

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.37079 OF 2015

Date:25.11.2015

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Between :

Ch.Raghavulu s/o. Vishwanandham, Aged 51 years,
Occu: Conductor, E.No.250105, R/o.3-5-76/7/10/1,
Satya Sai Nagar, New Bus Stand, Sangareddy,
Medak District.

.... Petitioner

and

Telangana State Road Transport Corporation,
Rep.by its Managing Director, Bus Bhavan,
Musheerabad, Hyderabad and others.

.... Respondents

This Court made the following :

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ORDER:

Disciplinary proceedings were initiated against the petitioner, while he was working as Conductor by the Depot Manager, TSRTC, Zaheerabad, Medak District (the 5th respondent), on the allegation of cash and ticket irregularities. The said disciplinary proceedings resulted in removal from service by order dated 31.07.2014. Petitioner was unsuccessful in convincing the appellate and reviewing authorities to set aside the punishment imposed against him. As a lost resort, petitioner went before the Executive Director, Hyderabad, the 2nd respondent against the punishment imposed on him. Treating it as a Mercy Petition, the same was considered and the 2nd respondent by order dated 27.07.2015, modified the punishment imposed against the petitioner directing reinstatement into service as Conductor afresh. The petitioner

was admitted to duty on 04.08.2015. However, challenging the order passed by the 2nd respondent, this Writ Petition is filed by the petitioner.

2. Learned counsel for the petitioner contends that the order passed by the 2nd respondent is in consequence to the disciplinary proceedings initiated and such order has to be within the four corners of the Clarification, Control and Appeal Regulations, 1967 (for short, 'the Regulations'). These Regulations do not prescribe punishment of appointment as a fresh Conductor. Therefore, the 2nd respondent erred in treating petitioner appointment as a fresh appointment, having directed his reinstatement. According to learned counsel for the petitioner, initially the petitioner joined in service in December, 1986 and his services were regularised on 01.09.1987. The order impugned in this Writ Petition wipes out the entire service rendered by the petitioner till 04.08.2014. Learned counsel therefore submits that the order is illegal and liable to be set aside on that ground alone.

3. He further submits that if said contention is accepted, matter requires reconsideration. However, having regard to the long drawn disciplinary proceedings, instead of remitting the matter, the court may substitute the punishment and give quietus to the litigation. In support of his submissions, learned counsel for the petitioner has placed reliance on earlier orders of this Court in several Writ Petitions. The main case being W.P.No.12857 of 2011 disposed of on 28.04.2011. In the said case, similar order as impugned in this writ petition was passed. Having declared such order as illegal, instead of remitting the matter, this court modified the punishment holding that the petitioner is entitled to continuity of service from the date of dismissal to reinstatement but not entitled to monetary or other benefits treating the removal period as not spent on duty. Learned counsel for the petitioner prays for similar relief in the present case also.

4. In support of the said submission, the petitioner has also filed affidavit stating that he is giving up the claim of monetary benefits for the period of out of duty after his removal.

5. Learned Standing Counsel made extensive submissions. He contends that the 2nd respondent passed the order by considering the Mercy Petition filed by the petitioner and therefore the same is validly made. It is not issued as a measure of punishment in exercise of disciplinary control but more on humanitarian grounds. He further submits that past history of the petitioner was also not good. Earlier he was removed from service and later reinstated into service. The 2nd respondent, taking note of these facts and considering the Mercy Petition filed by the petitioner, passed the order appointing the petitioner as Conductor afresh and therefore it is not illegal.

6. On the submission of learned counsel for petitioner for substitution of punishment instead of remitting the matter, learned standing counsel submits that the facts in W.P.No.12857 of 2011 are distinguishable to the facts of the present case. From a reading of the order in W.P.No.12857 of 2011, dated 28.04.2011, it appears that the petitioner therein rendered unblemished service. However, in the instance case, the petitioner cannot be treated on par with the petitioner in the earlier case. He therefore submits that even assuming that the said order is not valid and liable to be set aside, the matter requires to be remitted to the same authority for re-consideration.

7. I have given my anxious consideration to the rival claims.

8. The petitioner was aggrieved by the order of removal from service, dated 31.07.2014, which was confirmed by the appellate and reviewing authorities. As a final resort, he submitted petition to the Executive Director. The order of the Executive Director would show that he considers the plea of the petitioner sympathetically and orders reinstatement. On reinstatement he intends to impose some punishment. The punishment imposed in the order impugned is appointment as a fresh Conductor. The order of the Executive Director was issued in continuation to the disciplinary action initiated against petitioner which resulted in imposing punishment of removal from service. Disciplinary action and imposing of punishment against an employee is governed by 'the Regulations'. 'The Regulations' prescribe various kinds of punishments, ranging from removal from service to minor punishment such as stoppage of annual increments depending on the nature of

allegations established. 'The Regulations' do not provide for punishment in the form of appointment as a fresh candidate. Whenever an authority considers plea of employee against whom disciplinary proceedings were initiated, the said authority has to act within the four corners of 'the Regulations' and cannot go beyond those 'regulations'. Therefore, imposing of such punishment is illegal. The same issue was considered by this Court in the earlier Writ Petitions which were relied upon by the learned counsel for the petitioner.

9. Since the order of the 2nd respondent, dated 27.07.2015, is not sustainable, ordinarily the matter should be remitted back to the same authority for re-consideration of the issue. However, having regard to the long history of the litigation and the plea raised by the petitioner and in view of earlier orders of this Court, I am inclined to impose appropriate punishment as warranted in the facts of this case instead of remanding the matter.

10. The facts of this case would show that the 2nd respondent was of the opinion that the petitioner be inducted into service. The only question remains is what kind of punishment be meted out to the petitioner and treatment of the period of out of employment.

11. Since the petitioner was removed from service on the allegation of cash and ticket irregularities and he has previously had similar misconduct, the relief that was granted by this Court in W.P.No.12857 of 2011, dated 28.04.2011, cannot be granted and the petitioner has to be imposed with more stringent punishment. In the facts of this case, I am of the opinion that interests of justice would be served, if the petitioner is imposed with the punishment of two increments with cumulative effect, while granting him continuity of service. However, he is also not entitled to claim monetary benefits or any other benefits for the period between removal from service to induction into service.

12. The Writ Petition is allowed accordingly. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

P. NAVEEN RAO, J

Date: 25.11.2015

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