

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Writ Petition No. 26465 of 2010

Order:

The petitioner was appointed as a Conductor in the second respondent – Corporation in the year 1986. While so, when the petitioner was performing his duties on 06.01.1994 on the route from Afzalgunj to Peddamangalaram a check was conducted at stage No.16, Moinabad. Based on the note prepared by the checking officials the following charges were framed against the petitioner.

“(i) For having failed to complete the ticket issues within one fare stage and failed to observe TIC point.

(ii) For having failed to collect fare and issue ticket to a batch of two lady passengers found traveling without tickets from Peddamangalaram to Bandlaguda, ex-stages 17 to 9.

(iii) For having failed to collect fare and issue ticket to a batch of three passengers found alighting without tickets at Moinabad and traveled from Peddamangalaram ex-stages 17 to 16.

(iv) For having operating the service late by 20 minutes on 06.01.1994.”

2. The petitioner submitted an explanation denying the said charges. In view of the same, an enquiry was conducted by the Enquiry Officer, who submitted his report. Based on the report submitted by the Enquiry Officer, a show cause notice was issued and the petitioner was removed from service on 29.04.1994. Challenging the same, the petitioner preferred an appeal before the appellate authority and the appellate authority confirmed the order of termination of service of the petitioner. Though the petitioner submitted a review petition, the same was also dismissed. Thereafter, challenging the order of termination, the petitioner filed ID No.73 of 1995 before the Labour Court-I, Hyderabad, The Labour Court, based on the documentary evidence adduced before it, held that the order of termination of service of the petitioner dated 29.04.1994 is bad and the

petitioner was ordered to be appointed as “Fresh Conductor” for all purposes except for pensionary benefits. The relevant portion of the order reads as follows.

“In the result, award is passed partly allowing the petition, but without costs and order passed by the respondent in terminating the services of the petitioner under proceedings No.SPA/62(2)/94-MP, dated 29.04.1994 is set aside, and he is ordered to be appointed as a “Fresher” i.e., as a “Fresh Conductor” for all purposes except for ‘Pensionary Benefits’.

- a) Consequently, he i.e., petitioner is not entitled to continuity of previous service, not to claim any back wages i.e., any salary or any emoluments, or any remuneration or any allowance or any attendant benefits.
- b) It is further ordered that for a period of one and half (1 1/2) years i.e., eighteen (18) months from the date of his actually reporting for duty and actually commencing performing duty subsequent to the receipt of order of appointment and posting, he has to work on seventy five percent (75%) of his gross, total and entire salary.
- c) Award shall come into force after thirty (30) days of publication of the ‘Notification’ issued by the Government.
- d) Within sixty (60) days of its publication, the petitioner should approach the respondent with a request to issue order of appointment and posting.
- e) The request should be made in writing and the letter should be sent under “Registered Post with Acknowledgment Due” only and in no other manner. Its copy should be marked to this Court, which should be dispatched under certificate of posting.
- f) If he, i.e., the petitioner fails to act and fails to approach the respondent in time and in the manner as stated above, the petition, i.e., this petition shall be deemed to have been dismissed, and the respondent need not take any cognizance of any representation made by the petitioner, and need not issue order of appointment and posting.
- g) The respondent should issue order of appointment and posting within thirty (30) days of the receipt of the letter of the petitioner which should be issued at the address mentioned by the petitioner in the letter, but it should be dispatched under registered post with acknowledgment due.

- h) The petitioner should report for duty within fifteen (15) days of the receipt of the order of appointment and posting at the place posted, failing which, the petition shall be deemed to have been dismissed, and his request rejected.
- i) The petitioner would be entitled to his salary and attendant benefits subject to the condition mentioned in clause (b) from the date of actually reporting for duty i.e., actually starting working subsequent to the receipt of order of appointment and posting.
- j) For purposes of pensionary benefits only: his previous service shall be notionally taken into consideration, but not either for claiming back wages or any attendant benefits or seniority etc., and for all such purposes, he shall be treated as a Fresh Appointee.”

3. Challenging the said award directing to appoint the petitioner as a “Fresh Conductor”, the present writ petition was filed.

4. The only point raised by the learned counsel for the petitioner before this Court is with regard to Circular, dated 17.03.1992, which was issued amending item No.II D (b) of the earlier Circular, dated 24.09.1991, in respect of job security to Conductors. Learned counsel for the petitioner submits that, as per the amended circular, SR should be closed at alternate stage in city/town services, whereas in the instant case since the check was conducted at stage No.16 after leaving stage No.17, the said circular is applicable to the petitioner and she has fairly submitted that the benefit of the said circular was not taken at the time of consideration of the case before the Labour Court as it was not argued before the Labour Court.

5. Since the said circular will have bearing on the entire case, this Court feels it just and proper to set aside the impugned award passed in ID No.73 of 1995, dated 29.08.1996, and remand the matter to the Labour Court-I, Hyderabad, for hearing the arguments of the learned counsel for the petitioner and the respondent – Corporation on the application of the said Circular, dated 17.03.1992, to the facts of the

case on the basis of material already available on record. The Labour Court shall allow the counsel for the petitioner to file a copy of the said circular and hear the counsel for the petitioner and the respondent – Corporation on the application of the said Circular and its bearing on the facts of the case in the light of the material available on record. In view of the reinstatement of the petitioner pursuant to the award, the reinstatement of the petitioner shall not be disturbed pending consideration of the ID consequent to remand and the award shall not be modified to the disadvantage of the petitioner consequent to the remand. The only point that has to be considered by the Labour Court is with regard to application of the Circular, dated 17.03.1992, to the facts of the case and by virtue of the consideration of that point whether the award requires modification in favour of the petitioner or not. The Labour Court shall endeavour to dispose of the case as expeditiously as possible, but not later than three (3) months from the date of receipt of a copy of this order.

6. The Writ Petition is, accordingly, allowed to the extent as indicated above. There shall be no order as to costs.

7. As a sequel thereto, the miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

A.
Date: 24.02.2016
Nsr

RAMALINGESWARA RAO, J.