

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.1621 OF 2010

DATED : 28.09.2016

Between :

The Depot Manager, APSRTC,
Ranigunj-I Depot, Ranigunj,
Secunderabad, A.P.

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Petitioner

And

R.John Wesley, S/o.R.John,
Aged 51 yrs, Driver, APSRTC,
Staff No.E-202069,Ranigunj-I, Depot, Ranigunj,
Secunderabad, A.P. C/o.I.P.Joel,
Gen.Secretary and Representative,
APSRTC Employees & Workers Union,
Regd.No.H.No.10,D.No.11-4-4-288 & 11-4-77/78,
Chilakalaguda, Secunderabad -500 061 & another.

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Respondents



This court made the following :

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

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ORDER :

The first respondent was engaged as casual driver on daily wage basis with effect from 21.09.1988 and later his services were regularized with effect from 27.11.1989. On 06.02.2004 he was assigned Bus No.2789 which was one man service on the route Parkal to Medaram Jathara Special. At that time a check was exercised at Mulugu. At about 17.50 hours the checking officials noticed cash and ticket irregularities. According to the checking officials report they have detected that 1st respondent collected Rs.13/- from three passengers alighting from the bus at Mulugu without ticket. It appears the passengers boarded the bus at Mallampalli. The actual fare from Mallampalli to Mulugu was Rs.6/- whereas Rs.13/- was collected and issued some fake ticket. The one man service was not provided the facility of issuing tickets in the bus, as the tickets were to be booked at the ground level. On the said allegation, the disciplinary action was initiated, charge memo dated 19.02.2004 was issued containing two charges. In the first charge, it was alleged that the 1st respondent allowed three passengers to travel without ticket unauthorisedly and in the second charge it was alleged that the 1st respondent collected Rs.13/- instead of Rs.18/- as concessional fare while alighting from the bus. Detailed enquiry was conducted and the enquiry officer held the charges as proved.

2. Based on the findings of the report of the enquiry officer, the disciplinary authority passed orders dated 20.07.2004 removing the 1st respondent from service. The appeal and revision filed against the said orders were rejected. Aggrieved thereby 1st respondent raised industrial dispute. The Additional Industrial Tribunal-Cum-Additional Labour Court, Hyderabad (for short 'the Labour Court'), registered the dispute as I.D.No.20 of 2007. By the Award dated 04.09.2008 the Labour Court while upholding the disciplinary action interfered with the punishment imposed as excessive and disproportionate and directed reinstatement of the 1st respondent without backwages and without attendant benefits, but with continuity of service. Aggrieved thereby this writ petition is filed by the Corporation.

3. At the stage of admission, this Court by order dated 01.02.2010 granted interim stay of the Award except to the extent of reinstatement. It appears the 1st respondent was reinstated on 20.05.2009 and he retired from service on attaining the age of superannuation, on 30.09.2012.

4. Heard Sri Mayur Reddy, learned counsel for the petitioner and no representation on behalf of the 1st respondent though notice is serviced.

5. Learned counsel for the petitioner would submit that the allegations leveled against the 1st respondent are grave as the driver holding one man service which was a jatara special, he was not authorized to admit any passenger without having a valid ticket issued at the station and was not authorized to collect fare. Whereas the 1st respondent not only allowed the passenger to

travel without ticket but at the stage of alighting from the bus, collected less fare and issued bogus tickets and therefore, the charge leveled against the 1st respondent is grave by his conduct.

6. The Labour Court having found that the disciplinary action was validly taken and the charges leveled against the 1st respondent as proved, erred in holding the punishment as excessive and disproportionate. He would submit that in view of the charges leveled against the 1st respondent as proved, it cannot be said that the punishment of removal is disproportionate. He would further submit that the 1st respondent did not have good record of service. 1st respondent was earlier visited with number of punishments; was censured twice for having committed irregularities and his annual increments were deferred twice in addition to the order of removal from service dated 20.07.2004.

7. The only issue for consideration is whether the Labour Court erred in holding that the punishment imposed against the 1st respondent is disproportionate and not commensurate with the allegations leveled and held proved ?

8. The charge leveled against the 1st respondent was that he has allowed passengers to travel without valid tickets and collected less fare from them knowing fully well that he is not competent to allow any passenger to board the Bus without tickets and to collect fare as he was not authorized to issue tickets in the bus and he should only admit passengers who obtained tickets at the station. This allegation is proved and the Labour Court also affirms the findings recorded in the domestic enquiry and holds the charge as proved against the 1st respondent.

9. As the allegation pertaining to cash and ticket irregularities, would thus amount to misappropriation of money belonging to the employer. Whenever, there is an allegation of misappropriation, ordinarily it would result in imposing gravest punishment.

10. Having regard to the charges leveled against the 1st respondent and proved and in view of the past record, it cannot be said that the punishment imposed against the 1st respondent was disproportionate to the delinquency alleged and proved and the Labour Court erred in holding the punishment as disproportionate.

11. However, as seen from the facts on record, the 1st respondent was reinstated on 20.05.2009 and retired from service on attaining the age of superannuation on 30.09.2012. Having regard to these facts, learned counsel representing the petitioner-Corporation would fairly submit that if grant of attendant benefits as a consequence to the treatment of the past service as continuity of service is confined only to gratuity and if the period between date of removal and date of reinstatement is denied for the purpose of computation of gratuity, would suffice the interests of petitioner-Corporation.

12. Having regard to the submissions made, the writ petition is disposed of modifying the order of the Labour Court and it is held that the benefit of continuity of service is confined only for the purpose of payment of gratuity and that 1st respondent is not entitled to compute the period of out of service for the purpose of computation of gratuity. The rest of the order is not disturbed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

28th September, 2016
Rds

P.NAVEEN RAO,J

