

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

WVMP.No.953 of 2014 in WPMP.No. 39982 of 2013

in

WP.No.32158 of 2013

and

WP.No.32158 of 2013

COMMON ORDER :

This Writ Petition is filed challenging the order dt.25.03.2013 in I.D.No.9 of 2011 of the 2nd respondent published on 01.05.2013 in G.O.Rt.No.340 dt.10.04.2013.

2. The 1st respondent was employed as a Driver in the petitioner-Organization.

3. A charge-memo was issued on 03.07.2009 to the 1st respondent framing the following charges :

“1. For having failed to stop the bus at stage no.3/2 (Mother Theresa Statue) when the checking officials hailed their hands to check the bus at about 11:35 Hrs., while operating the bus No.5867 on route No.16C, on 20.06.2009, causing inconvenience to them to exercise the check, which tantamount to insubordination on your part, which constitutes misconduct under Reg.28(viii) of APSRTC Employees’ (Conduct) Regulations, 1963.

2. For having refused to give your spot statement and also rudely mis-behaved with the checking officials in public place, which tantamount to insubordination on your part, which constitutes misconduct under Reg.28(viii) & (xxxii) of APSRTC Employees’ (Conduct) Regulations, 1963.”

4. The 1st respondent submitted his explanation to the said charge-memo.

5. Thereafter, an enquiry officer was appointed and he submitted a report to petitioner holding 1st respondent guilty of the charges. Thereupon, on 07.12.2009, the 1st respondent was imposed punishment of deferment of annual increment with cumulative effect after agreeing with the conclusion of the enquiry officer.

6. The Appeal and the Review Petition filed by 1st respondent were rejected. Thereupon, a reference was made by the Joint Commissioner of Labour, Hyderabad (Twin Cities) to the 2nd respondent as to whether the petitioner was justified in awarding the above punishment to 1st respondent besides treating the entire suspension period as not on duty.

7. The 2nd respondent held that the enquiry conducted by the Management is vitiated, and cannot be sustained through an order dt.04.09.2012.

8. Thereafter, the petitioner examined RW.1 and marked Exs.R.1 to R.19. The 1st respondent did not lead evidence.

9. The 2nd respondent considered the evidence of RW.1 who also stated that the 1st respondent did stop the bus but at a distance from the place where he was asked to stop the bus by the TTI's for the purpose of checking. On appreciation of evidence, the 2nd respondent held that Charge No.1 was not proved since the conductor had given Ex.R.4 statement at the time of the spot check, that the 1st respondent

did stop the bus but a little ahead of the place where the TTI's asked him to stop the bus.

10. I see no reason to interfere with this finding because it was not the charge against the petitioner that he did not stop the bus at the place where the checking officials asked him to stop the bus. The charge is that he failed to stop the bus when asked to do so by the checking officials.

11. The other charge against the petitioner was that he had refused to give his spot statement and rudely misbehaved with the checking officials in the public place. On this aspect, the 2nd respondent held that no charge-memo was issued on the spot to the 1st respondent and he relied on the statement of RW.1 in cross-examination that he made an endorsement in Ex.R.5, that they could not issue the charge-memo on the spot to avoid any delay in service. Without issuing the charge-memo on the spot to the 1st respondent, the 1st respondent cannot be expected to give a spot statement. It is also noted by 2nd respondent that the spot statement of the conductor Ex.R.4 stated that no rude or un-parliamentary words were uttered by 1st respondent. The conductor who is a direct witness to the occurrence was not examined by petitioner.

12. Therefore, in my considered opinion, the 2nd respondent rightly held that Charge No.2 was also not proved.

13. Once it is established that charges are not proved, the order dt.07.12.2009 imposing punishment by the petitioner on the 1st respondent cannot be sustained and was rightly set aside by 2nd respondent, and a direction was given to restore the pay scale to 1st respondent to its original position and to pay him full salary for the suspension period with full back-wages within two (02) months from the date of publication of the Award.

14. Since the Award passed by 2nd respondent is based on appreciation of evidence and the findings recorded therein cannot be said to be perverse or based on no evidence, I see no reason to interfere with the impugned Award.

15. Accordingly, the interim order dt.14.11.2013 in WPMP.No.39982 of 2013 is vacated, and WVMP.No.953 of 2013 is allowed. Consequently, the Writ Petition is dismissed. No order as to costs.

16. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 21-12-2016

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