

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

WRIT PETITION No.22755 OF 2000

Between:

K.Narsappa.

..Petitioner.

And:

The APSRTC represented by its Regional Manager, Cuddapah
Region, Cuddapah and others.

..Respondents.

JUDGMENT PRONOUNCED ON : 21st August, 2015

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HONOURABLE SRI JUSTICE : S.RAVI KUMAR

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

HONOURABLE SRI JUSTICE S.RAVI KUMAR

WRIT PETITION No.22755 OF 2000

Dated 21-8-2015

Between:

K.Narsappa.

..Petitioner.

And:

The APSRTC represented by its Regional Manager, Cuddapah Region, Cuddapah and others.

..Respondents.

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HONOURABLE SRI JUSTICE S.RAVI KUMAR

WRIT PETITION No.22755 OF 2000

ORDER:

This writ petition is filed seeking direction more particularly in the nature of mandamus declaring the proceedings No.PA/20A(32)/2000-RM, Cuddapah dated 16-5-2000 as illegal, unjust and contrary to the circular instructions and against the principles of natural justice.

Brief facts that are necessary for the purpose of this writ petition are as follows:

Petitioner was appointed as conductor in the respondent corporation with effect from 6-4-1986 at Rajampet Depot. On 11-8-1999 while the petitioner was conductor on the bus from Chitvel to Rajampet, the bus was checked at stage No.6, i.e., Thummachetlapalli and the inspecting authorities detected serious irregularities like not issuing tickets to two passengers having collected Rs.5/- from them who boarded the bus at Saivignan School who were found alighting at Thummachetlapalli. A charge memo was issued and departmental enquiry was conducted basing on the Enquiry Report, the appointing authority-Depot Manager, Rajampet removed the petitioner from service with immediate effect having accepted the enquiry report. Petitioner preferred appeal to the Deputy Chief Traffic Manager who dismissed the appeal vide proceedings dated 12-4-2000 confirming the orders of the Depot Manager. Petitioner preferred review to the Regional Manager, Cuddapah who confirmed the findings in respect of charges but modified the punishment. The Reviewing Authority observed that removal of the petitioner from service is too excessive and not in proportionate to gravity of offence and while setting aside the order of removal, ordered that petitioner be appointed as conductor afresh with immediate effect and posted him to Prodduturu depot. Challenging

the said order, petitioner preferred the present writ petition.

Heard both sides.

Advocate for petitioner submitted that the order of the reviewing authority is not in accordance with regulations of the corporation concerning enquiries and punishment. He further submitted that this case is squarely covered by a decision of this court in *K.C.NARAYANA v. MANAGING DIRECTOR, APSRTC, HYDERABAD AND OTHERS* () wherein this court held that corporation has not followed the APSRTC employees (Classification Control and Appeal) Regulations, 1967) (hereinafter referred to as "Regulation, 1967") and set aside the order, appointing petitioner therein as a conductor afresh.

Advocate for corporation submitted that in view of the decision of Honourable Supreme Court in *U.P.SRTC Vs. RAM KISHAN ARORA* () and *REGIONAL MANAGER, RSRTC vs. GHANSHYAM SHARMA* (), the decision relied on by advocate for petitioner cannot be applied.

In reply to the arguments of Advocate for Corporation, advocate for petitioner submitted that these two decisions have no application to the facts of the case.

Now the point that would arise for my consideration in this writ petition is whether the order of the reviewing authority is legal, correct and proper?

POINT:

As already referred above, the petitioner was found guilty for charge of misconduct and he was imposed punishment of removal by the Disciplinary authority which was confirmed by the appellate authority but reviewing authority modified the punishment observing that the punishment of removal from service is too excessive and not in proportionate to the gravity of the offence and while setting aside the order of removal reviewing authority passed orders appointing petitioner as conductor afresh.

According to petitioner, on account of this fresh appointment, he lost his entire service besides losing Rs.1500/- per month in the basic pay though misconduct proved, is for not accounting a sum of Rs.5/-.

Admittedly, punishments in respect of misconduct are governed by Regulation 1967 and the penalties are referred in chapter 4, particularly under rules 8 and 9.

This Court in *K.C.NARAYANA v. MANAGING DIRECTOR,*

APSRTC, HYDERABAD AND OTHERS (1st cited) in a similar set of facts considering these penalties under rules 8 and 9, held that the action of the corporation in appointing petitioner therein as conductor is not in accordance with the penalties indicated in rules 8 and 9.

Now the contention of the corporation is that said decision has no application because of the two Supreme Court decisions.

I n *REGIONAL MANAGER, RSRTC vs. GHANSHYAM SHARMA (3rd cited)*, on a reference being made, the Labour Court invoked its jurisdiction under Section 11 A of the Industrial Disputes Act, 1947 and while upholding finding that the employee was guilty of misconduct, directed reinstatement with continuity of service without back wages and that order was challenged before the High Court and a single judge of High Court has set aside the award of the Labour Court holding that the powers under Section 11 A of the Industrial Disputes Act, 1947 have to be used judiciously and in that case, they were not used judiciously. The employee therein preferred appeal to the Division Bench and the Division Bench reversed the orders of the Single Judge and the Supreme Court while confirming the orders of the Single Judge observed that Labour Court was not justified in interfering with the punishment of dismissal. But, here, it is not a case of exercising powers under Section 11 A of the Industrial Disputes Act, 1947 and the question before me is in respect of powers of reviewing authority under the Regulations, 1967. Therefore, as rightly pointed out by advocate for petitioner, this decision has no application.

I n *U.P.SRTC Vs. RAM KISHAN ARORA (2nd cited)*, the punishment of removal was challenged before the Labour Court which directed reinstatement with full back wages and in the writ preferred by Department, the High Court upheld the order of the reinstatement but held that employee is not entitled for back wages and ordered for stoppage of two increments with cumulative effect. That order of the High Court was challenged before the Supreme Court and the Supreme Court while considering the nature of misconduct found that the punishment imposed by the department was not disproportionate to the gravity of the misconduct and observed that the Labour Court and High Court were not correct in setting aside the punishment imposed by the disciplinary authority. Supreme Court observed further even if the High Court feels that the quantum of punishment is disproportionate to the gravity of misconduct, it should have remitted back the matter to the employer for reconsideration in respect of quantum of punishment and the High Court without assigning any reason could not have substituted its opinion to that of the disciplinary authority. This decision is also not applicable because the order under challenge is of the reviewing

authority with regard to quantum of punishment on the ground that punishment imposed by reviewing authority is not covered by the penalties under Rules 8 and 9 of the Regulations 1967.

I n *K.C.NARAYANA v. MANAGING DIRECTOR, APSRTC, HYDERABAD AND OTHERS (1st cited)*, this court has not completely set aside the punishment, it only set aside the impugned order and directed the corporation to examine the records and determine appropriate punishment in accordance with Regulations, 1967.

Therefore, as rightly pointed out by advocate for petitioner, as punishment imposed by reviewing authority is not covered by Rules 8 and 9 of Regulations, 1967, I am of the considered view that the decision of this court in *K.C.NARAYANA v. MANAGING DIRECTOR, APSRTC, HYDERABAD AND OTHERS (1st cited)* squarely applies to the present case and therefore, applying the same, the order of the first respondent (Reviewing Authority) is set aside and R.1 is directed to determine the appropriate punishment in accordance with Rules 8 and 9 of the Regulations, 1967 other than the punishment of removal in view of findings of R.1 that punishment of removal is disproportionate to misconduct proved within a period of four months from the date of receipt of this order.

Accordingly, this Writ Petition is disposed of. No costs.

As a sequel to the disposal of this writ petition, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE S.RAVI KUMAR

Dated 21-8-2015.

Dvs.

HONOURABLE SRI JUSTICE S.RAVI KUMAR

WRIT PETITION No.22755 OF 2000

Dated 21-8-2015

Dvs