utilize the service of another driver to operate one other service to Nandyal Town, an important town with commercial activity in Kurnool District. Because of these difficulties encountered by the Corporation all due to the unauthorized absence of the workman- driver, the Depot Manager imposed on him the punishment of removal from service, after conducting the domestic enquiry, as per the regulations framed by the Corporation. The workman has been removed on 03.05.1996 by the Depot Manager and the appeal preferred by him to the Regional Manager, Kurnool was also rejected on 31.01.1997. He then moved the Industrial Tribunal - cum- Labour Court at Anantapur by raising I.D.No. 104 of 1999 and the Labour Court passed an Award on 03.01.2002 in the said Industrial Dispute by setting aside the order of termination passed against the workman-driver as it was found by the Labour Court that there was a genuine reason for the absence on the part of the workman as he suffered from Typhoid and consequently, could not report to duty, but however, his failure to intimate in time and his inability to report to duty has not been condoned by the Labour Court. Hence, the Labour Court, while ordering the workman-driver to be reinstated to duty, denied payment of back wages to him completely. Further, the Labour Court, obviously, in exercise of the power available to it under Section 11-A of the Industrial Disputes Act, has substituted the punishment of removal with that of stoppage of three annual grade increments with cumulative effect. In accordance with this Award, the Corporation has reinstated the workman back as a driver in its service. Thereafter, the workman driver instituted Writ Petition No. 22686 of 2003 challenging that portion of the Award which went against his interests, in that his back wages were denied and punishment of deferment of three increments with cumulative effect has been imposed. A learned Single Judge of this Court has considered the entire matter in a proper perspective and came to the conclusion that withholding of two increments without cumulative effect perhaps, would have met the

ends of justice, particularly when back wages were denied to the workman. Obviously, what weighed with the learned Single Judge was from May 1996, the workman-driver has been kept out of service and came to be reinstated in the month of May 2002. Thus, for a period of six long years, he was denied wages. Hence, the learned Judge exercised the discretion available with him and modified the punishment of deferment of three annual increments with cumulative effect with that of withholding of two increments without cumulative effect. It is against this order of the learned Single Judge, Writ Appeal No. 327 of 2015 has been preferred by the workman-driver and Writ Appeal No. 452 of 2015 has been preferred by the Corporation.

Heard Sri S.M. Subhan, learned counsel for the workman and Sri A. Rama Rao, learned Standing Counsel for the Corporation.

Sri Rama Rao has contended that the Labour Court itself has shown extraordinary compassion and sympathy and when it has imposed the punishment of deferment of three annual grade increments with cumulative effect, there was no necessity or occasion for the learned Single Judge to substitute it further by reducing the effect to that of stoppage of two annual grade increments without cumulative effect.

Sri S.M. Subhan would contend that having preferred to impose a minor punishment of deferment of two annual grade increments without cumulative effect, the learned Single Judge ought to have awarded payment of back wages at least to a reasonable extent.

We are not impressed by the submissions made by either of the learned counsel. It is true that the Labour Court has shown considerable amount of compassion in the matter. Since the workman-driver has produced the necessary sick certificate vouching to the fact that he has been affected by Typhoid, which resulted in his absence from duty, but nonetheless, for the failure to intimate his absence from duty to the Depot Manager, he has been faulted. The punishment of stoppage of three annual grade increments with

cumulative effect has been preferred by the Labour Court. The Labour Court obviously has not noticed the serious consequences that will flow from withholding increments with cumulative effect. Deferment of increments with cumulative effect will have cascading effect on the career of an employee. In fact, they even travel beyond and may affect the terminal benefits as well. Therefore, keeping this very aspect of the matter in mind, obviously, the learned Judge exercised the discretion available to him and modified the said punishment by removing the cumulative effect part of it. This apart, what obviously has been weighing with the Courts is the fact that the workman-driver has been denied back wages for as much as a six-year period.

Though a different view is possible, in the given circumstances and facts, it would not be appropriate to substitute the other view to the one, which has been taken by the learned Single Judge. Since we have not found any grave error in exercise of jurisdiction carried out by the learned Single Judge, we do not prefer to disturb the conclusion to which the learned Judge has reached and accordingly, we dismiss both the Appeals, but however, without costs.

Consequently, the miscellaneous applications, if any shall stand dismissed.

NOOTY RAMAMOHANA RAO, J

ANIS, J

23rd July 2015

ksld