HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Writ Petition No.24823 of 2000

ORDER:

The writ petitioner herein prays the Court for issuance of writ of Certiorari and seeking to set aside the proceedings No.PA/20(26)/97-HCR dated 31.03.1997 passed by the 2nd respondent denying him back wages and continuity of service and consequently direct the respondents to reinstate him with back wages and continuity of service with all other attendant benefits.

2) Briefly stating the petitioners' case is thus:

a) The 1st petitioner was appointed as Conductor on 19.01.1985 and he was working under the control of 4th respondent. He was allotted duty to conduct service in route —Charminar to Jahangir Peer Darga. While conducting the service No.4498 on the route—Charminar to Jahangir Peer Darga, a check was exercised at stage No.9/10 on 18.05.1995. A charge memo was issued to him alleging that he failed to observe the rule *Issue and Start* which amounted to misconduct in terms of Regulation 28 of APSRTC Employees' Conduct (Classification, Control and Appeal) Regulations, 1967 (for short "APSRTC Regulations") and he was further charged that he failed to issue tickets to six (6) individual passengers even after collecting the requisite fare

who boarded the bus at Kothur and found alighting without tickets at Mekalguda Ex-Stages 9 to 10/11 which constitute misconduct. He was also ascribed that he failed to close the tray numbers of all denominations at Stage No.10 without completing the above issues which constitutes misconduct. He submitted spot explanation denying the same but he was placed under suspension as per order dated 23.05.1995 and served with charge sheet dated 23.05.1995 with the charges as aforementioned. He submitted explanation to the charge sheet on 29.05.1995 denying the charges. An enquiry officer was appointed to conduct enquiry who conducted the enquiry without prosecuting officer bypassing the principles of natural justice. The enquiry officer submitted enquiry report holding that the 1st petitioner is guilty of charges. The enquiry officer did not consider the objections raised by the 1st petitioner. Basing on enquiry officer's report the 4th respondent issued show cause notice of removal on 28.11.1995. The petitioner submitted his explanation on 12.12.1995. However, the 4th respondent without appreciating his explanation in a proper manner passed the order of removal from service on 14.12.1995.

b) The further case of the 1st petitioner is that on 23.01.1996 he preferred an appeal to the 3rd respondent questioning the order of removal dated 14.12.1995. However, the appellate authority without considering his case confirmed the order of removal by his order dated 04.04.1996.

Aggrieved by the said order of the appellate authority, the petitioner filed revision petition on 21.02.1997 before the 2nd respondent. The 2nd respondent in his order dated 31.03.1997 while allowing the revision petition reinstated the petitioner as Conductor Grade II ***afresh*** denying back wages and continuity of service. The petitioner submitted that the punishment is disproportionate to the proved misconduct. The second respondent ought to have ordered reinstatement with continuity of service. As per the order of the 2nd respondent, the 1st petitioner was reinstated into duty by order dated 04.03.1998 as Conductor afresh. Challenging the said order of 2nd respondent denying the 1st petitioner back wages and continuity of service, the instant writ petition is filed.

c) Respondents opposed the writ petition.

d) It should be noted that pending writ petition the 1st petitioner died on 27.10.2012 and as per orders dated 27.10.2015 in WPMP No.33521 of 2015 his wife and children were permitted to come on record as petitioners 2 to 4 as his legal heirs.

3) Heard both sides.

4) The main plank of argument of learned counsel for petitioners is that the revisional authority having found in his order dated 31.03.1997 that the punishment of removal from service imposed on the petitioner by the 4th respondent and

confirmed by the 3rd respondent as excessive, ought to have imposed a lesser punishment prescribed in Regulation 8 of APSRTC Regulations but instead imposed a strange punishment of appointing the 1st petitioner as Conductor Grade II ***afresh*** without back wages and continuity of service. He would vehemently argue that modified punishment besides being equally harsh as that of original punishment, as it deprived continuity of service and back wages, it was not enumerated in any one of the punishments under Regulation 8 of APSRTC Regulations. The authority has no power to pass punishment which is not prescribed in the Statute or Regulations applicable to the concerned delinquent. On this proposition he relied upon the decision of this Court reported in ***K.C.Narayana v. Managing Director, APSRTC, Hyderabad***[1]. He submitted that in a similar case when the RTC authorities have ordered appointing the petitioner therein as Conductor afresh this Court set aside the said order and directed the authorities to pass appropriate punishment on the petitioner in accordance with APSRTC Regulations. He thus prayed to allow the writ petition and pass appropriate order.

5) Per contra, learned Standing Counsel for APSRTC while defending the impugned order argued that the order passed in the revision do not suffer any legal infirmity inasmuch as the order would connote that the revisional authority while agreeing with the finding of the authorities below holding the 1st petitioner was guilty of misconduct and also holding that he

deserves severe punishment but only disagreed with the nature of the punishment imposed by them by observing that the same was excessive and using its discretion, ordered for reinstatement as Conductor Grade II afresh without continuity of service and back wages. The revisional authority being the Regional Manager has such power of discretion and the petitioners cannot challenge his power. He relied upon the Division Bench judgment of this Court in ***P.Habeeb Saheb vs. APSRTC***[2].

6) In the light of above rival arguments, the point for determination is:

> *"Whether the order of the 2nd respondent vide proceedings No.PA/20(26)/97-HCR dated 31.03.1997 is legally sustainable?"*

7) **POINT**: The admitted facts are that 1st petitioner worked as Conductor and on charges of misconduct the 4th respondent passed an order dated 14.12.1995 removing him from the service. Aggrieved, the 1st petitioner preferred appeal before the 3rd respondent but the same was also rejected vide proceedings No.PA/20 (95)/95-Dy.CTM:CR dated 04.04.1996. Thereupon the 1st petitioner preferred revision before the 2nd respondent and the 2nd respondent in his proceedings No.PA/20(26)/97-HCR dated 31.03.1997

observed thus:

> *"The charges levelled against the petitioner were thus established beyond doubt and the petitioner deserves a severe punishment, but the punishment of removal from service imposed on the petitioner appears rather excessive, as the petitioner had issued 30 tickets in between stages 9 and 10/11 (point of check) and this is the case wherein the petitioner was removed from service on the first occasion. Hence the punishment of removal from service is set aside and order that that petitioner shall be appointed as Conductor Gr.II afresh with the following terms and conditions.*
>
> 1. *Petitioner shall be appointed as Conductor Gr.II afresh duly fixing his pay at Rs.1645/- per month in the scale of Rs.1645-55-2140-65-2595-70-3155.*
> 2. *His previous service in the Corporation shall not be counted for any purposes i.e. PF, Gratuity, leave, increment, promotion etc. and his seniority shall be reckoned from the date of his reporting for duty at the unit posted on appointment as Conductor Gr.II afresh.*
> 3. *He should pay fresh seniority deposit.*
> 4. *His appointment as Conductor Gr.II afresh shall be subject to medical fitness for A-2 category in the medical examination and production of valid conductor licence.*
> 5. *He should pay back all the dues viz., festival advance, short remittance of the bus cash and other amounts, if any, pending due prior to the date of his removal from service and submit no due certificate from Depot Manager, Falaknuma Depot as well as Accounts Officer (Hyderabad City Region) at Rathifile, Secunderabad.*
> 6. *If the above terms and conditions mentioned at Sl.Nos.1 to 5 are acceptable to him, he may give in writing that the above terms are acceptable to him.*

a) The 1st petitioner pursuant to above order was reinstated into service *afresh* with effect from 04.03.1998. As can be seen, the 1st petitioner is not challenging the finding of

the authorities holding him guilty of misconduct. However, his argument is that the revisional authority having found that the punishment or removal from service imposed by the authorities below as excessive, ought to have imposed a lesser punishment enumerated in Regulation 8 of APSRTC Regulations, but contrary to it imposed the punishment of reinstatement into service as Conductor Grade II afresh without continuity of service and back wages which is not enumerated in Regulation 8 and hence such modified punishment is illegal.

b) Per contra, the argument of learned Standing Counsel for respondents/APSRTC is that the modified punishment in reality is a discretion exercised by the revisional authority in favour of the 1st petitioner and therefore, though it is not enumerated in Regulation 8 the same cannot be challenged.

8) A perusal of operative portion of the order of revisional authority extracted supra, would give an understanding that the revisional authority agreed with the finding of the authorities below that the 1st petitioner was guilty of misconduct and hence he deserves severe punishment. Then, with regard to punishment of removal of service imposed by the authorities below the revisional authority found it as "*excessive*" for the reason that the 1st petitioner had issued 30 tickets in between stages 9 and 10/11 (point of check) and further he was removed from service on the first occasion. Thus, the revisional authority has given its own

reasoning as to why in its opinion the punishment imposed by the authorities below was "*excessive*". Hence, the revisional authority embarked upon in setting aside the order of removal from service and instead ordered that the 1st petitioner shall be appointed as Conductor Grade II afresh with certain terms. So, at the outset, the order of revisional authority in appointing the 1st petitioner as Conductor Grade II afresh with certain terms and conditions shall be treated as modified punishment, in my considered view. It is pertinent to note here that the revisional authority has not made it clear that its ordering reinstatement of the 1st petitioner **afresh** as a measure of discretion or compassion. Therefore, such an order shall be understood only as a modified punishment. Admittedly the modified punishment imposed by the revisional authority is not enumerated in Regulation 8 of APSRTC Regulations. For clarity sake, the penalties enumerated in Regulation 8 are listed as follows:

"8. **Penalties**:

(1) The following penalties may, for good and sufficient reason and as hereinafter provided, be imposed upon an employee namely:

(i) censure;

(ii) withholding of the privilege of free passes or privilege ticket orders or both for travel on the railway or the bus services of the Corporation, as the case may be, in the case of employees to whom such privilege or privileges are admissible;

(iii) fine, in the case of persons for whom such penalty is permissible under these Regulations, vide Sub-clause (3);

(iv) withholding of increments;

(v) recovery from pay of the whole or part of any pecuniary loss caused to the Corporation by an employee's negligence or breach of orders;

(vi) suspension, where a person has already been suspended under Regulation 18 pending enquiry into his conduct, to the extent considered necessary by the authority imposing the penalty;

(vii) reduction to a lower rank in the seniority list or to a lower post or time-scale, whether in the same class of service or in another class, or to a lower stage in a time-scale;

(viii) removal from the service of the Corporation which does not disqualify from future employment.

(ix) Dismissal from the service of the Corporation which ordinarily disqualifies from future employment."

9) In that view of the matter, the question is whether the revisional authority is legally competent to impose a punishment which is not statutorily prescribed. The law on this aspect is no more *res integra* as it has been dealt with in extensive in ***K.C.Narayan'***s case (1 supra).

10) In that case the facts are more or less similar to the case on hand. In that case also a Conductor in APSRTC was removed from service on the ground of misconduct. The reviewing authority taking compassionate view directed him to be appointed afresh. A learned Judge of this Court following the judgment of the Honourable Apex Court in ***State Bank of India v. T.J.Paul***[3] having observed that the punishment of appointment '*afresh*' is not the one among the enumerated penalties, set aside the order and directed the authorities to

examine the records and determine the appropriate punishment to be imposed on the petitioner strictly in accordance with the APSRTC Regulations. The judgment in ***P.Habeeb Saheb***'s case (2 supra) relied upon by the learned Standing Counsel for respondents was also cited before the learned judge in ***K.C.Narayan***'s case (1 supra). However, the learned judge opined that in view of Supreme Court's judgment in ***T.J.Paul***'s case (3 supra) the earlier judgment of this Court taking contrary view was no longer good law. The learned Judge observed thus:

> *"18. In view of the judgment of the Supreme Court in T.J. Paul's case (supra), the earlier judgments of this Court taking a contrary view must be held no longer as good law and as a result the impugned order of the reviewing authority, appointing the petitioner as a conductor afresh, must necessarily be set aside and the matter remanded to the 2nd respondent for his consideration on the question of penalty."*

11) It is need less to emphasise that the judgment in ***K.C.Narayan***'s case (1 supra) applies with all its force in the case on hand. In the instant case also the 2nd respondent passed an order imposing the penalty of appointing the 1st petitioner as Conductor Grade II 'a*fresh*' without back wages and continuity of service which punishment is not enumerated in Regulation 8 of APSRTC Regulations and as such, it is liable to be set aside.

12) In the result, this writ petition is allowed and the impugned order of the 2nd respondent is set aside and he is

directed to examine the records and pass appropriate punishment to be imposed on the 1st petitioner strictly in accordance with APSRTC Regulations within a period of three (3) months from the date of receipt of a copy of this order. Since the 1st petitioner died pending writ petition, petitioners 2 to 4 who are his legal heirs, will be entitled to his terminal benefits basing on the order to be passed by the 2nd respondent. No costs.

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

U.DURGA PRASAD RAO, J

Date: 06.06.2016

Murthy

---

[1] 2007 (5) ALD 416

[2] 1995 (1) ALT 553 (DB)

[3] AIR 1999 SC 1994