

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

W.P.No.5423 OF 2002

ORDER

This writ petition is filed questioning the award dated 30.06.2001 of the Labour Court in I.D.No.124/1998 wherein the Labour Court ordered reinstatement of 1st respondent into service with full backwages with continuity of service.

The brief facts of the case are:

The 1st respondent was appointed as conductor in petitioner's organisation with effect from 30.04.1975. While so, on 19.02.1997, while the 1st respondent was discharging his duties on bus route from Avanigadda to Tirupati, a surprise check was conducted by the APSRTC checking officials during which, an amount for Rs.74/- was found short in the bus cash and also found alterations in S.Rs. bearing Nos.1156330 and 1156331 dated 18/19-2-97 and issued a charge memo dated 14.03.1997. Basing on the report of the Chief Inspector, a charge sheet was issued to the 1st respondent on 17.04.1997 duly placing him under suspension pending enquiry. In pursuant to the charge sheet issued, the 1st respondent submitted his explanation on 06.05.1997. Since the explanation submitted by the 1st respondent was not satisfactory, an Enquiry Officer was appointed and after conducting enquiry, he submitted a report dated 15.08.1997 holding that the charges levelled against the 1st respondent are proved. Thereafter, a show cause notice dated 27.09.1997 was issued to the 1st respondent asking him to explain as to why he should not be removed from services of the Corporation. The 1st respondent submitted his explanation on 13.10.1997. Being unsatisfied with the said explanation, a final order of removal was passed on 13.10.1997. Aggrieved by the same, the 1st respondent preferred an appeal and the same was considered and rejected by the appellate authority vide order dated 22.02.1998. Against the said order, the 1st

respondent raised a dispute in I.D.No.124/1998 before the Labour Court, Guntur, where in it has passed an award dated 30.06.2001 directing the petitioner to reinstate the 1st respondent into service with full back wages and continuity of service. Hence, the present writ petition.

Learned Standing counsel for the petitioner submits that serious charges are levelled against the 1st respondent i.e., a shortage of an amount of Rs.74/- was found in the cash bag and also misappropriation in SRs. He further submits that the Enquiry officer after scrutinizing the evidence held that the charges are proved against the 1st respondent which are also confirmed by the Disciplinary authority, as such the Disciplinary authority rightly passed the order of removal. But the Labour Court without any basis ordered reinstatement with continuity of service. He also submits that once the domestic enquiry is held against the 1st respondent and procedure is followed, the Labour Court cannot interfere with the same. He also submits the punishment imposed cannot be interfered by the Labour Court unless the punishment imposed is shockingly disproportionate to the charges proved. In support of his contentions he relied on judgment reported in ***Divisional Controller, N.E.K.R.T.C. versus H.Ramesh***^[1].

On the other hand, learned counsel for the respondents submits that charges levelled against the 1st respondent are vague and there is no loss to the Corporation. The shortage of the amount found in the cash bag was recovered from the 1st respondent's salary. He also submits that the Labour Court found charge No.2 as vague and is not proved and has rightly held that the order of removal is not legal and valid and thereby passed an award reinstating the 1st respondent into service with full back wages and continuity of service. He further submits that in terms of the order passed by the Labour Court, the 1st respondent was reinstated into service and also retired on superannuation; as such this Court cannot interfere with the same by exercising judicial review under Article 226 of

Constitution of India.

In this case, it has to be seen that though 2 charges levelled against the 1st respondent i.e., shortage of amount of Rs.74/- in the cash bag and alteration of SRs, are proved in the enquiry conducted by the Enquiry Officer, the Labour Court found that 1st charge is proved, but held that since the same is recovered from the salary of the petitioner, the same will not amount to misappropriation. As far as the 2nd charge is concerned i.e., alteration of SR's, the Labour Court held that charges are vague and are not proved. The Labour Court has not discussed the issue why it came to the said conclusion and has not recorded any reasons for setting aside the findings of the Domestic Enquiry. No doubt when there is misappropriation and charges are proved, the punishment of removal cannot be termed as illegal as per the judgment reported in ***Divisional Controller's case***. But in this case, as the charge of misappropriation is held to be not proved, the ratio laid in the above judgment will not be applicable to the present case. Normally, the Tribunal and the Courts will not interfere with facts basing on evidence without any basis. In view of the same, the award of the Labour Court is liable to be set aside. However, by virtue of orders of the Labour Court, the petitioner was reinstated into service and retired on superannuation. More so, the punishment of removal from service is shockingly disproportionate and the Labour Court has exercised its discretion and set aside the punishment. This Court granted interim order directing the petitioner to deposit half of the back wages awarded by the Tribunal and also permitted the 1st respondent to withdrawn the same. Accordingly, the 1st respondent has withdrawn the said amount.

In view of the above facts and circumstances and in the interest of justice, as the Labour Court has not given any cogent reasons as to why full back wages are awarded, I feel that the award of the Labour Court to the extent of back wages be modified from reinstatement of 1st respondent into service with full back wages to reinstatement into service

with 50% of the back wages which are already deposited by the petitioner and withdrawn by the 1st respondent.

Accordingly, the writ petition is disposed of with the above modification. There shall be no order as to costs.

As a sequel, miscellaneous petitions pending if any, shall stand closed.

A.RAJASHEKER REDDY,J

Date: 20.08.2015

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[\[1\]](#) (2006) 6 Supreme Court Cases 187