

***THE HONOURABLE SRI JUSTICE CHALLA KODANDA
RAM**

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+WRIT PETITION No.9260 of 2009

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%Dated 08-02-2016

M.R.Manikyam

.... Petitioner

VERSUS

\$ The APSRTC rep. by its

Managing Director, Musheerabad, Hyderabad,

and others

... Respondents

! Counsel for Petitioners: Sri C. Raghu

^Counsel for Respondents: Sri A. Ravi Babu

Government Pleader for Labour

<GIST:

>HEAD NOTE:

? CITATIONS:

1997 (1) ALT 219

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.9260 of 2009

ORDER:

This writ petition is filed questioning the award, dated 31.10.2008, passed by the Labour Court-I, Hyderabad, in I.D.No.181 of 2005.

2) By the aforesaid award, the Labour Court has dismissed the application filed by the petitioner under Section 2-A (2) of the Industrial Disputes Act, 1947 (for short, 'the Act'), confirming the order of his removal by the disciplinary authority as confirmed by the departmental appellate authority.

3) The case, in brief, is that while the petitioner, who was working as Conductor with the Andhra Pradesh State Road Transport Corporation at H.C.U.Deport, was conducting a bus bearing No. AP 10 Z 1460 on 27.09.2004, on the route Lingampally to Janwada, a check was exercised by the checking officials at Stage No.11/12 i.e., Janwada Cross Roads and noticed that the petitioner, though issued tickets to a batch of 10 passengers, failed to punch the same at stage No.11, and that he also failed to close the S.R for stage No.11 even after crossing the said stage. Alleging misconduct under Regulation 28 (ix) (a) of the Andhra Pradesh State Road Transport Corporation Employees (Conduct) Regulations, 1963 (for short 'the Regulations'), the petitioner was proceeded with departmentally and was issued with a charge sheet, dated 12.10.2004, enumerating the following two charges:

"Charge No.1: For having failed to punch the ticket (bearing Nos.804/763983 to 992 of Rs.3/- den. tickets) on stage No.11 instead of that you have punched on

stage No.9 to a batch of 10 passengers who boarded the bus at Miyakhanguda and bound for Janwada ex-stages 11 to 13. Due to your failure, the checking officials treated them as TPTs, which constitute misconduct under Regulation 28 (ix) (a) of APSRTC Employees (Conduct) Regulations, 1963.

Charge No.2: You have avoided to close the SR against stage No.11 even after closing the stage No.11 and arrived nearly by stage No.12. Due to non-closing of SR, the checking officials marked XXX against blanks which constitutes misconduct under Regulation 28 (ix) (a) of APSRTC Employees (Conduct) Regulations, 1963.”

4) In the domestic enquiry, the explanation submitted by the petitioner was not accepted. After conducting a detailed enquiry into the charges leveled against the petitioner, the petitioner was found guilty and the disciplinary authority ultimately passed an order, dated 14.12.2004, removing the petitioner from service. Challenging the said order, the petitioner preferred an appeal before the departmental appellate authority and also the review before the departmental reviewing authority. Both were dismissed. Aggrieved thereby, the petitioner filed a petition in I.D.No.181 of 2005, under Section 2-A (2) of the Industrial Disputes Act, 1947 before the Labour Court-I, Hyderabad. By impugned order, dated 31.10.2008, the Labour Court recorded a finding that the domestic enquiry was validly conducted and, after taking into consideration of the material brought on record, confirmed the finding of the Enquiry Officer that the petitioner was guilty under both the charges leveled against him, as in a bus containing 19 passengers, he did not issue tickets immediately to 10 passengers, who boarded the bus at Stage No.11, and did not enter the particulars in the SR in column No.11, which would result in financial loss. In that view of the matter, the Presiding Officer of the

Labour Court found that it is not a case for interference and, accordingly, dismissed the I.D by the impugned order.

5) Learned counsel for the petitioner, by placing reliance on Circular No.04/2008-OPD (HES), dated 08.02.2008, submits that the Corporation itself was of the opinion that unless there is serious nature of misconduct, removal from service should not be a norm. Learned counsel further submits that in the present case, there is no financial loss and it is only a procedural irregularity of not closing the SR and, therefore, the harsh punishment of removal from service is totally disproportionate to the misconduct found. Learned counsel placed reliance on the judgment of this Court in **G.Sambasiva Rao vs. A.P.S.R.T.C**^[1] to contend that the authorities ought to have exercised the discretion in given set of facts to impose lesser punishment even assuming that the petitioner is liable to be punished.

6) On the other hand, learned counsel appearing for the respondent Corporation disputes the proposition made by learned counsel for the petitioner that there is no financial loss. He further submits that in the present case, it was found that the petitioner had intentionally did not close the SR at appropriate stage and, if the same would not have been discovered, the petitioner would have continued to conduct himself in the same manner and misappropriated the money, which would have resulted in financial loss. In this context, learned counsel would draw the attention of this Court to the findings recorded by the Labour Court. He also submits that removal from service is the appropriate punishment for the petitioner and, in view of the findings of the authorities and the Labour Court, it is not a fit case for interference by this Court.

7) Having perused the record and keeping in view the scope of interference of this Court with respect to the findings of fact as recorded by the authorities and the Labour Court, this Court is not inclined to take a different view on facts. While findings of facts with respect to the guilty on the part of the delinquent employee cannot be interfered with, this Court is yet to consider whether the punishment imposed is disproportionate to the misconduct alleged. The misconduct that is charged and proved against the petitioner is under Regulation 28 (ix) (a) of the Regulations, which reads as under:

“28. General Provisions:

(ix) (a) gross negligence resulting in or likely to result in serious loss to the Corporation or inconvenience to the public or both.”

8) In the present set of facts, it is not the case that there was any financial loss as such, but the same is likely to result in serious loss to the Corporation. If one reads Regulation 28 (ix) (a) of the Regulations, it can be understood that it is not every negligent act, which would fall within the definition of the word “misconduct”, but the negligence should be of a gross negligence and further it should result in or is likely to result in serious loss to the Corporation. The use of the words “gross negligence” juxtaposed with “serious loss” would indicate that the negligent act should be of grave one and it should result in or likely to result in serious loss, which is a pointer of a particular magnitude though the same is not specified. In other words, every negligent act would not fall within the definition of the word “misconduct”.

9) In the case on hand, one of the charges is that the petitioner had failed to close the S.R for Stage No.11. The check took place between Stage Nos.11 and 12. Assuming that the S.R was not closed, non-closure of S.R would have resulted in some financial loss, but the

same by itself cannot be said to be resulted in serious loss as to be understood in Regulation 28 (ix) (a) of the Regulations. The Corporation itself, by issuing Circular dated 08.02.2008, had recognized the same in their Circular and had conferred a discretion on the disciplinary authority that if it is a case of the first misconduct, the punishment of removal from service need not be imposed, unless the case is of very serious nature. Though the judgment relied on by the learned counsel for the petitioner is useful for the purpose of understanding the scope of discretion, which is required to be exercised by the disciplinary authority in the context of Regulation 8 of the Regulations, the same has no application to the present set of facts of the case. In the instant case, taking into consideration of the facts on record, it cannot be said that the non-closure of S.R can be said to be a misconduct of serious nature. In that view of the matter, the punishment of removal from service cannot be justified. However, the language of Regulation 28 (ix) (a) of the Regulations classifies gross negligence, which is likely to result in serious loss to the Corporation, also as misconduct. On check, it was found out that the petitioner did not close the S.R and that if the same was not found out by the checking officials, the same conduct would have been continued by the petitioner and it would have resulted in financial loss to the Corporation. Further, in the counter affidavit filed by the respondent Corporation, it is categorically asserted before this Court that on previous occasions as well, the petitioner was inflicted with number of punishments, such as stoppage of increments, censure, warning etc., and he does not have clean record of service. This aspect of the matter was not denied by the petitioner by filing a reply affidavit.

10) Further the Presiding Officer, while disposing of the I.D, had accepted the arguments of the Corporation that the punishment of

removal from service is on account of loss of confidence. Though the theory of loss of confidence is entirely different as understood by the Courts, what the Presiding Officer of the Labour Court meant was that the petitioner was not a trustworthy person to be continued in the post of Conductor involving finances. This extreme view of the Presiding Officer, without properly appreciating the scope of the legal concept of loss of confidence, does not command for acceptance.

11) For the aforesaid reasons, this Court is of the view that the punishment of removal from service is a harsh punishment and, therefore, the award passed by the Labour Court requires interference by this Court. Though in normal circumstance, this Court would have remitted back the matter to the authorities to re-consider the punishment, considering the fact that the charge sheet is of the year 2004 and the I.D, which was filed in 2005, was decided in 2008 as also the writ petition, though admitted in 2009, is kept pending all these years, I deem it appropriate to exercise the discretion of this Court under Article 226 of the Constitution of India by granting the relief of reinstatement as under:

The impugned award, dated 31.10.2008, in I.D.No.181 of 2005 on the file of the Labour Court-I, Hyderabad is hereby set aside and the respondent authorities are directed to reinstate the petitioner into service with continuity of service, which shall be taken into account only for the purpose of calculating the retirement benefits. It is made clear that the petitioner shall not be entitled for any backwages.

12) The Writ Petition is allowed to the extent indicated above. No order as to costs.

13) As a sequel, pending miscellaneous petitions, if any, shall stand

closed.

CHALLA KODANDA RAM,J

08.02.2016

v v

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