

THE HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

WRIT PETITION No.2104 of 2010

ORDER :

The petitioner joined the service of respondent-Corporation as driver in the year 1995 on regular basis. He was removed from service on 02.11.1999. Challenging the order of removal he filed an appeal before the Divisional Manager and the said appeal was dismissed on 05.02.2000. Petitioner preferred Revision before the Regional Manager, APSRTC, Picket, Secunderabad (1st respondent), who passed an order on 11.09.2000 appointing the petitioner as driver Grade-II in the starting basic pay. Though the petitioner joined the duty as fresh driver, pursuant to the said order of the 1st respondent he filed I.D.No.167 of 2001 on the file of Labour Court-I, Andhra Pradesh, Hyderabad, challenging the order of removal dated 02.11.1999 and order passed by the 1st respondent dated 11.09.2000, insofar it went against him before the Labour Court. The Labour Court dismissed the petition holding that the said dispute was raised before the Labour Court after availing the benefit of order passed by the 1st respondent on 11.09.2000 and the order passed by the 1st respondent cannot be set aside. Challenging the said award of the Labour Court dated 18.12.2004, the present writ petition is filed.

2. Learned counsel for the petitioner submits that since the petitioner was removed from service, in view of the financial circumstances, he availed the benefit of the order of the 1st respondent dated 11.09.2000 and joined as a fresh driver. He submits that joining as fresh driver does not disentitle him to challenge the order passed by the 1st respondent on the ground that 1st respondent has no jurisdiction to modify the order of punishment. He further submits that he has taken a specific plea in the petition filed before the Labour Court stating that the 1st respondent has no power to order for fresh appointment as per the Regulations of the Corporation.

3. Learned Standing counsel for the respondents does not dispute the position of the lack of jurisdiction of the 1st respondent for passing an order of fresh appointment but submits that since the petitioner has already joined duty, the Award of the Labour Court is correct.

4. A reading of the Award of the Labour Court dated 18.12.2004 discloses that it has taken into consideration the objection raised by the Law Officer, representing the respondents before it and came to the conclusion that there was no order of discharge, dismissal, retrenchment or termination from service. As the petitioner has already joined in service afresh as Grade-II driver, the Labour Court dismissed the application with the following observations :

"In the result, the petition is dismissed holding that the petitioner is not entitled, for setting aside the order of removal from service issued by R-2 Depot Manager and another order Dt.11.9.2000 issued by R-1 Regional Manager and consequently not entitled for any other benefits. The award is passed accordingly."

5. In view of the specific plea raised in the petition, the Labour Court should have considered whether the 1st respondent has jurisdiction to pass an order contrary to the Regulations of the Corporation and whether the joining of petitioner as a fresh driver disentitles

him from pursuing his remedy. A driver who was removed from service would naturally be anxious to avail the benefit of an order passed by the higher authority but he can always challenge the portion of the order which went against him. The Labour Court should have considered that aspect of the matter.

6. In the circumstances, the Award of the Labour Court in I.D.No.167 of 2001 dated 18.12.2004 is set aside and the matter is remanded to the Labour Court for fresh consideration of the petition filed by the petitioner in accordance with law. In view of the passage of time, it is needless to observe that the Labour Court shall dispose of the application of the petitioner as expeditiously as possible, but not later than 31.12.2016.

7. The Writ petition is accordingly allowed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

A. RAMALINGESWARA RAO, J

24th February, 2016
Rds

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

WRIT PETITION No.2104 of 2010

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DATED : 24.02.2016

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