

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

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WRIT PETITION NO.7649 OF 2003

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ORDER:

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This writ petition is filed by the petitioner declaring the proceedings issued by the 1st respondent dated 10.01.2002 insofar as denying the continuity of service and back wages as illegal, arbitrary, unjust and consequently direct the respondents to grant continuity of service, back wages and other attendant benefits.

The case of the petitioner is that he was appointed as a Conductor on 14.06.1983 at Nizamabad Depot and his services were regularised from 01.07.1986 and he was performing his duties without any complaint. While he was conducting duty on 05.12.1988, on a bus bearing No.AAZ 452, on the route Nizamabad to Kandalwadi, a check was conducted at stage No.15. Basing on the same, the petitioner was issued charge sheet, dated 31.12.1988 alleging the following charges:

- i. For having reissued ticket No.319/510351 of Rs.1.00 denomination to a passenger who boarded the bus at Hilali and bound for Kandalwadi check post, ex-stage 14 to 15 who was found alighting at Kandalwadi check post with the above ticket. The said ticket was already issued and accounted by you at stage No.8 itself. Your act of resorting to re-issue of ticket No.319/510351 of Rs.1/- denomination to another passenger after collecting the requisite amount constitutes misconduct under Reg.28 (vi)(a), (x), (xviii), (xxxii) of APSRTC Employees' (Conduct) Reg.1963.
- ii. For having failed to close the ticket numbers of den.Rs.1/-, 1-25, 1-6-, 2-25 and 8.50 LT from stage No.12 to 15 which were marked by the

TTIs even though the bus reached upto Kondalwadi chekpost, i.e., stage No.15 which you were performing your duty as mentioned in the above charge, which constitutes misconduct under Reg.28 (xvii), (xxv), (xxxii) of APSRTC Employees (Conduct) Reg.1963.

- iii. For having failed to observe the rule “issue and start” without having any valid reasons, which constitutes mis-conduct under Reg.28 (xvii), (xxxii) of APSRTC Employees (Conduct) Reg.1963.

An enquiry was ordered against the petitioner, basing on the charges levelled against him. The disciplinary authority issued show cause notice of removal from service on 12.01.1989. The petitioner submitted an explanation for the same, on 19.02.1989. But the Depot Manager issued proceedings dated 12.02.1991 removing the petitioner from service. The appeal and review filed by the petitioner before the concerned authorities met with the same fate and ultimately they were rejected on 16.02.1991 and 08.07.1991 respectively. Aggrieved by the rejection of appeal and review, the petitioner preferred I.D.No.775/92. The Labour Court confirmed the punishment of removal vide Award dt.20.08.1993. The petitioner thereafter filed W.P.No.17380 of 1993. The writ petition was allowed and the matter was remitted to the appellate authority for re-consideration of the whole issue whether any lesser punishment can be imposed for the charges levelled against the petitioner. Pursuant to the same, the impugned order vide proceedings No.Li/785(1)/01-RM:NZB dated 10.01.2002 were issued reinstating the petitioner into service afresh, without any back wages. Aggrieved by the same, the present writ petition is filed.

The learned counsel for the petitioner submits that the impugned order is passed without considering the issue with proper perspective and the concerned authority mechanically ordered for fresh appointment, without granting continuity of service. He also submits that the punishment imposed against the petitioner is disproportionate to the charges levelled against him. He submits that

the petitioner also attained the age of superannuation in the year 2009. As such, he seeks the benefit of continuity of service, though without backwages, for the purpose of calculating his retiral benefits.

Though notice is served, none appears for the respondents.

It is a case to be seen that while disposing of W.P.No.17380 of 1993, this Court observed as follows:

“It is not in dispute that the bus driver who gave a statement at the time of check under Ex.M3 that during the check one passenger had shown one rupee denomination ticket to TTI, but conductor disputed the statement given by the said passenger. During the course of enquiry the bus driver under Ex.M-14 admitted that the passenger has spoken with the TTI as ‘GELA’ and he do not know the meaning of the word ‘GELA’. After saying that passenger had shown a ticket to the TTI. When a specific question was put to driver whether the TTI asked the passenger to search the ticket and to give, the driver denied the same. It is also spoken by him that passenger replied with TTI that it was the ticket given to him by the Conductor. When a specific question was put to Conductor regarding the re-issue of ticket, the conductor get down the bus and told that he did not issue the said ticket. The disciplinary authority as well as the appellate authority have not adverted to the fact of meaning of the word “GELA”. As known from Marati the word ‘GELA’ means ‘not lost’. Whether the passenger told that he has not lost the ticket, he has searched and given the ticket of one rupee denomination and whether the very same ticket was re-issued by the Conductor or not is doubtful and the said fact was not properly adverted either by the disciplinary authority or by the appellate authority.

In view of the same, it is a fit case to remit the matter to the appellate authority to re-consider the whole issue whether any lesser punishment can be imposed for the charges levelled against the petitioner. It is made clear that the petitioner is not entitled to backwages from the date of termination till the date of order to be passed by the appellate authority. The order of the appellate authority is set aside and the matter is remitted back to the appellate authority for fresh disposal. The appellate authority is directed to consider and pass appropriate

orders within 8 weeks from the date of receipt of a copy of this order.”

This court has remitted the matter for re-considering the issue and expressed a doubt whether the charge is proved against the petitioner. The authority while passing impugned order has not given any reasons. Since the petitioner already attained the age of superannuation in the year 2009, remitting the matter back to the authorities at this point of time does not arise.

In view of the facts and circumstances and in view of the earlier order passed by this court in the said writ petition and as the petitioner is already reinstated and attained the age of superannuation, I am of the opinion that the petitioner is entitled for continuity of service, without monetary benefits, for the purpose of grant of retiral benefits.

With the above direction, the writ petition is disposed of. Miscellaneous petitions, if any, pending shall stand closed. No order as to costs.

A.RAJASHEKER REDDY, J

Dt.29.10.2015

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