

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 27856 of 2005

ORDER:

1) The order of reinstatement into service with 50% of the back wages is sought to be challenged in this writ petition by the employer ie. The Depot Manager, A.P.S.R.T.C., Zaheerabad, Medak District.

2) For the sake of convenience, the parties will be referred to as arrayed in I.D.

3) The petitioner joined as a Casual Conductor in the Road Transport Corporation (hereinafter referred to as "Corporation") on 08.06.1997 and his services were regularized as Grade-II Conductor. On 25.11.2000 the Senior Traffic Inspector of RES, APSRTC, Sangareddy, Medak District, submitted a report against the petitioner. Basing on the said report, the petitioner was suspended from service on 12.12.2000 and a charge sheet was issued against him with the following charges.

- i) For having altered the figures in the column 5 (ie. 5.00/ 7.50) from 29 to 20 which constitutes misconduct in terms of Regulation 28 (xxxii) of A.P.S.R.T.C. Employees (Conduct) Regulations, 1963.
- ii) For having manipulated the endorsed figures of on duty controller from 29 to 20 by over writing the vertical line of "9" with blue ink pen which constitutes misconduct as per Regulation 28

(xxxii) of A.P.S.R.T.C. Employees (Conduct) Regulations, 1963.

- iii) For having shown the issuance of tickets bearing No. 020 to 028 at stage No.6 in his SR and again shown it was sold at stage No.9 (12.00 hours, Peddalodi-Zaheerabad trip) in respect of 0-20 to 022 and at a stage No.6 in respect of 023 to 028 indicated you have resold tickets of 020 to 029 from stage 6 to 1 and 1 to 8 which constitutes misconduct in terms of Regulation 28 (xxxii) of A.P.S.R.T.C. Employees (Conduct) Regulations, 1963.
- iv) For having made several alterations in the SRs bearing No.135755, dt. 13.09.2000, 2423855 dated 14.09.2000, 2410782 dated 28.09.2000, 24110218 dated 22.09.2000, 2405198 dated 02.10.2000, 2433410 dated 03.11.2000, 2433508 dated 04.11.2000, 2423877 dated 17.11.2000, 2459397 dated 20.11.2000 which constitutes misconduct in terms of Regulation 28 (xxxii) of A.P.S.R.T.C. Employees (Conduct) Regulations, 1963.

4) An explanation to the said charge sheet came to be submitted, which being un-satisfactory, a domestic enquiry was ordered. The Enquiry Officer, after following the principles of natural justice, held the petitioner guilty of the charges leveled against him and proposed removal from service. After receipt of the enquiry report, the same was sent to the petitioner calling for his objections. After considering the objections, the respondent confirmed the penalty of removal. Vide proceedings dated 07.05.2001, final orders came to be passed removing the petitioner from service. Aggrieved by the same, the petitioner

preferred an appeal before the Divisional Manager, A.P.S.R.T.C., Sangareddy, which was rejected. Challenging the same, the petitioner preferred I.D.No.103 of 2002 which was re-numbered as I.D.No.105 of 2004 before the Industrial Tribunal-II, Hyderabad. After considering the evidence available on record, the Tribunal ordered reinstatement of the petitioner with continuity of service and with 50% of back wages. Challenging the same the Corporation filed the present writ petition.

5) The main ground urged by the learned Standing Counsel for the Corporation is that the Tribunal erred in re-appreciating the evidence on record by upsetting a factual finding given by the enquiry officer which was confirmed in appeal and revision by the authorities of the Corporation.

6) The points that arise for consideration is whether the Tribunal was justified in holding that the employee was found not guilty of the charges leveled against him; and whether the relief granted is in accordance with law.

7) In order to deal with the said aspect, it would be appropriate to refer to the findings arrived at by the Tribunal in its order.

8) After considering the evidence placed on record, the Tribunal held as under:

“The ~~SRs~~ were in different hands like with ADC of Depot, with the Depot Clerk and ultimately with the Chief Inspector for considerable time and none of them pointed

out the alterations in the SR on the date and time when each of the ADC or the Depot Clerk or the Chief Inspector of Depot received those SRs. They were detected only when the checking officials of Regional Enforcement Squad checked the SRs at a much later time which was on 25.11.2000. From the date of submission of each of the SR mentioned above till the alteration were detected they moved in different hands of different employees of the Corporation for a considerable time. In the absence of any positive proof by the Management to the effect that there was no scope for other person to alter the SRs, the petitioner would be entitled for the benefit of doubt. The management did not adduce any evidence or any iota of evidence to show that there was no scope for any other person in between period from the date of handing over the SRs by the petitioner to the ADC or DC till the alterations were detected. So, the petitioner is entitled for the benefit of doubt.”

9) It has to be seen whether the Tribunal was justified in finding the petitioner not guilty of ordering reinstatement with continuity of service.

10) Insofar as altering the records are concerned the Tribunal held that it is an undisputed fact that the SRs in question along with other equipment was returned by the petitioner on each day or trip after completion of respective trips in the bus and those SRs were in different hands like ADC of Depot, Depot Clerk and ultimately with the Chief Inspector for considerable time and none of them pointed out the alterations in the SRs on the date and time when they received the same. The alterations were detected only when the checking officials of Regional Enforcement Squad checked the SRs much later. In the absence

of any positive proof by the Management to the effect that there was no scope for other person to alter the SRs, the petitioner would be entitled for the benefit of doubt.

11) Coming to the reliefs granted, in *A.L.Kalra v. The Project and Equipment Corporation of India Limited*¹ a three Judge Bench of the Apex Court, while dealing with the issue of payment of back wages after holding his removal from service as illegal, held that though he was employed elsewhere during the period of his removal still he is entitled to 50% of the back wages. In *Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyala and others*² the Apex Court after referring to all the judgments on the subject, including the judgments of the Apex Court in *J.K.Synthetics Ltd. V. K.P.Agrawal*³ and *Zilla Parishad, Gachiroli v. Prakash*⁴, held as under:

- 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

¹ AIR 1984 SC 1361

² (2013) 10 SCC 324

³ (2007) 2 SCC 433

⁴ (2009) 4 Mah.LJ 628

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.

12) Similarly, the Apex Court in *Raghubir Singh v. General Manager, Haryana Roadways, Hissar*⁵ after referring to the judgments of the Apex Court in *Deepali Gundu Sarwase (2 supra)*, *Hindustan Tin Works (P) Ltd. V. Employees*⁶ and *Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court*⁷, held as under:

“the critical analysis of law laid down is very much relevant to the case on hand, which is neither discussed nor considered and examined by the courts below while answering the reference made by the State Government and passing the award, judgments and orders in a cavalier manner. Thus, the lives of the appellant and his family members have been hampered. Further, on facts, we have to hold that the order of termination passed is highly disproportionate to the gravity of misconduct and therefore shocks the conscience of this Court. Hence, we hold that the appellant is entitled for the reliefs as prayed and the respondent is directed to reinstate the appellant workman with back wages from the date of raising the industrial dispute till the date of his reinstatement with all consequential benefits such as continuity of service, wage revisions and other statutory monetary benefits.”

13) From the judgments referred to above, it is clear that the workman, who has not been found guilty of the charges leveled against him and was not gainfully employed elsewhere during the period of his removal, is entitled not only for reinstatement with continuity of service but also with full back wages along with other consequential benefits. The petitioner did not challenge the order of his reinstatement with continuity of service and 50%

⁵ (2014) 10 SCC 301

⁶ (1979) 2 SCC 80

⁷ (1980) 4 SCC 443

of back wages and did not adduce any evidence to show that he was not gainfully employed elsewhere during the period of his removal. Hence, I see no reasons to interfere with the order passed by the Tribunal.

14) Accordingly, the writ petition is dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending, shall stand dismissed.

JUSTICE C. PRAVEEN KUMAR

21.10.2016
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