

HON'BLE SRI JUSTICE S.V.BHATT

W.P. No.3801 OF 2006

ORDER:

The petitioner prays for writ of Mandamus declaring the action of the 1st respondent in issuing the proceedings No.PA/19(47)/045RM(G) dated 11.11.2005 in so far as imposing punishment of deferment of annual increment for a period of two years with cumulative effect and treating intervening period from the date of suspension till petitioner reports for duty at the Depot on reinstatement as 'Not on duty' for all purposes, as illegal and arbitrary and consequently to set aside the same.

The case of petitioner is that he was appointed as Conductor in the respondent Corporation in the year 1998. While the petitioner was performing his duties on bus bearing No. AP 10 Z210 from Dachepalli to Thengada on 02.09.2004, a check was carried out by the checking officials at stage No.5/6. Though there was no cash and ticket irregularities on part of the petitioner the checking officials framed false case of cash and ticket irregularity. Basing upon the said allegation the petitioner was issued the following charge sheet dated 16.09.2004.

"For having collected fare and not issued ticket to a passenger who boarded the bus at Dachepalli and bound for Gottimukkalla, at stage 5 to 5/6 which constitutes mis-conduct vide Regulations No.28 (ix-a) of APSRTC Employees (Conduct) Regulations, 1963."

The petitioner gave explanation to the said charge sheet denying the charge. However, the 3rd respondent without considering the facts and circumstances, appointed an Enquiry

Officer to conduct enquiry into the charge. The Enquiry Officer conducted enquiry in gross violation of principles of natural justice and made the petitioner guilty of the charge in his enquiry report dated 12.01.2005. According to petitioner, the findings are not supported by evidence. Basing on the said report, the 3rd respondent issued show-cause notice dated 20.01.2005. The petitioner was removed from service by proceedings of the 3rd respondent on 02.02.2005. The appeal filed by the petitioner was rejected by the 2nd respondent on 08.04.2005. Thereafter, the petitioner preferred a review petition to the 1st respondent on 26.05.2005. The 1st respondent vide orders dated 11.11.2005 set aside the removal order passed by the 3rd respondent and petitioner was reinstated into service by taking a lenient view and modified the punishment of removal from service into one for deferment of annual increment for a period of two years with cumulative effect etc. Aggrieved by the same, the present writ petition is filed.

No counter affidavit is filed by the respondents.

Heard learned counsel for the petitioner and Sri P.Durga Prasad, learned Standing Counsel for the respondent Corporation.

Learned counsel for the petitioner submits that the Enquiry Officer has not conducted enquiry by following the due procedure or afforded opportunity to the petitioner. He further submits that the alleged passenger stated that his ticket was taken by his relatives in the back side and during the course of enquiry the passenger himself stated that he had not paid ticket fare of Rs.3/- nor he had

taken ticket, as such, punishment imposed was disproportionate to the charge leveled against the petitioner and same requires interference by this Court.

On the other hand, Sri P. Durga Prasad, learned Standing Counsel appearing for the respondent Corporation submits that after conducting regular enquiry, removal order was passed by the 3rd respondent and the same was confirmed by the 2nd respondent in the appeal filed by the petitioner. In the review filed by the petitioner, the 1st respondent by taking a lenient view reinstated the petitioner into service and imposed present punishment. Therefore, he submits that at any rate, this Court cannot interfere with the order impugned in the writ petition.

The Enquiry Officer vide enquiry report dated 12.01.2005 held that the charge leveled against the petitioner is proved. However, 1st respondent having taken into consideration of his service, wherein no major penalty was issued, has imposed punishment of deferment of annual increment for a period of two years with cumulative effect in order to give him reasonable opportunity to correct himself. This Court after hearing the learned counsel for the parties and perusing the material available on record is of the view that the 1st respondent ought to have imposed punishment of deferment of annual increment for a period of two years without cumulative effect. The quantum of punishment, once charge is proved is well within the discretion of the employer. But in the case on hand, the very reasons recorded by the review authority, support the case of petitioner that the punishment imposed is shockingly

disproportionate at best the petitioner can be found to be negligent in collecting fare from all the passengers. Therefore, to meet the ends of justice and discipline in the organization, I deem it appropriate that the punishment of deferment of annual increment for a period of two years with cumulative effect shall be modified into one for non-cumulative effect, without any monetary benefits up to the date of this order.

Accordingly, this writ petition is disposed of. There shall be no order as to costs.

Miscellaneous petitions pending if any shall stand closed.

Date: 31.08.2016
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S.V.BHATTJ