

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 3173 of 2006

ORDER:

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Heard Sri N.Vasudeva Reddy, learned counsel appearing for the petitioner and perused the record. In spite of service of notice there is no representation on behalf of respondent No.1.

The present writ petition came to be filed seeking issuance of writ of mandamus to declare the impugned award dated 02.07.2004 passed in I.D.No.131 of 2004 on the file of the Labour Court-II, Hyderabad, as illegal and arbitrary; and consequently to set-aside the same.

For the sake of convenience the parties will hereinafter be referred to as arrayed in I.D.

The petitioner filed an application under Section 2-A (2) of the Industrial Disputes Act, to set aside the order of the respondent in his proceedings No. 02/95 (11)/2002-BDN, dated 04.07.2002 wherein and whereunder he was removed from service. The averments in the I.D. disclose that the petitioner joined as conductor in APSRTC in the year 1974 and after regularization of services, he was attached to Bodan Depot. On 25.04.2002 the petitioner was on duty as conductor in the RTC bus No.9433 which was running from Nizamabad to Bodhan. When the said bus was checked at stage No.4/3, the checking officials found that the petitioner having collected Rs.25/- from a batch of three passengers including a chargeable child passenger issued correct tickets to both the adult passengers but the ticket issued to the child passenger was found to be reissued ticket

since the petitioner already issued the said ticket in the earlier trip from Nizamabad to Dhupally. The checking officials also found that the petitioner also collected a sum of Rs.6.50 from a passenger traveling from Nizamabad to Sathapur Cross roads, reissued the ticket bearing No. 303/606814 of Rs.6.50 which was already issued and accounted in the previous trip from Jankampet to Bodhan at 4.30 hours. After completing the checking formalities, the TTIs have issued the charge memo and check sheet to the petitioner. An explanation was given to the charge memo on 01.05.2002, but however the checking officials reported the matter to the respondent. Two charges came to be framed and a charge sheet dated 08.05.2002 was issued to the petitioner. Not being satisfied with the explanation given by the petitioner on 11.05.2002, regular domestic enquiry was ordered. One passenger was examined during the enquiry and after examining the checking officials, the Chief Inspector (E), Nizamabad (Enquiry Officer) submitted a report dated 15.06.2002 holding that both the charges framed against the petitioner are proved. Objections were called for from the petitioner. Though the petitioner submitted his objections on 24.06.2002, the respondent issued a show cause notice to the petitioner for removal of the petitioner. The petitioner submitted his explanation on 01.07.2002. On 04.07.2002 the respondent passed order removing the petitioner from service. Aggrieved by the same, the petitioner filed an appeal before the Divisional Manager, Nizamabad, which was rejected on 26.09.2002 and a review petition was filed before the Regional Manager, Nizamabad, which was also rejected on 28.01.2003. Challenging the same, the petitioner filed an application under Section 2-A (2) of the Industrial Disputes Act. During the course of trial, no oral

evidence has been adduced on behalf of either side but the respondents Corporation placed on record a file relating to the domestic enquiry conducted against the petitioner, which was marked as Ex.M1. After considering the material available on record, the Labour Court directed the respondent to reinstate the petitioner into service without back wages but with continuity of service and notional increments. After reinstatement the respondent is at liberty to defer two annual increments of the petitioner with cumulative effect. Challenging the same, the respondent Corporation preferred the present writ petition.

Though notice was served on the employee, none filed vakalat on his behalf. It is also brought to the notice of the Court that the petitioner might have retired from service long back.

The finding of the Labour Court which was based on the enquiry file placed before him would show that in the concerned column of the S.R. where check particulars are to be entered the checking officials first stated that there are 15+3 passengers and in the second column the checking officials stated that there are 32 passengers traveling without tickets. They made alterations regarding the number of passengers traveling in the bus. Therefore, there appears to be some interpolation and overwriting in the documents relied upon by the Corporation. The S.R. maintained by the petitioner would go to show that at the check stage there were in all 18 passengers and the said figure is also put by the petitioner in the concerned column of the S.R. This indicates that all the 18 passengers got valid tickets with them and if at all two passengers have shown invalid tickets, then the number of passengers shall be $18+2 = 20$ but it cannot be $16+2 = 18$ as endorsed by the checking officials on the reverse side of

the S.R. When one of the passengers, who was examined at the spot, stated that he boarded the bus at Nizamabad to go to Sathapur gate and he neither paid fare to the conductor nor obtained any ticket from him. His version is that by the time of check he was traveling without ticket and because of fear he gave a false statement to avoid payment of penalty. This witness was not cross examined by the enquiry officer or by the checking officials in whose presence the said statement was recorded. Therefore, from the very document which was made part of the enquiry report, it is clear that the checking officials have not considered the number of passengers traveling in the bus at the time of checking and gave a version as if 32 passengers were traveling in the bus without tickets.

The other irregularity which is said to have been committed by the petitioner is that he failed to issue ticket to a passenger who boarded the bus at Nizamabad and intending to travel upto Sathapur gate. It was also admitted by the petitioner in the spot explanation, which is also supported by the evidence of passenger. In the absence of any explanation given by the petitioner as to how and why he failed to issue ticket, he has to be found fault with and as such part of the charge framed against the petitioner stand proved. However, the Labour Court found that the petitioner has not committed serious irregularity which warrants removal from service. The discretion exercised by the Labour Court in ordering reinstatement of the petitioner without back wages but with continuity of service and to defer two annual increments of the petitioner with cumulative effect, cannot be said to be disproportionate or commensurate to the alleged irregularity committed by the petitioner.

Having regard to the circumstances stated above and since the petitioner has already retired from service, the order under challenge warrants no interference.

Accordingly, the writ petition is dismissed. No order as to costs. Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

**JUSTICE C. PRAVEEN
KUMAR**

10.12.2015
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