

HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION NO. 7659 OF 2011

Date: 02.09.2016

Between :

The Depot Manager, APSRTC,
Siddipet Bus Depotm Medak District.

.... Petitioner

And

Md. Nooruddin S/o Shaik Hyder,
H.No.19-169/1, Srinivas Nagar,
Near Siddartha High School,
Siddipet P & Tq, Medak District
and another.

.... Respondents



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ORDER:

First respondent herein was appointed as Conductor on 01.07.1994. While he was conducting bus on route from Jubilee Bus Station, Secunderabad to Siddipet, a check was conducted by the Checking Officials on 16.11.2005 between Stage No.13/11. Having noticed serious cash and ticket irregularities, disciplinary action was initiated and a charge memo dated 30.11.2005 was issued. The sum and substance of the allegation was reissue of tickets which were already accounted. A detailed enquiry was conducted and the Enquiry Officer held charges proved. The Disciplinary Authority imposed punishment of removal from service by proceedings dated 16.05.2006. Appeal as well as Revision filed against the said orders were rejected. Aggrieved thereby, the first respondent raised industrial dispute before the Labour Court-II, Hyderabad and the same was numbered as I.D.No.98 of 2007. The Labour Court-II, Hyderabad, by award, dated 19.1.2010, affirmed the disciplinary action. However, having regard to the analysis of evidence on record, found that the punishment imposed is disproportionate to the delinquency alleged and proved and accordingly, allowed the claim in-part by setting aside the order of removal and directed the petitioner herein to reinstate the first respondent into service with continuity of service, but without back-wages and other consequential benefits.

2. Heard Sri C.Sunil Kumar Reddy, learned counsel for petitioner, Sri A.G.Satyanarayana Rao, learned counsel for

respondent No.1 and learned Government Pleader for Labour for respondent no.2.

3. The award is challenged on the ground that the Labour Court erred in not appreciating that in the enquiry all the charges have been proved; the petitioner himself admitted issuance of some tickets, which were already issued in the earlier journey and he only stated that they were issued by mistake. This admission and the statement of passengers recorded at the time of checking would substantiate the allegation. He would further submit that the petitioner was earlier committed misconduct on four occasions, resulting in imposing punishment of deferment of annual increments. He would, therefore, submit that the punishment of removal is validly made and Labour Court erred in interfering and setting aside the order of removal and granting reinstatement with continuity of service.

4. Learned counsel for the first respondent would submit that what is alleged against the first respondent is not true and correct. At the time of inspection, he was forced to give false statement as dictated by the Inspecting team and only on the threat and duress, he has given statement. He would, therefore, submit that it is not a voluntary statement. He would further submit that statements of passengers were obtained at the time of check. Petitioner could trace the passenger, by name, P.Mallaiah and Mallaiah has denied the particulars recorded at the time of inspection. The statement of Mallaiah is not considered by the enquiry officer. He would therefore submit that the Labour Court has come to a correct conclusion and, therefore does not call for

interference of this Court. He would further submit that petitioner was reinstated on 05.05.2010 and after his reinstatement, he has rendered satisfactory service and is not involved in any other misconduct. Affidavit dated 27.08.2016 is filed to this extent. Further, he has categorically given undertaking that he would serve the Corporation sincerely without giving any scope of adverse reports in his duties.

5. A bare perusal of award passed by the Labour Court would show that when the Checking Officers checked the Bus, two passengers traveling from Jubilee Bus Station to Siddipet were holding tickets issued to them, which were already issued and accounted for. This would show that first respondent collected requisite fare of Rs.34/- and Rs.38/-, but failed to issue tickets and only given them tickets of previous journey, which were already accounted for. It appears from the award that petitioner gave spot explanation stating that those tickets were issued by mistake and there was not *mala fide* intention and requested to excuse him. Labour Court records "*The statement given by the petitioner at the spot and the explanation to the charge is contradictory*".

6. As rightly contended by learned standing counsel for petitioner-Corporation, first respondent subsequently retracted from the statement made by him at the time of inspection. As rightly contended by the learned standing counsel, relationship between first respondent and the petitioner-Corporation is one of fiduciary and first respondent has to conduct his job honestly. The petitioner-Corporation runs through the revenue generated on

the passengers. Any kind of abuse of the duty vested in the Conductor would badly affect functioning of the Corporation itself. A reading of the order discloses that first respondent retracted from the statement given by him on the spot.

7. Even assuming what is contended by the counsel for first respondent that all the passengers were not examined is true, the disciplinary proceedings need not be nullified on that ground. It is a fact that first respondent gave statement immediately after the inspection stating that what had happened was by mistake and he should be exonerated; that the passengers on the spot gave statements on payment of full fare and issuance of tickets already accounted for in the previous journey. Thus, merely because a passenger was not examined, would not vitiate the disciplinary proceedings on that ground. In disciplinary proceedings, what is required is preponderance of probabilities. The material on record would substantiate allegation that full fare was collected from the passengers and tickets issued to them were the tickets, which were already accounted for. Therefore, I see no illegality in the disciplinary proceedings conducted by the petitioner-Corporation.

8. On the ground that one of the passengers did not support the case of the petitioner-Corporation, Labour Court sets aside the punishment. This conclusion of the Labour Court was contrary to the material on record. Further more, what was contended by the counsel for petitioner-Corporation, which is not denied by the first respondent, the first respondent did indulge in such illegalities earlier and was punished on four occasions. Thus, first

respondent cannot be classified as a person having, at least, good record previous to the said disciplinary action.

9. As a consequent to the award passed by the Labour Court, first respondent was reinstated and has been working for more than six years by now. The first respondent deposed in his affidavit dated 27.08.2016 that he has not indulged in any other misconduct after the reinstatement. He also gave undertaking that he would not invite any such disciplinary action in future.

10. Having regard to the same, I am not inclined to nullify the award in toto. In the facts of this case, to do complete justice and to protect the interest of petitioner-Corporation as well as first respondent and having regard to the fact that first respondent is not involved in any other disciplinary action after reinstatement, I deem it appropriate to modify the award of Labour Court dated 19.01.2010 in I.D.No.98 of 2007 by holding that first respondent be visited with punishment of reduction in time scale of pay by two stages, which will have effect through out his service. Petitioner shall be entitled to continuity of service and other consequential benefits, but without back-wages for the period of out of employment.

11. Writ petition is accordingly disposed of. No costs. Miscellaneous petitions if any shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 02.09.2016
ka/kkm

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