

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION NO.1165 of 2009

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Between:

The Deputy Chief Traffic Manager (Rural),
APSRTC, Vijayawada Region, Vijayawada.

PETITIONER

AND

1. The Depot Secretary, APSRTC Employees Union, Vijayawada Depot, Rep. for T. Krishna Rao, Driver, E.78135, Vijayawada-I Depot, and another.

RESPONDENTS

ORDER:

This writ petition is filed by the A.P.S.R.T.C. challenging the Award of the Labour Court, Guntur, dated 11.10.2007 passed in I.D.No.118 of 2003.

Brief facts of the case are that one T. Krishna Rao was appointed as Driver in the petitioner-Corporation and was attached to Vijayawada-I Depot. He was booked for Vijayawada-Mysore service on 31.10.1993 and reached Mysore in the morning hours on 01.11.1993. He was supposed to take link on 02.11.1993 to perform return service, but he refused to take the link service, and insisted the up-drivers to replace the broken spring blades even though it was made road worthy at Mysore garage, and refused to perform the return service and overstayed at Mysore without performing his schedule duty. A charge sheet was issued to him on 24.11.1993 with the following charges.

- i) "For having refused to take the link bus No.AP9Z 4851 at Mysore on 02.11.1993, to perform return service which constitutes misconduct vide Regulation 28(xxxi) of APSRTC Employees (Conduct) Regulation 1963."
- ii) For having insisted the up-drivers to replace the broken spring blades even though it was made road worthy at Mysore garage and refused to perform the return service on 02.11.1993 which constitutes misconduct vide Regulation 28(iii) of APSRTC Employees (Conduct) Regulation 1963."

In response to the charges, the delinquent submitted his explanation. Not satisfied with the explanation offered by the delinquent, the Depot Manager, Vijayawada-I Depot, passed orders dated 11.05.1994 imposing the punishment of deferment of increment

for a period of two years which shall have an effect on future earnings.

The delinquent filed an appeal before the 1st respondent-Deputy Chief Traffic Manager (Rural), Vijayawada, who after considering the long service rendered by the delinquent took a lenient view vide his order dated 25.06.1997 and modified the punishment as that of deferment of increment for a period of one year six months which shall have an effect on future increments.

As the delinquent is a member of the APSRTC Employees Union, Vijayawada Depot, representing the delinquent the Depot Secretary of the Union sought a reference under Section 10-1(C) of the Industrial Disputes Act in I.D.No.118 of 2003 before the Labour Court, Guntur. The Labour Court through its order dated 11.10.2007 allowed the I.D directing the petitioners herein to release the incremental benefits to the delinquent-employee. Challenging the same the present writ petition is filed.

This Court while issuing Rule Nisi on 29.01.2009 suspended the Award of the Labour Court.

Heard Sri P. Durga Prasad, learned Standing Counsel for the petitioner-Corporation, Sri P. Gopal Das, learned counsel appearing for the 1st respondent and the learned Government Pleader for Labour for 2nd respondent, and perused the material available on record.

Learned counsel for the 1st respondent contended that the primary authority as well as the appellate authority have imposed the punishment without conducting domestic enquiry as required under the Regulations for withholding of increments with cumulative effect. It was also contended that the punishment was disproportionate to the misconduct alleged to have been committed by the delinquent.

As can be seen from the record, it is evident that the delinquent submitted explanation for the charges framed against him. Not satisfied with the said explanation, the primary authority imposed the punishment of withholding of increments for a period of two years with

cumulative effect. In appeal the Deputy Chief Traffic Manager (Rural) reduced the same to that of deferment of annual increments for one year six months with cumulative effect. In the Industrial Dispute raised by the delinquent, the Labour Court categorically recorded a finding that refusal to perform return service the delinquent on 02.11.1993 was on account of the fact that there was a major repair that was required to be done to the bus, by replacing the broken spring. Though the same was got repaired at Mysore garage, the delinquent employee being an experienced driver was not satisfied with the repair as the journey from Mysore to Vijayawada is about 800 kms. As a matter of fact, the repaired bus met with an accident at Guduru being driven by another driver thereby confirming the fear of the delinquent-driver that even after repair the vehicle is not road worthy.

These aspects, particularly, the bus not being road worthy, is born on record and the same has been confirmed in evidence before the Labour Court. In other words, the delinquent employee had a reasonable cause for refusing to perform return service back to Vijayawada and he was justified in his refusal. In the above fact situation, the Labour Court did not find it justifiable to impose a major punishment of deferment of annual increments for a period of one year and six months with cumulative effect.

One another fact which the Labour Court had taken into consideration in setting aside the punishment is the dictum as enunciated by the Supreme Court in **Kulwant Singh Gill v. State of Punjab**^[1] to the effect that stoppage of annual increments with cumulative effect is a major punishment and as such conducting of domestic enquiry is mandatory.

In the present case, it is an admitted fact that no domestic enquiry was conducted. In other words, both on facts and law the petitioner-Corporation failed to sustain its order imposing major punishment against the delinquent employee. There being no illegality in the order passed by the Labour Court in I.D.No.118 of 2003, no

interference is called for. The writ petition is devoid of merits and the same is liable to be dismissed.

Accordingly, the writ petition is dismissed. As a sequel, pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

CHALLA KODANDA RAM, J.

28th December, 2015
Js.

[\[1\]](#) 1991 Supp (1) SCC 504