

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

WRIT PETITION No.3438 of 2003

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Date:05.01.2016

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Between:

A.K. Swamy

... Petitioner.

AND

The Industrial Tribunal- cum-
Labour Court, Warangal rep.by its
Presiding Officer and another.

...Respondents.

The Court made the following :

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

WRIT PETITION No.3438 of 2003

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ORDER:

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This writ petition is filed challenging award in I.D.No.37/2000 dated 04-02-2002 on the file of Industrial Tribunal-cum-Labour Court, Warangal.

2. Petitioner was appointed as Conductor in respondent Corporation in the year 1973 and thereafter, he was promoted as Assistant Depot Clerk. While he was discharging his duties as Assistant Depot Clerk in Narsampet Depot, ASPSRTC, Warangal District, he was allotted to Earning Section.

On 22-10-1996, one Sri P. Ramaiah, Depot Clerk of Earning Section, requested the petitioner to take care of Section in his absence and

asked him to remit cash in the bank. In view of the above direction of the Depot Clerk, petitioner was

in-charge of section on 22-10-1996 and as per Charted Off duty, petitioner has to avail Weekly Off on 23-10-1996 and accordingly, he availed his Charted Off duty on 23-10-1996 by keeping the cash collected on 22-10-1996 in the chest and the chest keys were kept in almyrah and the almyrah keys were handed over to Sri G. Rajawardhan, the other Assistant Depot Clerk with a request to handover the same to P. Ramaiah, Depot Clerk on 23-10-1996. But on 23-10-1996,

Sri P. Ramaiah did not attend office and the cash could not be deposited in the bank on 23-10-1996 and it could be deposited only on 24-10-1996 for that a charge memo was issued to the petitioner and thereafter, he was kept under suspension and a regular departmental enquiry was conducted and in the enquiry, he was found guilty of the charge and punishment of reduction of two increments with cumulative effect besides treating the suspension period as not on duty. The said order is challenged before the appellate authority and finally, it was challenged before the labour Court and the Industrial Tribunal-cum-labour Court, Warangal by its order dated 04-02-2002 rejected the claim of the petitioner and now the same is questioned before this Court contending that the labour Court failed to appreciate evidence on record and also failed to see that there was no mistake on the part of the petitioner, while discharging his duties. According to petitioner, the labour Court has not given any finding with regard to evidence produced by the petitioner and therefore, the findings of the labour Court are perverse and biased.

3. Heard arguments.

4. Advocate for petitioner submitted that the chest keys would be always in the almyrah and only almyrah keys will be handed over to

the in-charge person as per the practice and the same is specifically pleaded in the explanation offered to the charge memo, but the enquiry officer has not considered that aspect and not even given any finding with regard to the practice pleaded and on the other hand, observed that the petitioner is at fault in not handing over the chest keys to

Sri G. Rajawardhan as the same caused dislocation of work to the Corporation. He further submitted that the cash was intact and the same was deposited into the bank on

24-10-1996 i.e., on the next day and there was one day delay in depositing the cash for such one day delay, punishment of withholding two increments with cumulative effect and denying salary for the suspension period is shockingly disproportionate to the charge of misconduct alleged against the petitioner and for these two reasons, the award of the labour Court is to be modified.

5. On the other hand, Advocate for second respondent-Corporation vehemently opposed and contended that there is no perversity either in the findings of the enquiry officer or in the award of the labour Court and this Court cannot entertain this writ as there is no perversity in the findings. He further submitted that on account of non handing over of chest keys, huge amount could not be deposited into bank and that there was dislocation of work and the punishment imposed is only minor in nature and that there are no grounds to interfere with the award dated 04-02-2002.

6. I have perused the material papers including the award.

7. As seen from the material, the allegation against the petitioner is that on 23-10-1996, the petitioner did not attend to office without any intimation to the depot authorities and the chest keys were not handed over to the depot authorities due to which, the cash collected on 22-10-1996 could not be remitted into the bank on the next day

i.e., on 23-10-1996 and it could be remitted only on 24-10-1996, thereby the Corporation sustained irreparable loss. Domestic Enquiry was conducted against the petitioner in respect of the charges framed and the enquiry officer found that the charge is proved and punishment of withholding two increments with cumulative effect besides treating the suspension period as not on duty was given.

As seen from the material, the petitioner specifically pleaded in his explanation that chest keys will be in the almyrah and only almyrah keys will be handed over to the in-charge clerk and by following that practice, he handed over almyrah keys to

Sri G. Rajawardhan, who was the other Assistant Depot Clerk with instructions to deliver the same to Sri P. Ramaiah, Depot Clerk on 23-10-1996. It is also clear from the material that every employee can avail Charted Off as fixed by the authorities well in advance on month wise. According to the petitioner, his Charted Off was on 23-10-1996 and he accordingly availed it. This aspect is not disputed by respondent though Corporation contended that the petitioner has to inform the authorities about availing Charted Off, no such material is produced to support their contention. When the petitioner specifically pleaded practice with regard to handing over of keys to the in-charge clerk, there was no denial of that practice by the Corporation either during evidence produced before the enquiry officer or by way of any counter filed before the labour Court. Enquiry officer without touching into the practice pleaded by petitioner found fault with the petitioner for not handing over chest keys to the other Assistant Depot Clerk by name

Sri G. Rajavardhan. As rightly pointed out by Advocate for petitioner, this part of findings of the enquiry officer and the labour Court cannot be held as sound.

8. The petitioner was given punishment of withholding two

increments with cumulative effect and also denied salary for the suspension period treating the same as not on duty. Now the question is whether such a punishment would be shocking when compared to the gravity of the charge. Here the allegation against the petitioner is that because of his not handing over the chest keys, the Corporation sustained loss. Nowhere, the Corporation pleaded the quantum of loss that was sustained due to delayed deposit of money into the bank. Withholding two increments with cumulative effect would definitely be a severe punishment, which would affect the employee even for his retirement benefits.

9. Advocate for petitioner submitted that since the employee has already retired, the punishment of reduction of pay by two increments with cumulative effect may be converted into without cumulative effect and requested that the period of suspension may be treated as on duty and the Corporation may be directed to pay the differential amount. Considering the facts of the case and material on record, I am of the view that the request made by the Advocate for petitioner is quite reasonable, while considering the nature of misconduct alleged against the petitioner.

10. For these reasons, I am of the view that the writ petition can be disposed of by modifying the punishment of reduction of pay by two incremental stages for two years with cumulative effect to that of reduction of pay by two incremental stages without cumulative effect and to treat the period of suspension as on duty.

11. Writ Petition is disposed of accordingly and as a sequel, miscellaneous petitions, if any, pending in this writ petition, shall stand disposed of. No costs.

JUSTICE S. RAVI KUMAR

Date:05.01.2015

mrbb

