

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 13849 of 2010

Date :12.10.2017

Between :

G S Manyam S/o Bairan Swamy
57 years
Asst Depot Clerk APSRTC
Chittoor I Depot
R/o 19-161, Red Cross Street
Chittoor

Petitioner

And

The Depot Manager APSRTC
Chittoor I Depot, Chittoor and another

Respondents

The Court made the following:



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ORAL ORDER:

Petitioner was working as conductor in the respondent corporation. On the allegation that petitioner was involved in misappropriation of the cash by way of fake police warrants and disciplinary proceedings were initiated against him resulting in removal from service from 16.8.2000. Against the order of removal, petitioner unsuccessfully raised I D No. 12 of 2002. Aggrieved thereby, he filed W P No. 8315 of 2004 and the same was dismissed by order dated 19.8.2005. Aggrieved thereby, petitioner preferred W A No. 1957 of 2005. On elaborate consideration of the rival claims, the Division Bench disposed of the batch of writ appeals by order dated 28.7.2009. The Division Bench held that there is no evidence adduced to come to conclusion by the enquiry officer that the appellants utilized fake warrants and thereby misappropriated the amount. (paragraph 7). The Division Bench also held that even assuming that appellants ought to have been diligent in verifying the correctness or otherwise of the police warrants, as it is their case that they accepted the said warrants in good faith and issued tickets for the value mentioned on the reverse of the warrants, the extreme punishment of removal from service is shockingly disproportionate to the misconduct alleged against the appellants. Having held as above, the Division Bench, instead of remitting the matter for fresh disposal, modified the punishment of removal to that of stoppage of two increments with cumulative effect. The Division Bench further directed that in case, the employee has still some more service, he should be reinstated into service.

2. In terms of the judgment of the Division Bench, petitioner was reinstated into service; the punishment as modified by the Division Bench was imposed and petitioner retired from service on attaining the age of superannuation.

3. In the instant writ petition, petitioner challenged the order of recovery as penalty from the benefits payable to the petitioner.

4. Heard learned counsel for petitioner and learned standing counsel for respondent corporation.

5. In view of the judgment of the Division Bench referred above, there is no need to discuss elaborately about the issue involved. Suffice to note that on the allegation of misappropriation, based on fake warrants, disciplinary action resulted in removal from service. As noted above, Division Bench exhaustively considered the issue and recorded findings in paragraph 7 of the judgment. In view of the said findings recorded by the Division Bench, when there is no proof that petitioner utilized fake warrants and misappropriated the amount, it is not open to the respondent corporation to recover the amount on the premise that loss caused to the respondent corporation was on account of alleged misconduct and misappropriation. Thus, the action of the respondent corporation in effecting recovery in the form of penalty on the alleged misappropriation is contrary to the findings recorded by the Division Bench in W A No.1839 of 2005 and batch dated 28.7.2009 is not sustainable and is liable to be set aside and accordingly set aside. If any amount was recovered from the petitioner, it shall be refunded to the petitioner within a period of four weeks from the date of receipt of copy of this order.

6. Accordingly, writ petition is allowed. No costs. Having regard to the same, miscellaneous petitions, if any pending, are closed.

P NAVEEN RAO,J

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TVK

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