

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.16146 of 2012

ORDER:

Heard Sri N.Vasudeva Reddy, learned Standing Counsel for the petitioner and Sri P.Venkateswar Rao, learned counsel for the respondent.

2. This Writ Petition is filed challenging the order dt.13-09-2011 in I.D.No.34 of 2010 of the Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad, published on 29-10-2011 in G.O.Rt.No.1617 dt.11-10-2011.

3. The respondent was engaged as Conductor on contract basis from 03-08-2005 to 31-12-2006. Later her services were terminated on 18-01-2007 on the ground that she committed serious cash and ticket irregularities. On 31-03-2007, she was again re-engaged.

4. On 18-04-2009 she was the Conductor to a Bus No.AP11Z-4910 on route No.16-P. A check was exercised by Checking Officials of Zonal Enforcement Squad/H CZ, stage No.2, at about 1615 hours. During the course of check, the Checking Officials detected that the respondent had already collected the requisite fare of Rs.6/- from a batch of three passengers who boarded the bus at Mirjalguda and found them alighting without tickets at Allugaddabai ex-stage 3/2 to 2. The Checking Officials confronted the passengers to the respondent and obtained their statement in her presence. It is

alleged that the respondent refused to attest the said statement. It was reported by the Checking Officials that she obstructed them while framing the case and tried to tear the passenger statement and she also instigated passengers. The Checking Officials obtained the witness signature of a co-passenger and Jeep driver. They then obtained three Top Punched Tickets of Rs.2/- denomination from respondent since she collected Rs.10/- from the passengers and refunded Rs.4/-. They recorded the check particulars in brief in check sheet which was also attested by 1st respondent.

5. A Charge Memo dt.18-04-2009 was also prepared but they could not serve it on the respondent since she allegedly threw away the cash bag and tickets tray and tried to leave the spot by deserting the duty. It was subsequently served on the respondent.

6. She offered a spot explanation stating that check took place before issuing tickets and there were only 31 passengers in the bus including three alighting ticketless passengers at the place of Check.

7. She was put off duty and a charge sheet dt.22-04-2009 was issued to her framing the following charge:

“Charge:- For having already collected the requisite fare of Rs.6/- at boarding point itself and failed to issue tickets to a batch of 3 (three) passengers found alighting without tickets at Alugaddabai who have boarded the bus at Mirjalguda, Ex-stages No.3/2 to 2 in terms of Item No.19 of Circular No.P-5/2009, dt.23-02-2009.”

8. The respondent submitted explanation to the same. Having found the explanation unsatisfactory, enquiry was ordered by nominating Assistant Manager (T)/Enquiries of Secunderabad Division as Enquiry Officer.

9. During the enquiry, the statement of the TTI of XES/H CZ was recorded in the presence of respondent. He confirmed the irregularities committed by her. Thereafter, respondent also cross examined the said witness. She also made her statement before the enquiry officer.

10. The enquiry officer submitted a report stating that the charge against the petitioner was proved. Copy of the enquiry report was sent to the respondent inviting her objections on 01-07-2009.

11. The respondent acknowledged it and offered her objections on 08-07-2009.

12. Thereafter, show cause notice proposing termination of her services was issued on 10-07-2009. She submitted explanation thereto on 20-07-2009 and on the same day, orders of termination were passed.

13. The respondent filed appeal before Divisional Manager who rejected it on 17-08-2009.

14. Revision filed by the respondent was also rejected on 05-05-2010 by the Regional Manager.

15. The respondent then filed a petition under Sec.2A (2) of the Industrial disputes Act,1947 before the Additional Labour Court, Hyderabad which was numbered as I.D.No.34 of 2010.

16. Before the Labour Court, the respondent examined herself as WW-1 and did not mark any documents. But the petitioner examined M.W.1 and marked Exs.M-1 to M-14.

17. On 04-01-2011, the Labour Court held that the domestic enquiry was not valid and that the principles of natural justice were not complied with. So parties led evidence before it.

18. By award dt.13-09-2011, the Labour Court held that MW-1 was not the person who present at the time of checking of the bus and who issued the check memo to the respondent, that the Checking Officials did not check the cash bag of the conductor to show that respondent collected Rs.10/- and did not issue the tickets to three passengers amounting to Rs.6/-; if the cash bag had been checked, the truth would have come out and it could have been proved that there was cash excess of Rs.6/- in the bag of the respondent. It was pointed out that the Checking Officials recorded the statement of passengers but the passengers were not examined and no opportunity to cross examine was given to the respondent and that the Checking Officials who did the checking on 18-04-2009 were not examined. It was also recorded that in the cross examination, the respondent admitted that at the time of checking, three passengers have no tickets and the checking officials had taken three Top Punched tickets at

Rs.3/- denomination from her and she collected fare from “*other passengers*” from Alugaddabai. In view of the above findings, the Labour Court directed reinstatement of the petitioner into service with continuity of service and 50% of back-wages.

19. Challenging the same, this Writ Petition was filed by the petitioner.

20. Learned counsel for the petitioner contended that respondent, having admitted in cross examination that three passengers had no ticket and that *she collected fare from the passengers at Alugaddabai*, cannot claim that she is innocent of the charge of not issuing ticket after collecting the fare and that this evidence of the respondent was misread by the Labour Court in para-11 of its award stating that respondent stated that she collected fare from *other* passengers (meaning she did not collect fare from the three passengers). He also contended that as per Circular No.04/2008-OPD (HES) dt.08-02-2008 if a passenger had paid the fare and remained without a ticket, even if he does not cross a fare stage, such Conductor is liable to be issued with a charge memo (Clause (a) of para-6) and if a passenger is found alighting without a valid ticket at any place also a Conductor is liable to be issued charge memo (Clause (c) of para-6). He therefore, contended that once the respondent admitted that she collected fare from all passengers including the three passengers and did not issue any ticket, she is guilty of the

misconduct and the reasoning of the Labour Court on the point is perverse.

21. The learned counsel for the respondent, on the other hand, supported the award passed by the Court below and insisted that the cross examination of the respondent was not correctly recorded and that the word “not” was not typed in the sentence “I have collected the fare from the passengers at Alugaddabai.

22. This contention cannot be accepted since the evidence was given on oath and the respondent was represented by a counsel before the Labour Court.

23. So I am satisfied that there is manifest misreading of evidence by the Labour Court in ignoring the statement of the respondent that she had collected fare from *the passengers* (i.e all passengers) at Alugaddabai, and noting wrongly that the respondent collected fares from *other passengers and not the three passengers* who were found to be without ticket by the Checking Officials.

24. If the evidence was not correctly recorded, it was the duty of the respondent and her counsel to ensure that the recording was made correctly by pointing out to the presiding officer at the time of recording of such evidence about the mistake. Such a plea cannot be raised by the respondent at this point of time to escape the liability.

25. If the respondent had collected the fare from the passengers but at the time of the check and at the time of alighting,

they had no ticket, then as per para-6 (a) and (c) of the Circular dt.08-02-2008, a charge memo could be issued to her and was thus rightly issued to the respondent.

26. The further submission of the learned counsel for the respondent that the charge levelled against the respondent ought to have been proved by independent evidence, or that MW-1 cannot be said to have proved charge because he was not present at the time of checking of the bus, or the persons who actually checked the bus were not examined, or that the cash bag was not checked are not relevant in view of the admission of the respondent in her cross examination that she collected the fare from the passengers at Alugaddabai (i.e all passengers) but at the time of Check, three passengers did not have tickets.

27. Therefore since admitted facts need not be proved, it is established that the respondent had collected fare and not issued tickets to the three passengers.

28. In this view of the mater, I am of the opinion that the finding of the Labour Court that the charge against the petitioner was not established is perverse and cannot be accepted.

29. Accordingly, the Writ Petition is allowed and the Award dt.13-09-2011 in I.D.No.34 of 2010 of the Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad is set aside and

the order of removal dt.20-07-2009 passed by the petitioner is affirmed.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 02-12-2016

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