

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

WRIT PETITION No.17456 of 2004

ORDER:

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This writ petition is filed under Article 226 of the Constitution of India, challenging the Award dated 24.04.1990 in I.D.No.368 of 1988 passed by the 1st respondent-Labour Court, Warangal, whereby and whereunder the Labour Court directed appointment of the writ petitioner afresh as a Cleaner without continuity of service and back wages.

2. The case of the writ petitioner, in brief, is that the petitioner was appointed as Conductor in 1983. On 25.01.1985, while he was conducting Bus bearing No.AAZ-1477 on the route Huzurabad to Narsampet, he was found to have committed certain cash and ticket irregularities and consequently, the following charges have been framed against him:

“1. For having failed to collect the fare and issue tickets to a batch of five passengers found travelling ex-stages 14 to 12, who boarded the bus at Ramanujapoor and bound for Venkatapur, thus violating the rule of issue and start, which constitutes misconduct under Regulation No.28(vi) (a) and (xxxii) of APSRTC Employees (Conduct) Reg.1963:

2. For having failed to collect fare and issue tickets to four individual passengers found alighting at Palampet, who boarded the bus at Ghanpur, ex-stages 15 to 13, thus violated the rule of issue and start, which constitutes misconduct under Regulations 28 (vi) (a) (xxxii) of APSRTC Employees (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. Basing on the enquiry report, the petitioner was issued show cause notice of removal for which, the petitioner submitted his explanation. The 2nd respondent finally issued termination proceedings dated 09.04.1985. The petitioner approached the 1st respondent-Labour Court in I.D.No.368 of 1988. The Labour Court by its award dated 24.08.1990, set aside the termination proceedings and directed the petitioner to be appointed afresh without continuity of service and without back wages. Questioning the denial of continuity of service and back wages, the present writ petition is filed.

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 directing reinstatement without continuity of service and back wages. Therefore, the learned counsel for the petitioner submits that a direction may be given to treat the petitioner with continuity of service and back wages.

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 background of the writ petitioner, directed reinstatement without continuity of service and back wages. 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 decision 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 continuity of service and back wages.

Point:

7. Admittedly, the writ petitioner was found guilty during the course of enquiry of the charges of having failed to collect fare and issue tickets to 9 passengers. The writ petitioner without availing any statutory remedies, directly approached the Labour Court. The learned Presiding Officer, Labour Court, Warangal in his Award dated 24.04.1990 in I.D.No.368/1988, while upholding the termination order dated 09.04.1985, held as under:

“The only point that services for consideration is whether is exercise of discretionary power of this Court under Section 11-A of the Industrial Disputes Act, the petitioner deserves any relief. On a careful consideration of the facts and circumstances of the case and purely on compassionate and humanitarian ground I consider that the ends of justice would be met if the petitioner is directed to be appointed afresh as a cleaner in the service of the respondent/Corporation. Accordingly, the order of the respondent dated 09.04.1985 is set aside and the respondent is directed to appoint the petitioner afresh as a Cleaner in the service of the respondent Corporation.”

8. It is apparent from the above that the learned Labour Court has not exonerated the delinquent employee of the accusation and taken into consideration the totality of the facts and circumstances and taking humanitarian approach, the learned Labour Court directed reinstatement as a Cleaner afresh without continuity of service and back wages. The learned counsel for the petitioner submits that having directed reinstatement, the learned Labour Court ought not to have denied the continuity of service and back wages.

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 decision:

10. In ***Deepali Gundu Surwase v Kranti Junior Adhyapak Mahavidyalaya***^[1], the Hon'ble Supreme Court after referring to various authorities on the subject has held as under:

“The propositions which can be culled out from the aforementioned judgments are:

- i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.
- ii) The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.
- iii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service.

This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

iv) The cases in which the Labour Court/Industrial Tribunal exercises power Under Section [11-A](#) of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and/or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

v) The cases in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the concerned Court or Tribunal will be fully justified in directing payment of full back wages. In such cases, the superior Courts should not exercise power under Article [226](#) or [136](#) of the Constitution and interfere with the award passed by the Labour Court, etc., merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The Courts must always be kept in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and sufferer is the employee/workman and there is no justification to give premium to the

employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

vi) In a number of cases, the superior Courts have interfered with the award of the primary adjudicatory authority on the premise that finalization of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The Courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer, i.e., the employee or workman, who can ill afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in *Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited* (supra).

vii) The observation made in *J.K. Synthetics Ltd. v. K.P. Agrawal* (supra) that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three Judge Benches referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman.

11. Bearing in mind the above authoritative pronouncement of judgment 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 or without continuity of service, but without

back wages and attendant benefits, 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.

12. In the instant case, as already stated, the Enquiry Officer and 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 afresh as a Cleaner without continuity of service and without back wages on humanitarian grounds. 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.

13. 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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[\[1\]](#) (2013) 10 SCC 324