

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Writ Petition No. 2102 of 2009

Order:

This Writ Petition was filed challenging the award passed in I.D.No.132 of 2006 dated 25.07.2007 filed by the first respondent herein.

The first respondent filed the said ID praying for setting aside the order of his removal passed by the second petitioner herein on 01.04.2006 and confirmed by the first petitioner herein on 04.10.2006. The first respondent was working as driver and the allegation is that while he was working as such he consumed alcohol and in an intoxicated condition he performed duty on Uppal-Vijayawada special service on 10/11.12.2005. On the complaint made by the passenger, the Station Manager and other Officer came to the first respondent and stated that he was in a drunken condition, but he denied the same and stated that he was chewing Baba Prabhat Zarda Pan and Gutka which might have smelt like alcohol and he was ready to go for medical check-up. The Conductor also stated that the first respondent was chewing Zarda Pan as well as Gutka, but had not taken alcohol. He was subjected to breathe analyzing test in the presence of ASI, MGBS, Jagadish Singh, Security Guard care taker of MGBS and service Conductor. It showed a positive result. Accordingly, he was withdrawn from the duty. The Assistant Manager (Traffic) submitted a report to the petitioners on 12.12.2005. A preliminary enquiry was conducted. The first respondent was placed under suspension and a charge sheet was issued on 17.12.2005 for which he submitted his explanation. Since the explanation was not satisfactory, the Chief Inspector (Enquiries) was nominated as Enquiry Officer. The

Enquiry Officer submitted a report stating that the charges levelled against the first respondent were proved. Accordingly, he was removed from service on 01.04.2006 after giving opportunity to submit his comments on the enquiry report. He preferred an appeal and the same was rejected by the Depot Manager on 29.07.2006 and the revision to the Regional Manager was disposed of on merits on 04.10.2006. In those circumstances, he raised the industrial dispute.

No oral evidence was adduced before the Tribunal. Exs.M1 to M23 were marked on behalf of the petitioners herein. The first respondent herein filed a memo not disputing the validity of domestic enquiry which was recorded on 09.07.2007. The Tribunal came to the conclusion that the enquiry report was not based on any conclusive evidence. Accordingly, the order of removal was set aside and the petitioners herein were directed to reinstate the first respondent herein into service with continuity of service and all other attendant benefits except back wages, by award dated 25.07.2007. Thereafter, the first respondent was stated to have been reinstated into service on 06.12.2007 and he is continuing in service till today.

Learned Standing Counsel for the petitioners submits that when the first respondent did not dispute the method of conducting enquiry, the Labour Court erred in interfering with the order of removal and ordering reinstatement of the first respondent into service.

A perusal of the award of the Labour Court shows that it scrutinised the evidence and since it found that the report of the Enquiry Officer was not based on conclusive evidence, it set aside the order of removal. In

order to come to that conclusion, the observations of the Labour Court are as follows:

“In the present case the petitioner himself prepared for medical check up by stating that he was not drunken and informed that he was chewing Baba Pan Gutka and the smell is emanating like that. The respondent has not sent him for medical check up, except breathing test report. The test report is also not available to consider anything about it. The material shows that the respondent has suspected the condition of the petitioner which is not a conclusive one. Their main case is that breath analyzer test was a scientific one and its report was accurate and acceptable. Digital point limits are important for considering the case of both sides to decide whether the petitioner condition is fit or not, even assuming that he consumed anything but his case was that he chewing only Zarda Pan which emanate smell like that. It is common in their duties to chew such things while performing night and double duties to control their mind and to avoid sleeping mood that is not a wrong or irregular. On the other hand it is necessary while performing duty which depends upon the person to person. Generally drivers are adopting such type of methods as safety method to drive the vehicle properly. There is no ban or prohibition to that effect and that cannot be taken adverse to the drivers. Moreover it is nothing but additional precautions taken by the drivers while performing their duties. In the present case he agreed to go for double duty. There is no iota of evidence that he consumed anything before breathing analyzer test. There is no evidence against the respondent except the statement analyzer test that indicates the petitioner take liquor it is not a conclusive evidence to take action against the petitioner. No doubt when the driver consumed alcohol performing duty of driver would endanger lives of the passengers and pedestrians for which it requires to take stringent action against such persons for safety of passengers and public. But the present circumstances is not sufficient, moreover there is no past record of the respondent that the delinquent is a habitual drinker.”

A perusal of the above observations shows that the conclusions arrived by the Labour Court for passing the award appears to be sound and does not call for any interference by this Court. In view of the same, the Writ Petition is liable to be dismissed.

The Writ Petition is, accordingly, dismissed upholding the award of the Labour Court. There shall be no order as to costs.

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

A. RAMALINGESWARA RAO, J

Date: 21.06.2017
Nsr

