

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

Writ Petition Nos. 12600, 24427 of 2002 and 15943 of 2004

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COMMON ORDER :

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As the issue involved in all these writ petitions is arising out of an Award of the Labour Court I, Hyderabad dated 20.07.2001 in I.D.No.119 of 1998, they are being heard together and disposed of by way of this Common Order.

2. W.P.No.12600 of 2002 is filed by the Andhra Pradesh State Road Transport Corporation (for brevity 'APSRTC')-Management against the Award dated 20.07.2001 passed by the Labour Court-I, Hyderabad, published in G.O.Rt.No.3164, dated 03.12.2001 in I.D.No.119 of 1998, wherein the Labour Court held that the respondent-workman is entitled for reinstatement, continuity of service, 50% of back wages and other attendant benefits.

3. W.P.No.24427 is filed by the workman assailing the action of the APSRTC in not calculating the notional increments for the out of period i.e., 15.09.1998 to 30.11.2002 as illegal and arbitrary and contrary to Award dated 20.07.2001 in I.D.No.119 of 1998.

4. W.P.No.15943 of 2004 is filed by the employee seeking writ of mandamus declaring the action of the 1st respondent in not granting the rest of 50% of wages and attendant benefits and imposing the punishment of deferment of one increment with cumulative effect as illegal and arbitrary and consequently to direct the 2nd respondent to pay the back wages and attendant benefits and consequential reliefs by modifying the major penalty of postponement of two annual grade increments with cumulative effect.

5. For the sake of convenience, the parties herein after will be referred to as arrayed in W.P.No.12600 of 2002.

It is the case of the petitioner-Management that the respondent was working as Conductor in the petitioner's organization. Basing on certain irregularities committed by the respondent, he was issued charge memo and basing on the

explanation offered by him, the petitioner-Management suspended the respondent and was charge sheeted on 27.01.1998 for the following charges:

“1. For having excess bus cash by Rs.50.25 while conducting vehicle No.131 on route 123 on 17.1.1998 which constitutes misconduct under Reg.No.28(xxiv) of APSRTC Employees (Conduct) Regulations, 1963”.

2. For having found the old ticket No.003/129266 of Rs.3.25 denomination E.1, in your pocket while conducting vehicle No.131 on route 123 on 17.1.1998. The said ticket was issued by you on 22.12.1997 and accounted in the service statistical return No.A1/3414472 dt.22.12.1997 at stage No.1 in 19.24 hours trip leaving Mehdiapatnam which constitutes misconduct under Regulation 28 (xxiii) of APSRTC Employees (Conduct) Regulations, 1963.”
3. For having found the old ticket No.006/123650 of Rs.3.25 ps denomination E.1 in your pockets while conducting vehicle No.131 on route 123 on 17.1.1998. The said ticket was issued by you on 30.12.1997 at stage No.7 in 17.14 hours trip leaving Narsingi which constitutes misconduct under Regulation 28 (xxiii) of APSRTC Employees (Conduct) Regulations, 1963.
4. For having found the old ticket Nos.013/000567 to 571 of Rs.3.25 denomination E.5 in your pockets while conducting vehicle No.131 on route 123 on 17.1.1998. the said tickets were issued by you on 14.1.1998 and accounted in the service S.R.No.A1/3720571, dated 14.01.1998 at stage No.7 in 18.44 hours trip leaving Narsingi which constitutes misconduct under Regulation 28 (xxiii) of APSRTC Employees (Conduct) Regulations, 1963.

Since the respondent failed to file any explanation to the charge sheet, the Chief Inspector (Enquiries), Charminar Division was appointed as Enquiry Officer. It is stated that in spite of providing sufficient opportunity, the respondent did not attend for enquiry before the Enquiry Officer. However, enquiry was conducted by the Enquiry Officer and he filed his report stating that the charges leveled against the respondent are proved. Basing on which, the respondent was issued show-cause notice dated 19.08.1998 as to why the punishment of removal should not be imposed on the respondent. Even for the show-cause notice also, he has failed to submit any reply. Basing on the available material on record, the petitioner-Management passed order removing the respondent from service vide proceedings 15.09.1998. Against the said removal order, the respondent preferred appeal and review to the Divisional

Manager, Charminar Division and the same was considered and rejected on merits vide proceedings dated 17.02.1999. Aggrieved by the order of removal dated 15.09.1998, the respondent filed I.D.No.119 of 1998 before the Labour Court-I. The Labour Court-I, by Award dated 20.07.2001, ordered reinstatement of the respondent into service with continuity of service, 50% of back wages and attendant benefits and denied 50% of back wages and one annual increment with cumulative effect, as a measure of punishment. Aggrieved by the same, the petitioner-Management filed W.P.No.12600 of 2002.

6. Heard Sri N.Vasudeva Reddy, learned Standing Counsel for the petitioner-Management and Sri S.Pradeep Kumar, learned counsel for the respondent.

7. Sri N.Vasudeva Reddy, learned Standing Counsel for the petitioner-Management submits that the Labour Court, having come to the conclusion that the enquiry conducted by the Enquiry Officer is valid, the Labour Court should not have interfered with the award of punishment by modifying the same by granting 50% of back wages along with attendant benefits under Section 11-A of Industrial Disputes Act, 1947 by holding that the respondent did not commit any misconduct on the date of check in respect of tickets tray of way bill, which is contradictory. He would further contend that when once the Labour Court held that the charges leveled against the respondent are proved and same are serious in nature, it should not have exercised the discretion under Section 11-A of the I.D.Act, 1947 by holding otherwise. He would further contend that the respondent was found cash in excess of permissible limits, the Labour Court erred in ordering reinstatement of respondent with 50% back wages along with attendant benefits. In support of his contention, he relied on the judgment reported in **Divisional Controller, N.E.K.R.T.C v. H.Amaresh**.

8. On the other hand, Sri S.Pradeep Kumar, learned counsel for the respondent in W.P.No.12600 of 2002 (for petitioner in W.P Nos.24427 of 2002 and 15943 of 2004) submits that the Labour Court has exercised its discretion under Section 11-A of the I.D.Act, 1947, as such, this Court cannot interfere with the award passed by the Labour Court under Section 11-A of the Act. He also submits that while conducting enquiry and also while passing the impugned order of removal, the petitioner-Management has not followed the principles of natural justice. He would further contend that the petitioner-Management has not

supplied the relevant documents, though asked for. As such, the alleged enquiry conducted by the Enquiry Officer is vitiated and consequently, the order of removal is liable to be set aside. He would further contend that the Labour Court should not have denied the remaining 50% of back wages when once the order of reinstatement is ordered. He also submits that when the petitioner-Management has not alleged that the respondent was in gainful employment, the question of denial of back wages does not arise at all. He would further contend that the order of reinstatement should follow grant of full back wages instead of grant of 50% of back wages. In support of his contention, he relied on the judgment reported in **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyala (D.ED) and others**.

9. In view of above factual matrix, it is to be seen that though the respondent was issued charge memo, he never submitted any explanation and even when opportunity was given at the time of conducting enquiry, he never attended the enquiry. Though enquiry report is served on the respondent, he failed to file any explanation in respect of the same. Though sufficient opportunities were provided to him, he failed to avail the same. Similar issue was raised before the Labour Court and the Labour Court, after going through the material available on record, clearly held that the petitioner-Management had followed the procedure by issuing appropriate notice to the respondent, but the respondent has not utilized the same. Except stating that principles of natural justice have not been followed, the respondent has not brought to the notice of this Court about violation of the same. In fact, the Labour Court had elaborately dealt with the issue and held that the domestic enquiry conducted was valid and that the charges framed against the respondent are proved. As such, there is no basis for the respondent to contend that principles of natural justice have been violated. Even otherwise, this Court cannot re-appreciate the evidence by exercising power of judicial under Article 226 of the Constitution of India. In **Kalinga Mining Corporation v. Union of India and others** the Hon'ble Supreme Court held as follows:

“62....The court does not exercise the powers of an appellate court in exercise of its powers of judicial review. It is only in cases where either findings recorded by the administrative/quasi judicial authority are based on no evidence or are so perverse that no reasonable person would have reached such a conclusion on the basis of the material available that the court would be justified to interfere in the decision. The scope of judicial review is limited to the decision making

process and not to the decision itself, even if the same appears to be erroneous.”

In view of above, it cannot be said that the petitioner-Management has not followed the procedure in imposing punishment. However, while exercising discretion under Section 11-A of the Act of 1947, the Labour Court came to the conclusion that all the charges leveled against the respondent are proved, as the respondent himself admitted the charges, as such, cannot turn around and state that the petitioner did not commit any misconduct on the date of check in respect of tickets tray of way bill, therefore, the findings of the Labour Court are contrary in nature. No doubt, the Labour Court has exercised its discretion under Section 11-A of the Act of 1947 and granted order of reinstatement.

In **Divisional Controller, N.E.K.R.T.C v. H.Amaresh (supra)**, the Hon’ble Supreme Court held as follows:

“11. There is absolutely no precision in regard to the factual aspects and findings rendered by the Labour Court. In the said award, the Labour Court directed reinstatement of the respondent despite holding him guilty of the charge of pilferage levelled against him and directed reinstatement with back wages. In our view and as rightly pointed out by learned counsel for the appellant any dereliction of duty in this regard is highly detrimental to its financial well being and against public interest.

“17. The order of reinstatement passed by the Labour Court and its affirmation by the High Court is contrary to the law declared by this Court in (2001) 2 SCC 574 wherein it was held that it is misplaced sympathy by courts in awarding lesser punishments where on checking it is found that the bus conductors have either not issued tickets to a large number of passengers and deposit the same with the Corporation. They act in a fiduciary capacity and it would be a case of gross misconduct if knowingly they do not collect any fare or the correct amount of fare. It was finally held that the order of dismissal should not have been set aside. As already noticed, this view was reiterated by a 3 Judges Bench of this Court in the Regional Manager, RSRTC case.

19. In this context, it is useful to refer to the findings of the domestic tribunal which has already been extracted above in paragraph (supra). Before the Inquiry Officer Exh. M1-M4 were marked, which have not been refuted nor was the veracity of witness decided. The Inquiry Officer has stated that he has carefully examined the evidence of MW.1 and the documents marked which fully reveals that the delinquent has committed not only misconduct but misappropriated the cash. MW 1 was not cross examined by the delinquent employee. In reply, the delinquent has simply denied the charges stating it baseless. The Inquiry Officer, on a careful consideration of all aspects of the case, unhesitantly held that the

delinquent was guilty of the charges and that all the charges have been proved.

21. Coming to the question of quantum of punishment, this Court in [Divisional Controller, KSRTC \(NWKRTC\) vs. A.T. Mane](#), (2005) 3 SCC 254 has held as under:-

"Coming to the question of quantum of punishment, One should bear in mind the fact that it is not the amount of money misappropriated that becomes a primary factor for awarding punishment; on the contrary, it is the loss of confidence which is the primary factor to be taken into consideration. In our opinion, when a person is found guilty of misappropriating the Corporation's funds, there is nothing wrong in the Corporation losing confidence or faith in such a person and awarding a punishment of dismissal."

In the instant case on hand, the charges are grave in nature. The Inquiry Officer, while conducting enquiry, considered all the aspects and came to the conclusion that the charges leveled against the respondent are proved. In view of the principle laid down in the above decision, the Labour Court should not have granted reliefs, such as reinstatement and back wages to the respondent. Since the respondent has already been reinstated into service in the year 2002, even before the writ petition is filed and continuing in service, I feel that at this juncture, the order of reinstatement need not be set aside, as the petitioner has rendered almost 13 years of service. But, however, the Labour Court after finding fault with the respondent, interfered with the punishment of removal, which goes to show that the respondent is at fault. It is not the case where the removal was without following the due procedure or that the respondent is not at fault, but only punishment was modified by exercising the power under Section 11-A of the Act of 1947. When the petitioner-Management is not at fault, the question of grant of back wages does not arise.

In view of the same, the Award of the Labour Court dated 20.07.2001 in I.D.No.119 of 1998 to the extent of granting of 50% back wages and attendant benefits set aside. Since the petitioner has not worked for the period from the date of removal to the date of reinstatement, the petitioner cannot also get any benefits during that period, as such, he cannot claim notional increment. But however, there shall be continuity of service.

With the above modification to the Award of the Labour Court dated 20.07.2001 in I.D.No.119 of 1998, W.P.No.12600 of 2002 is disposed of.

As a sequel thereto, W.P.Nos. 24427 of 2002 and 15943 of 2004 are dismissed.

There shall be no order as to costs. As a sequel thereto, miscellaneous

applications, if any pending in these Writ Petitions, shall stand dismissed.

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18.09.2015.

KVS

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

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