

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 17895 of 2001

ORDER:

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Assailing the order dated 02.01.2001 passed in I.D.No.145 of 1998 on the file of the Industrial Tribunal-cum-Labour Court, Anantapur, the employee preferred the present writ petition.

The facts which lead to filing of the writ petition are as under:

The petitioner herein joined in the service of the Andhra Pradesh State Road Transport Corporation (hereinafter referred to as “the Corporation”) as a conductor in the year 1984. Since the date of joining in service, the petitioner discharged his services to the best of his ability without any blemish. The petitioner was elected as Deputy Secretary of the Corporation, National Mazdoor Union. Because of the activities of the petitioner in the union, the then Manager is alleged to have bore grudge against the petitioner, and lodged a false report against the petitioner alleging that on 05.06.1997 the petitioner abused one B.Kodandapani in filthy language in a drunken state. The police investigated into the matter and filed a charge sheet against the petitioner for an offence punishable under Section 353 IPC which was taken on file as C.C.No.151 of 1997 for the offences punishable under Sections 353 and 501 IPC. While things stood thus, the Depot Manager, Warangal, issued charge sheet against the petitioner leveling the following charges.

1. For having assaulted Sri B.Kodandapani, Depot Manager, Madanapalli-II Depot on 05.06.1997 at about 22.12 hours, while he was at his residence which constitutes misconduct under Regulation 28 (xviii) of APSRTC Employees (Conduct) Regulations, 1963.
2. For having approached Sri Kodandapani, Depot Manager, Madanapalli-II Depot in his residence in drunken condition which constitutes as misconduct under Regulation 28 (xviii) of APSRTC Employees (Conduct) Regulations, 1963.
3. For having approached Sri Kodandapani, Depot Manager, Madanapalli-II Depot at his residence in the night time and

questioned about the refund of earnest money deposit of K.R.Nagendra Babu, Sweeping contractor and thus unnecessarily interfered in the official duty of the Depot Manager, Madanapalli-II Depot which constitutes misconduct under Regulation 28 (xxxi) of APSRTC Employees (Conduct) Regulations, 1963.

After enquiring into the allegations made, the petitioner was removed from service by the Depot Manager vide proceedings No.APSRTC 01/34(3) 97 dated 25.11.1997. Questioning the order of removal, the petitioner filed a writ petition before this Court but however the same was disposed of directing the petitioner to approach the Labour Court. Accordingly, the petitioner raised a dispute before the Industrial Tribunal-cum-Labour Court, Anantapur in I.D.No.145 of 1998. No oral or documentary evidence was adduced in the said I.D., but however having regard to the arguments advanced and perusing the record placed before the Court, the Industrial Tribunal-cum-Labour Court directed the respondents to reinstate the petitioner into service with continuity of service but without back wages. Challenging the said order the present writ petition is filed.

Learned counsel for the petitioner mainly submits that having ordered reinstatement of the petitioner with continuity of service, denial of back wages is illegal. He further submits that the criminal case which has been registered against the petitioner ended in acquittal vide judgment dated 13.01.2000. In view of the acquittal of the petitioner in criminal case he submits that the petitioner is entitled to all the benefits including full remuneration for the period of removal from service. Relying upon the judgment of this Court in **the District Manger, A.P.State Road Transport Corporation, Bhimavaram v. Labour Court, Guntgur and another**, the counsel submits that the order of suspension merges in and automatically ceases to be operative upon passing the final order of acquittal in criminal proceedings.

The counsel for the Corporation opposed the same, contending that acquittal in a criminal case would not entitle the petitioner to all consequential benefits including back wages as no material is placed or pleaded to show that he was not gainfully employed during the said period. Relying upon a judgment of this Court in **R.Sankaraiah v. Managing Director, A.P.S.R.T.C., Hyderabad and others**, wherein a Division Bench of this Court held that findings recorded in

criminal proceedings will have no effect on previously concluded domestic enquiry even though criminal proceedings were also initiated on the same allegations and the acquittal of the delinquent in the criminal proceedings by giving benefit of doubt, the counsel for the Corporation submitted that there are no merits in the writ petition.

The short question that falls for consideration is whether the petitioner is entitled to back wages once he is ordered to be reinstated with continuity of service.

Insofar as the effect of acquittal in a criminal case which is made the basis for suspension is concerned, the Apex Court in **The Divisional Controller, KSRTC v. M.G.Vittal Rao** dealt with similar situation and held as under :

“24. The domestic enquiry found the delinquent employee guilty of all the charges. The enquiry report was accepted by the Disciplinary Authority and there is no grievance on behalf of the respondent-workman that statutory provisions/principles of natural justice have not been observed while conducting the enquiry. The Disciplinary Authority imposed the punishment of dismissal from service which cannot be held to be disproportionate or non-commensurate to the delinquency. The Labour Court after reconsidering the whole case came to the conclusion that the enquiry has been conducted strictly in accordance with law in a fair manner and charges have rightly been proved against the delinquent employee. However, considering the difference in the standard of proof required in domestic enquiry, vis-à-vis that applicable to a criminal case, the Labour Court repelled the argument of respondent-workman that once he stood acquitted he was entitled for all reliefs including re-instatement and back wages. The learned Single Judge as well as the Division Bench had simply decided the case taking into consideration the acquittal of delinquent employee and nothing else.

25. In view of the aforesaid settled legal propositions that there is no finding by the High Court that the charges leveled in the domestic enquiry had been the same which were in the criminal trial; the witnesses had been the same; there were no additional or extra witnesses; and without considering the gravity of the charge, we are of the view that the award of the Labour Court did not warrant any interference. Be that as it may, the learned Single Judge had granted relief to the delinquent employee which was not challenged by the present appellant by filing writ appeal. Therefore, the delinquent employee is entitled for the said relief.”

In **G.M. Tank v. State of Gujarat and another**, one of the issue which came up for consideration before the Apex Court, was whether an acquittal on merits amounting to clear exoneration of the appellant by the Special Court under the P.C. Act does ipso facto absolve the appellant from the liability under the disciplinary jurisdiction when the charges leveled against the appellant in the departmental proceedings and the criminal proceeding are grounded on the same set of facts, charges, circumstances and evidence. Dealing with the said issue and after referring to various authorities on the subject, the Court held as under :

“16. In our opinion, such facts and evidence in the department as well as criminal proceedings being the same without there being any iota of difference; the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though finding recorded in the domestic enquiry was found to be valid by the courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony's case (supra) will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed.”

In **Deputy Inspector General of Police and another v. S.Samuthiram** the Apex Court in paragraph 23 of the judgment held that mere acquittal of an employee by a criminal court has no impact on the disciplinary proceedings initiated by the Department. It was held that non-examination of two key witnesses before the criminal court was a serious flaw in the conduct of the criminal case by the prosecution. The Court held that in the facts and circumstances of the case, the possibility of winning over P.Ws.1 and 2 in criminal case cannot be ruled out. There was no explanation as to why the prosecution had not examined Head Constable, Adiyodi and Peter of Tenkasi Police Station. It was found that these two constables who took the respondent from the scene of offence along with P.Ws.1 and 2 to the police station and it is in their presence the complaint was registered. Having regard to the factual situation therein, the Apex Court acquitted only due to fact that P.Ws.1 and 2 turned hostile and other prosecution witnesses were not examined. Dealing with the word “honourable acquittal” the Court held that in the absence of any

provision in the service rules for reinstatement, if an employee is honourably acquitted by a criminal court, no right is conferred on the employee to claim any benefit including reinstatement. Reason being that the standard of proof required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceeding is entirely different. In the said case the Apex Court having found that the accused was honorably acquitted by the criminal court held that he is not entitled to claim reinstatement since the Tamil Nadu Service Rules do not provided so.

From the judgments referred to above one thing that emerges out is acquittal in a criminal case by giving benefit of doubt or even if he is Honorably acquitted but if the rules do not provide for, the reinstatement is not automatic. The situation on hand is totally different. The accused was tried for offences punishable under Sections 353 and 510 of the Indian Penal Code vide C.C. No.151 of 1997 on the file of II Additional Judicial First Class Magistrate, Madanapalli. The learned Magistrate after considering the evidence of P.Ws.1 to 4 and Exs.P-1 to P-3 which were placed on record by the prosecution and also the evidence of defence through D.Ws.1 and 2 and Exs.D-1 to D-4 held that it is doubtful whether the accused has committed any assault or used any criminal force against the complainant. It was also held that Ex.P-1 report is prepared after discussion with the Police Officers. Hence, it was held that accused was entitled for benefit of doubt. The court also held that the occurrence of the incident is not believable as it was not corroborated by any independent witness. Insofar as the offence under Section 510 of the Indian Penal Code is concerned, the Medical Officer, who was examined as P.W.3 stated that the accused consumed alcohol but the incident did not occur under its influence. Having regard to the said circumstances, the Court held that the prosecution miserably failed to prove the guilt of the accused beyond all reasonable doubts.

A reading of the judgment of the trial court shows that the accused was acquitted beyond reasonable doubt insofar as the offence under Section 510 of the Indian Penal Code is concerned, and he was acquitted under Section 353/352 IPC by giving benefit of doubt. But, however, the Court found that the

incident of assaulting P.W.1 is not believable as it is not corroborated by any independent witness.

One fact which is to be noted herein is that the labour Court while deciding the I.D. held that the State Transport Corporation failed to follow the principles of natural justice; that the Corporation failed to give opportunity to the petitioner in person and ordered reinstatement with continuity of service but however without back wages. Under those circumstances, the issue for consideration would be “Whether the petitioner can be denied payment of back wages when once he is reinstated with continuity of service, on the ground of violation of principles of natural justice.

The issue as to whether the petitioner is entitled for back wages on being reinstated into service with continuity of service came up for consideration before the Apex Court in ***Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyala and others.***

The Apex Court after referring to all the judgments on the subject including the judgments of the Apex Court in ***J.K.Synthetics Ltd. V. K.P.Agrawal*** and ***Zilla Parishad, Gachiroli v. Prakash*** held as under:

- i. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.
- ii. The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.
- iii. Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to

prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

- iv. The cases in which the Labour Court/Industrial Tribunal exercises power under [Section 11-A](#) of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and / or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.
- v. The cases in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the concerned Court or Tribunal will be fully justified in directing payment of full back wages.

Therefore, from the judgment of the Apex Court, it is clear that awarding back wages is not permissible in all the circumstances. The petitioner in his affidavit filed before this Court pleaded that from the date of removal of service he did not secure any employment. The same is neither disputed by the Corporation nor did they make an effort to rebut the same. Further, the Industrial Tribunal while allowing the I.D. held that the respondents failed to give an opportunity to hear the petitioner in person. The said finding has become final as the same is not challenged by the Corporation. That being the position and having regard to the findings of the Apex Court in the judgment referred to above wherein it has been held that where there is a gross violation of principles of natural justice the Court or Tribunal is justified in directing the payment of full back wages, the petitioner is entitled for the relief sought for in this writ petition.

For the aforesaid reasons the writ petition is allowed and the petitioner is held entitled to back wages for the period he was out of service. There shall be no order as to costs. Consequently, miscellaneous petitions, if any, pending in

this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

22.09.2015

gkv/gm