

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION NO.3890 OF 2009

DATED:06-10-2015

Between:

N. Jangaiah ... Petitioner

And

APSRTC, Rep. by its Managing Director
Musheerabad
Hyderabad
and others ... Respondents

... Respondents

COUNSEL FOR THE PETITIONER: Mr. V. Narsimha Goud

COUNSEL FOR THE RESPONDENTS: Mr. N. Praveen Reddy, for
Mr. N. Vasudeva Reddy,
Standing Counsel for respondent

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Corporation

THE COURT MADE THE FOLLOWING:

ORDER:

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This writ petition is filed for a certiorari to quash proceedings No.02/95(33)/05-MDCL, dt.17.8.2005 of respondent No.3 and order in proceedings No.PA/20(280)05-HCR, dt.20.5.2006 of respondent No.2.

2. The petitioner, a Conductor of the respondent - State Road Transport Corporation, was charge sheeted in connection with a check administered at 5.00 p.m., on 25.04.2004 at Stage No.11/10, Lachireddygudem on route Gomaram to Secunderabad Railway Station.

The charge reads as under:

“You have failed to issue tickets to a batch of two passengers despite collecting requisite fare of Rs.6/- (i.e., Rs.3/- each) at their boarding point itself found alighting without tickets at Lachireddygudem who boarded your bus at Gomaram ex-stages 11 to 11/10.”

3. During the check, the petitioner is stated to have made a statement that he has collected fare of Rs.6/- from two passengers at the rate of Rs.3/- each and failed to issue tickets. Both the passengers have also signed the statement. Based on the enquiry report, respondent No.3 has removed the petitioner from service. The petitioner has filed a revision before respondent No.2, who by his order dt.20.5.2006, while confirming the findings rendered by respondent No.3, that the petitioner has indulged in irregularity of collecting the fare and not issuing the tickets, however, modified the penalty imposed on the petitioner by ordering his reinstatement reducing his pay by two incremental stages for a period of two years which shall have the effect of postponement of his future increments. A further penalty of treating the period from the date of removal till the date of his reporting for duty to be treated as ‘not on duty’ for all the purposes, namely, provident fund, gratuity, leave, increment, promotion, seniority etc., was also imposed. Feeling aggrieved by these penalties, the petitioner filed this writ petition.

At the hearing, Mr. V. Narasimha Goud, learned counsel for the petitioner, submitted that as a fact, the two passengers have boarded the bus after it has crossed Gomaram - Stage-11 and alighted at the very next

stage, namely, Lachireddygudem and that therefore the petitioner could not collect the fares and issue the tickets. He has further submitted that his client as well as the passengers were coerced to sign the statements prepared by the TTI to the effect that the petitioner has collected the fares but failed to issue the tickets and that both respondent Nos.2 and 3 have failed to properly consider the evidence of the passengers during the domestic enquiry wherein they have categorically stated that they have boarded the bus at Shivairam Gadda, which is 1/4th km. away from Gomaram, between Gomaram and Lachireddygudem, and have not paid the money.

In a disciplinary proceeding, proof beyond reasonable doubt is not required and preponderance of probabilities is sufficient to find an employee guilty of misconduct. In the instant case, the passengers gave conflicting statements. While the possibility of the passenger deposing in favour of the Conductor during the domestic enquiry as remarked by the TTI during cross-examination of the passengers cannot be ruled out, the passengers being coerced into making a statement against the Conductor during the check under threat of collecting penalty for ticketless travel also cannot be ruled out. Even if the petitioner's guilt is held proved, based on all preponderance of probabilities, this Court is of the opinion that the modified penalty is highly disproportionate to the proven misconduct, more so, when the order of penalty of removal from service has been modified based on the clean record of the petitioner. As the petitioner has come to the adverse notice obviously for the first time, and hopefully for the last time, I am of the opinion that he deserves a lesser penalty which must be in proportion to the gravity of the misconduct.

Regulation 8 of Classification, Control and Appeal Regulations of the Corporation provides for penalties. Clause (iv) of Regulation 8(1) envisages withholding of increments, while under clause (vii) reduction in time scale is envisaged. Respondent No.2 has evidently combined both these clauses and imposed penalties envisaged therein which is too harsh, considering the nature of misconduct. Hence, I am of the opinion that interests of justice would be met if the penalty imposed on the petitioner is limited to reduction of his pay by two incremental stages for a

period of two years only. This necessarily means that the petitioner's increments shall be restored after completion of the period of two years. As regards the direction to treat the period between the date of removal and the reinstatement of the petitioner as 'not on duty', the said period shall be treated as 'on duty' only for the purpose of payment of provident fund, gratuity, leave, seniority etc. It is, however, made clear that the petitioner is not entitled to any monetary benefits such as salary etc., during the said period.

Subject to the modification of the order of respondent No.2 as above, his order is confirmed in other respects.

The writ petition is accordingly allowed to the extent indicated above.

As a sequel to disposal of the writ petition, W.P.M.P. Nos.5060 of 2009 and 23423 of 2011 shall stand disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

06-10-2015

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