

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.42852 of 2016

ORDER:

Heard Sri S.V.Ramana, learned Standing Counsel for the petitioner and the learned Government Pleader for Labour appearing for 2nd respondent.

2. This Writ Petition is filed challenging the award dt.20-08-2015 in I.D.No.46 of 2008 of the Labour Court, Guntur.

3. One K.S.Narayana (for short 'employee') was appointed as a Conductor in the AP State Road Transport Corporation (APSRTC) in 1968. Later he was promoted as Assistant Depot Clerk in 1988. He also received further promotion as a Depot Clerk in 1998 and retired from service on 30-06-2004.

4. When he was working at Narasapuram Depot, the Superintendent, Narasapuram Depot, reported that on 22-04-2004 when he was exercising a check on the Bus Pass Tickets Blocks Master (in stock) i.e. the stock of Monthly Season Tickets, he found E.04 blocks worth of Rs.88,000/- missing and that the said employee was responsible for this.

5. A preliminary enquiry was conducted by the Assistant Manager (T), Narasapuram Depot and he submitted a report on 08-05-2004 holding him responsible to preserve the tickets stock including the bus passes, monthly season tickets received through

indent from the Zonal Stores in an orderly manner in the almira in the Tickets Stock Room, to preserve the keys and issue the tickets stock including bus passes, monthly season tickets etc. to the counter whenever required. It is also stated that the employee provided the keys to the Assistant Depot Clerk to open the tickets Stock Room and take the required items by themselves and this caused the missing of monthly season tickets worth Rs.88,000/-.

6. A charge memo was issued to the employee framing the following charges:

“Charge No.1:

For having failed to preserve the bus tickets including the bus passes, Monthly Season Tickets etc. received through indent from the Zonal Stores in an orderly manner in the almira in the ticket stock room preserve the case with you only and issue ticket stocks including bus passes, monthly season tickets etc. to the counter whenever required through a Register as per the Standing Circular instructions which shows your gross negligence in discharging your legitimate duties which constitutes serious misconduct vide Reg. 28 (ix) (a) of APSRTC Employees Conduct Reg. 1963.

Charge No.2:

Your failure to reserve the ticket stocks including the bus passes, monthly season tickets etc. received through indent from the Zonal Stores, Vijayawada in an orderly manner in the almira in the ticket Stock room as per the Standing Instructions caused missing of the monthly season ticket blocks worth Rs.88,000/- from the ticket stock room of Narsapuram as detailed above which shows your gross negligence in discharging your legitimate duties which constitutes serious

misconduct vide Reg. 28 (ix) (a) of APSRTC Conduct Reg. 1963.”

7. An explanation to the charge memo was submitted by the employee on 11-06-2004 denying the charges.

8. Thereafter, on 23-06-2004 a provisional conclusion was drawn against said employee that the charges framed against him are proved beyond doubt and to recover Rs.88000/- from him towards value of missing monthly season tickets.

9. The employee was given a show cause notice on 16-06-2004 to show cause why the recovery should not be made and after receiving his explanation on 22-06-2004, an order was passed on 23-06-2004 rejecting the explanation offered by him and holding that he is guilty of the charges framed against him and he should pay Rs.88,000/- which shall be recovered from the salary settlement dues.

10. Aggrieved by the same, the employee filed appeal before the Divisional Manager, Tanuku who also rejected it.

11. A reference was made at the instance of 1st respondent to the Labour Court, Guntur as to “whether the action of the Depot Manager, APSRTC, Narasapuram imposing punishment of Rs.88,000/- from the salary settlement dues of the said employee by order dt.23-06-2004 was justified”.

12. Before the Labour Court, Employee marked Exs.M-1 to M-7.

13. The Labour Court held in its Award 20-08-2015 that no formal enquiry was conducted against the said employee; that Employee contended that the key of the almairah where the tickets were located was also accessible to the Duty Assistant Depot Clerks, but no enquiry was done against any Assistant Depot Clerk and no statement of Assistant Depot Clerk was recorded; and no police complaint was also given about the theft of the tickets. It considered the explanation of employee that he submitted a report to the Depot Manager, APSRTC, Narasapuram Depot on 22-04-2004 that he was taken off duty on 19-04-2004, that one A.Dattatreya, Assistant Depot Clerk was doing his duties; verification made by the Computer System Supervisor disclosed the missing of four bundles of season tickets; that only the Assistant Depot Clerks working in the depot used to take the keys of stock room where the tickets were preserved and action should be taken against the person who was responsible for the same. It recorded that even the charge sheet discloses that it was Employee who provided the key to the Assistant Depot Clerk contrary to the Standing Circular instructions, that it supports employee's plea that the Assistant Depot Clerks were attending the duties and they had access to the ticket stocks preserved in the almairahs kept in the stock room. It also recorded that there was no specific entrustment of duties by issuing any written order to employee; that he was working in the post of depot clerk temporarily in view of the retirement of one Murthy; no specific instructions were given by employee's superior or by the employee who retired; and that the key was in the Assistant

Depot Clerk cell in computer room giving access to the Assistant Depot Clerks to the almairah where the missing tickets were put forth so that they can without delay disburse the ticket blocks.

14. It held that in spite of the specific plea of employee that the Assistant Depot Clerks got access to the key taken by the petitioner, no enquiry was made with the working Assistant Depot Clerks and no justification was given for not making such enquiry with the working Assistant Depot Clerks. It accepted the contention of employee that no enquiry under Regulation 12 of the Classification, Control and Appeal Regulation was conducted and therefore, the punishment of recovery of Rs.88,000/- from the gratuity of employee by the Depot Manager, APSRTC, Narasapuram Depot is not warranted.

15. Challenging the same, this Writ Petition is filed.

16. The learned Standing Counsel for the petitioner contended that serious irregularities were committed in re-appreciating evidence by the Labour Court in arriving at a different conclusion that the punishment awarded to the employee was unjustified and that the enquiry report of the Depot Manager itself was sufficient for making the recovery. He also contended that valid reasons were not given by the Labour Court for setting aside the punishment imposed on the employee.

17. The case of the petitioner is that the employee had custody of the tickets but they were found missing and that the employee is negligent in preserving the tickets. The plea of the employee that he was working as Depot Clerk from 01-06-2003 after retirement of one Murthy and that his original place of working is at T & P and Oils in Garage and as per oral direction of the Depot Manager, he was working as Depot Clerk is not denied. The allegation that the employee not given necessary instructions from the authorities with regard to the custody of the key is also not denied.

18. The fact that Employee was off duty on 19-04-2004 and in his absence, his duty was entrusted to one A.Dattatreyyulu, A.D.C. is also not disputed.

19. In these circumstances, I am of the opinion that the Labour Court rightly came to the conclusion that non-examination of the Assistant Depot Clerks and non-filing of the police complaint and non-conduct of any enquiry under the Classification, Control and Appeal Regulations by the petitioner is not justified and that there is a clear violation of principles of natural justice.

20. In my opinion, the findings of the Labour Court, Guntur, cannot be said to be perverse or based on lack of evidence. At this point of time when the employee retired way back in 2004, it would not be justified in prolonging his agony for a further period of time by entertaining this Writ Petition.

21. Accordingly, the Writ Petition is dismissed at the admission stage. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 09-12-2016

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