

HON'BLE SRI JUSTICE M.S.K. JAISWAL

WRIT PETITION No.13317 of 2004

ORDER:

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This writ petition is filed under Article 226 of the Constitution of India, challenging the order dated 31-07-2001 in I.D.No.84 of 2000 passed by the 1st respondent-Labour Court-III at Hyderabad, whereby and whereunder the Labour Court directed reinstatement of the writ petitioner with continuity of service, but without back-wages and deferring next falling two annual increments with cumulative effect.

2. The case of the writ petitioner, in brief, is that the petitioner was appointed in 1991 as Conductor. On 01-12-1998, while he was conducting Bus bearing AP9Z-2644 from Gattupal to Mall, he was found to have committed certain cash and ticket irregularities and consequently, the following two charges have been framed against him, viz.,

- 1) For having failed to observe the rule of 'Issue & Start' while conducting the vehicle No.AP-9Z-2644 on 01-12-1998 on the route to GTPL-Mall which constitutes misconduct in terms of Reg. 28 (xxxii) of APSRTC Employee's (Conduct) Reg. 1963.
- 2) For having failed to issue the tickets to six (6) individual passengers in spite of collecting the requisite fare Rs.2.50 ps. Each (Rs.15.00 in total) at their boarding point itself, who boarded the bus at Kothagudem and alighting at Narayanapur ex-stages 15 to 15/16 while conducting the vehicle N: AP-9Z-2644 on 01-12-1998 on the routes GTPL-Mall which constitutes misconduct in terms of Reg. 28 (vi-A) & (x) of APSRTC Employee's (Conduct) Reg. 1963.

3. The Enquiry Officer, having considered the explanation given by the petitioner-conductor and the material placed by the

Corporation held that both the charges framed against the petitioner were proved. When the matter went to the Labour Court-III, Hyderabad in I.D.No.84 of 2000, the Labour Court by its order dated 31-07-2001 held that the first charge was on a technical violation and whereas the second charge was split up into two limbs. The first part of charge No.2 was treated as the alleged act of the petitioner-conductor in collecting the money from ticketless passengers and failing to issue tickets to them and the second limb of the charge No.2 is that the petitioner-conductor had not issued tickets to the six ticketless passengers in spite of collecting money from them. During the course of enquiry, it was found that the petitioner has not collected the amount from the passengers, and therefore, question of collecting money and failing to issue tickets to the passengers does not arise. However, the fact that was established during the enquiry was that the petitioner failed to issue tickets to the six passengers. Having regard to the facts and circumstances of the case, the Labour Court has modified the punishment imposed on the writ petitioner holding that it would meet the ends of justice if the petitioner/ respondent therein is directed to be reinstated with continuity of service, but, without back-wages and to defer two annual increments with cumulative effect.

4. The learned counsel for the petitioner submits that the learned Labour Court having observed that the negligence on the part of the petitioner/conductor is proved to some extent and having directed his reinstatement by setting aside the punishment of removal, has erred in withholding the back wages and deferring two annual increments with cumulative effect. The learned Labour Court has directed the reinstatement with continuity of service without giving the above two reliefs. Therefore, the learned counsel for the petitioner submits that a direction may be given to pay the back wages to the writ petitioner and to restore his two annual increments.

5. On the other hand, the learned counsel for the respondent Corporation submits that the Labour Court has granted the relief out of

humanitarian consideration and even though the writ petitioner is not absolved of the charges and is not exonerated, the Labour Court has taken into consideration the age and family back ground of the writ petitioner and directed reinstatement with continuity of service and has rightly imposed minor punishment of deferring two annual increments. The learned counsel further submits that when the charges as such against a delinquent employee stand proved and if the Authority out of humanitarian consideration grant certain relief and refused to grant other benefits, the employee cannot seek restoration of all the benefits negated by the Authority in a writ petition. In support of his contention, the learned counsel for the respondent Corporation has placed reliance on the decisions of the Hon'ble Supreme Court, which shall be referred to hereinafter.

6. The point for consideration is as to whether the writ petitioner is entitled to back wages and restoration of his two annual increments.

Point:

7. Admittedly, the writ petitioner was found guilty during the course of enquiry of the charges of having collected the amount but failed to issue tickets to six individual passengers. The writ petitioner was unsuccessful in his appeal as well as revision before the statutory authorities. However, when approached the Labour Court, the learned Presiding Officer, Labour Court, Hyderabad in his Award dated 31.07.2001 in I.D.No.84/2000 granted relief, as stated supra.

8. It is apparent from the Award that the learned Labour Court has not exonerated the delinquent employee of the accusations and taken into consideration the totality of the facts and circumstances and taking humanitarian approach, the learned Labour Court directed reinstatement with continuity of service, but did not order for payment of back wages and further imposed minor punishment of deferring of two annual increments with cumulative effect. The learned counsel for the petitioner submits that having directed reinstatement with continuity of service, the learned Labour Court ought not to have denied the back

wages and ought not to have deferred the two annual increments.

9. Once an employee has been found guilty and negligent in discharge of his duties, it is for the Authorities to adjudicate as to what is just and reasonable punishment that can be inflicted. When the Authorities take a view that a particular punishment will be sufficient and will be proportionate to the gravity of the accusation, interference thereof in exercise of writ jurisdiction should not be resorted to lightly and it should be only when exceptional circumstances are shown to exist. This is what is the submission of the learned counsel for the respondent Corporation is and in support of his contention, reliance is placed upon the following Authorities:

10. In ***Md.North-East Karnataka Road Transport Corpn v. K.Murti***^[1] the Hon'ble Supreme Court held as under:

“Where the bus conductors carry passengers without ticket or issue tickets at a less rate than the proper rate, the said acts would inter alia amount to either being a case of dishonesty or of gross negligence and such conductors were not fit to be retained in service because such inaction or action on the part of the conductors results in financial loss to the Road Transport Corporation. This Court has also observed that in cases like the present, orders of dismissal should not be set aside.”

11. In ***Rajasthan SRTC v. Kamruddin***^[2] the Hon'ble Supreme Court held as under:

“When the High Court had found that the respondent - employee deserved punishment on account of his misconduct, the High Court could not have rewarded the employee by granting him the back wages particularly when the Tribunal had converted the order of dismissal into that of the stoppage of two increments with cumulative effect.

It is misplaced sympathy by the Labour Courts in such cases when on checking it is found that the Bus Conductors have either not issued tickets to a large number of passengers, though they should have, or have

issued tickets of a lower denomination knowing fully well the correct fare to be charged. It is the responsibility of the Bus Conductors to collect the correct fare from the passengers and deposit the same with the Company. They act in a fiduciary capacity and it would be a case of gross misconduct if knowingly they do not collect any fare or the correct amount of fare.”

12. In ***Union of India v. P.Gunasekaran***^[3] the Hon’ble Supreme Court held as under:

“The jurisdiction to issue a writ of certiorari Under Article [226](#) is a supervisory jurisdiction. The Court exercises it not as an appellate court. The findings of fact reached by an inferior court or tribunal as a result of the appreciation of evidence are not reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by a tribunal, a writ can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Again if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal. See *Syed Yakoob v. K.S. Radhakrishnan* {AIR 1964 SC 477}.”

13. Bearing in mind the above authoritative pronouncement of judgments of the Hon’ble Supreme Court on the subject, I have no hesitation in holding that once the Industrial Tribunal-cum-Labour Court has exercised the discretion of directing reinstatement of a delinquent employee with continuity of service, but without back

wages and deferring two annual increments, more particularly, having upheld the charges against the delinquent employee, the same cannot be interfered with nor the benefit that has been specifically denied while granting some relief to the delinquent employee can be granted unless it is shown to be shocking the conscience of the judicial adjudication.

14. In the instant case, as already stated, the Enquiry Officer, the Disciplinary Authority, the Appellate Authority and the Revisional Authority and also the Industrial Tribunal-cum-Labour Court have held that the charges against the writ petitioner stood proved and the relief that is granted by the Tribunal instead of removal from service he was directed to be reinstated with continuity of service, without back wages and deferring two annual increments on the ground that dereliction of the delinquent employee was not so grave warranting the capital punishment of removal from service. Considering the facts and circumstances of the case, I have no hesitation to hold that substantial justice has been done to the writ petitioner by the learned Labour Court and the said award do not warrant any interference. There are no merits in the writ petition and the same is liable to be dismissed.

15. The Writ Petition is accordingly dismissed. In the circumstances, there shall be no order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.S.K.JAISWAL,J

Date: 09.02.2016

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[\[1\]](#) (2006) 12 SCC 570

[\[2\]](#) (2009) 7 SCC 552

[\[3\]](#) (2015) 2 SCC 610