

THE HON'BLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION No.5047 OF 2010

ORDER:

This Writ Petition, filed under Article 226 of the Constitution of India, challenges the Award, dated 06.12.2008 passed by the Labour Court-II, Hyderabad, dismissing the I.D.No.45 of 2006.

2. Heard Sri V.Narsimha Goud, learned counsel for the petitioner and Sri R.Vinod Reddy, learned Standing Counsel for APSRTC, apart from perusing the material available on record.

3. Petitioner was appointed as Conductor in the respondents' organization on 29.04.1995 and his services were regularized on 01.08.1996. Followed by a check on 19.06.2005, a charge memo was issued, framing as many as four charges. The petitioner was suspended from service on 13.07.2005. After holding regular enquiry, he was removed from service on 27.10.2005. After unsuccessfully availing the remedies of appeal and the revision, the petitioner herein raised I.D.No.45 of 2006 before the Labour Court-II, Hyderabad, and the Labour Court passed an Award on 06.12.2008, dismissing the said Industrial Dispute case.

4. Calling in question the validity and legal sustainability of the said Award passed by the Presiding Officer, Labour Court, the present writ petition came to be filed.

5. This Court issued Rule nisi on 05.03.2010. In response to the same, respondent corporation filed counter affidavit, denying the allegations made in the affidavit filed in support of the Writ Petition and in the direction of justifying the impugned action.

6. It is contended by learned counsel for the petitioner that the

Award passed by the Tribunal is erroneous, contrary to law and it is opposed to the very spirit and object of the provisions of the Industrial Disputes Act. It is the further submission of learned counsel for the petitioner that the Tribunal did not consider various issues raised and passed the impugned orders without recording the reasons whatsoever. It is further argued by learned counsel for the petitioner that the conclusion arrived at by the Tribunal, by taking into account the past conduct of the petitioner, is unsustainable and untenable in view of judgment of this Court in **A.V.Swami V. Industrial Tribunal-cum-Labour Court, Warangal**^[1].

7. On the contrary, it is submitted by learned counsel for the Respondent Corporation that there is no illegality, nor there exists any procedural infirmity in the impugned action, as such, the Writ Petition is not maintainable and the petitioner herein is not entitled to any relief from this Court under Article 226 of the Constitution of India. It is further submitted by learned Standing Counsel that the respondent authorities conducted enquiry, strictly, in accordance with the regulations and only after giving complete opportunity of being heard to the petitioner, as such the order passed by the Tribunal is not amenable for judicial review under Article 226 of the Constitution of India.

8. The Disciplinary Authority issued charge sheet, framing the following charges:

“1. For having failed to observe the rule “Issue and Start” while conducting the vehicle No.AP 10Z 3866 on 29.06.2005 on route Bheemgal, Armoor via Bada Bhemgal, which constitutes misconduct under Reg.28 (xxxii) of APSRTC Employees (Conduct) Reg.1963.”

2. “For having avoided to collect the requisite fare and issue ticket to 8 passengers who boarded your bus at Bheemgal and about to alight at Bada Bheemgal ex-stages 1 to 2, hence made you to collect the requisite fare of Rs.24/- from the above passengers @ Rs.3/- each and obtained TPT No.458/118760 to 767 while conducting the vehicle No.3866 on 19.06.2005 on route Bheemgal-Armoor, via Bada

Bheemgal, which constitutes misconduct under Reg.28 (vi) (a) of APSRTC Employees (Conduct) Reg.1963.”

3. “For having avoided to collect the requisite fare and issue tickets to 3 passengers who boarded your bus at Bheemgal and bound for Govindpet ex-stages 1 to 5, hence made you to collect the fare of Rs.7/- each total Rs.21/- and obtained TPT No.573/617991 to 993 of Rs.7/- deno., Ex-3 while conducting the vehicle No.AP 10Z 3866 on 19.06.2005 on route BMGL –ARMR via Bada Bheemgal, which constitutes misconduct under Reg. 28 (vi) (a) of APSRTC Employees (Conduct) Reg.1963.”

4. “For having failed to operate with the checking officials and also instigated the passengers not to pay EFT and also not to give statement while conducting the V.No.AP 10Z 3866 on 19.06.2005 on route while conducting the vehicle No.AP 10Z 3866 on 19.06.2005 on route Bheemgal-Armoor, Via Bada Bheemcal which constitutes misconduct under Reg.28 (xxxii) of APSRTC Employees (Conduct) Reg. 1963.”

9. A perusal of the material available on record, in clear and unequivocal terms, discloses that the petitioner herein specifically pleaded with regard to non-examination of jeep driver and the failure to afford reasonable opportunity of being heard to him apart from other aspects. A reading of the impugned award clearly and categorically reveals that the Tribunal did not deal with the charges and the explanation offered by the petitioner. It is further clear from the impugned award that the Tribunal in arriving at the conclusion against the petitioner obviously took into consideration the past conduct of the petitioner. In this contest it may be appropriate to refer to the judgment of Division Bench of this Court in **K.David Wilson V. Secretary**^[2], wherein at para No. 27 this Court held as under:

“It is well settled that the disciplinary authority cannot make use of any material or evidence collected by it in the course of preliminary enquiry against the delinquent official unless those materials and evidence are produced and proved in accordance with law in the regular departmental enquiry and the delinquent employee is given a fair opportunity to meet those adverse materials and evidence. In the instant case this well settled rule governing departmental enquiry is completely breached. On that count also, the

departmental enquiry conducted against the petitioner is vitiated.”

10. The case of the petitioner is that the jeep driver, on whose evidence complete reliance was placed by the enquiry officer, was not examined either during the domestic enquiry or before the Tribunal. In the judgment reported in **A.V.Swami V. Industrial Tribunal-cum-Labour Court, Warangal (1 cited supra)**, this Court at para No.5 held as follows:

“An analysis of this section shows that if the Labour Court is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal, as the circumstances of the case may require. The proviso to the said section is extremely important for the purpose of the case on hand which reads that in any proceeding under this section, the Labour Court shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter. Therefore, the question is whether the past record of service comes within the category of "materials on record" for the purpose of this case. It is an undisputed fact that the past record of service was neither considered nor referred to by either the workman or the second respondent-corporation at the time of the enquiry against the petitioner. But the past record of service has been considered in a detailed fashion by the Labour Court while coming to the conclusion that the order of removal is justified in the circumstances of the case. In fact, about three full pages have been written about the past record of service of the petitioner. This past record of service is evidently not material on record as visualised in the proviso to [Section 11-A](#). Therefore, the question is, would the Tribunal have come to the same conclusion, viz., that the order of removal is justified had it not looked into the past record of the petitioner. Suffice it to state that from the manner in which the award has been passed, it is easy to see that a lot of emphasis has been placed on the past record of service of the petitioner. The approach of the Industrial Tribunal was clearly wrong and not justified by the proviso to [Section 11-A](#). The Labour Court

should have come to the conclusion that the order of removal is justified only on the basis of the appreciation of the material on record and not by taking into consideration the past record of service of the petitioner. In this view of the matter, the award dated April 3, 1987, passed by the Labour Court in I.D. No. 141 of 1986 is set aside and the matter is remanded to the Industrial Tribunal for fresh consideration in accordance with the provision of [Section 11-A](#) of the Industrial Disputes Act. Especially the proviso to the said section, by taking into consideration only the materials on record and not the past record of service of the petitioner, The Labour Court may consider the matter and pass an award within two months from the date of receipt of this order.

11. In view of above legal position and the principles laid down in the above referred judgments, this Court has absolutely no scintilla of hesitation to hold that the impugned award passed by the Tribunal cannot be sustained in the eye of law.

12. Accordingly, the Writ Petition is allowed, setting aside the Award, dated 06.12.2008, in I.D.No.45 of 2006 passed by the Labour Court-II, Hyderabad and the matter is remanded to the Tribunal for fresh consideration, in accordance with law and the same shall be disposed of within a period of six (6) months from the date of receipt of a copy of this order. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

A.V.SESHA SAI, J

FEBRUARY 11, 2016

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[\[1\]](#) 1991 Labour Law Notes 648

[\[2\]](#) 2001 (5) ALD 406 (DB)