

HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

W.P.No.1821 OF 2009

ORDER

Heard learned counsel for the petitioner and learned Standing Counsel appearing for the 2nd respondent-Corporation.

The petitioner was appointed as a Driver in the 2nd respondent-Corporation in the year 1988. He was issued a charge sheet on 7.5.2004 and was suspended from service on the same day. The allegations against the petitioner are as follows:

“1.For having abused the Security Staff at depot gate on 1.5.2004 and 2.5.2004 and causing much inconvenience to the Security Staff and also created nuisance in the depot premises which is misconduct under Regulation No.28 (XXXI) and (XXXII) of APSRTC Employees (conduct) Regulation, 1963.

2.For having consumed alcohol and attended the depot on 1.5.2004 and 2.5.2004 and abused the Security Staff at depot gate with filthy language and create nuisance in her depot premises which is a mis-conduct under Regulation No.28 (XXXI) and (XXXII) of APSRTC Employees (conduct) Regulation 1963.”

On receipt of the charge sheet, the petitioner submitted his explanation denying the allegations. An

enquiry was conducted and in the said enquiry, the charges levelled against the petitioner were proved. On the basis of the report of the Enquiry Officer, a show cause notice of removal was issued on 23.8.2004 and the petitioner again submitted his explanation denying the charges. However, an order of removal was passed on 6.9.2004. Challenging the same, he preferred an appeal and review petition and the same were rejected *vide* orders dated 21.12.2004 & 10.02.2005 respectively. Challenging the order of removal, the petitioner raised I.D.No.52 of 2005 before the 1st respondent-Tribunal. The Tribunal passed an Award on 15.03.2007 setting aside the order of removal by directing reinstatement of the petitioner into service as Driver afresh in the present scale of pay, but without continuity of service, back wages and other attendant benefits. Challenging the same to the extent went against the petitioner, the present writ petition was filed.

Learned counsel appearing for the petitioner submits that no finding was recorded by the Tribunal and without a categorical appreciation of the evidence adduced before the Enquiry Officer, passing of the Award

by directing reinstatement as a Driver afresh after rendering long service, is bad in law.

Learned Standing Counsel appearing for the respondent-Corporation submits that pursuant to the Award the petitioner was appointed as Driver afresh and he was superannuated also.

However, since the present issue relates to the Award passed by the Tribunal which has affect on the service of the petitioner, this Court considered the validity of the Award.

Before the Tribunal, no oral or documentary evidence was adduced by the petitioner. However, the respondent-Corporation filed Exs.M1 to 18.

As stated above, the charges relate to abuse of security staff at depot on 1.5.2004 and 2.5.2004. It appears that the security guards gave a complaint to the Depot Manager on 2.5.2004 with regard to conduct of the petitioner. The complaints were attested by several members, who witnessed the incident. Though the complainants were examined during the course of enquiry, they were not cross-examined by the petitioner. During the course of enquiry, the petitioner submitted

that though he consumed alcohol on 1.5.2004 in connection with celebrations of May Day, he did not remember that he abused the security guards or not. During the course of enquiry, no other person was examined in support of the allegations against the petitioner. In spite of the same, Labour Court observed as follows:

“Petitioner in this case consumed alcohol and picked up quarrel with the security personnel in drunken condition and abused them in filthy language before other staff members in spite of several warnings. He abused them on 1.5.2004 and again he came to the depot on 2.5.2004 and scolded them, hence, he was referred for medical examination, but for various reasons he was not examined, it is an admitted fact that he consumed alcohol and created nuisance in a drunken condition abused security staff on duty and it definitely amounts to misconduct, but the punishment inflicted upon him is disproportionate to the alleged misconduct. Though respondent stated that the petitioner was addicted to the alcohol and he was removed from service twice on the similar grounds, but the perusal of the service record will not reflect the same. Petitioner consumed alcohol in view of the celebration of May Day and in a drunken condition he criticized the management policies. When the same was restrained by the security guard, he also abused him. It is undisputed fact that a person will loose sense while he was in intoxicated condition and he will loose control over his acts. The

petitioner herein is a driver and he consumed alcohol after his duty hours in pursuance of May Day celebrations but not while he was on duty.

Therefore, considering the facts and circumstances of this case and the nature of allegations made against him and also in view of the relevant evidence placed before the Court, I feel it reasonable to set aside the removal order 6.9.2004 and to direct the respondent to reinstate the petitioner as a 'Driver afresh' in the present scale of pay, but without continuity of service back wages and other attendant benefits."

The observations made by the Labour Court are contradictory and not clear with respect to the charges levelled against the petitioner. This Court feels that no proper reasons were given for directing reinstatement of the petitioner as Driver afresh.

In view of the same, it is a fit case for remanding the matter to the 1st respondent-Tribunal for adjudicating the case afresh in accordance with law on the basis of the documentary evidence already produced by the 2nd respondent-Corporation. The petitioner and the respondents are not permitted to adduce any evidence, but the counsel for the petitioner as well as the 2nd respondent are entitled to advance arguments on the basis of the evidence already on record. The Tribunal shall

record its findings and give reasons and pass a fresh award within a period of six months from the date of receipt of a copy of this order.

Accordingly, the Writ Petition is allowed to the extent indicated above. No costs.

Miscellaneous Petitions, if any, pending shall stand closed.

JUSTICE A.RAMALINGESWARA RAO

14th June, 2017
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