

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.1113 OF 2012

ORDER :

Heard Standing counsel for APSRTC appearing for petitioner. None appears for the 1st respondent even though the name of Sri Venkata Ramaiah Karumuri is printed in the cause list. Therefore, the matter is heard ex parte.

2. This Writ Petition is filed by the petitioner, who is the Depot Manager of the APSRTC, for a Writ of Certiorari to quash the award dt.22.12.2010 made in ID.No.72 of 2009 by the 2nd respondent.

3. The 1st respondent had been employed as a Conductor in the AP State Road Transport Corporation in 1998. While she was conducting the Bus No.5035 on 25.12.2007 on the route Mallepalli-Mudigubba in Anantapur District, Checking Officials of the Head Quarters Enforcement Squad, Rayadurg exercised a check at stage No.14(Seelollapalli) and allegedly discovered that the petitioner collected fare from certain passengers but did not issue them tickets, though she had punched some tickets and had not punched other tickets. Accordingly, a charge memo was issued to 1st respondent framing the following charges:

“1. For having collected Rs.45/- and failed to issue tickets from a batch of 15 lady passengers boarded the bus between Tappetavaripalle ex-stages 15/14 and alighting at Seelollapalle ex.stages 14 even after collecting the requisite fare of Rs.3/- each at the boarding point

itself which constitutes misconduct under Reg.28(iv)(a) of APSRTC Employees (Conduct) Reg. 1963.

2. For having failed to punch the eight tickets 254/493192 to 199 of Rs.3/- denomination to the stage no.15/14 instead of punched at the stage on 1, 5 and 6 on seeing the checking officials and no punching on 'to' column which constitutes misconduct under Reg.28(vi)(a) of APSRTC Employees(Conduct) Reg. 1963.

3. For having kept punched tickets of Rs.6/- each one 415/58520 and Rs.10/- each 267/190369 which have been punched on the stage from 15 to 11 in your hand tray with malafide intention to defraud the revenue of the Corporation which constitutes misconduct under Reg.28(vi)(a) read with clause (xxxii) of APSRTC Employees (Conduct) Reg. 1963.

4. For having closed all denomination of tickets in the S.R except Rs.3/- denomination column vide S.R No.049/734243 up to stage No.14 on the route Mallepalle to Mudigubba which constitutes misconduct under Reg.28(xxxii) of APSRTC Employees (Conduct) Reg. 1963."

4. The 1st respondent gave explanation stating that 15 passengers had boarded the bus at Thappetavaripalli and were proceeding to do coolie work and wanted to be permitted to travel without paying ticket fare; that she objected to the same and requested that they should pay Rs.3/- each; while the said amount was being collected from each of the passengers and the tickets were in the process of being issued to them, the stage arrived and the checking squad boarded the bus, and so she hurriedly issued the improperly punched tickets.

5. The Enquiry Officer appointed by the petitioner-Corporation passed order on 26.05.2008 imposing punishment of removal from service.

6. Assailing the same, 1st respondent filed application in I.D.No.72 of 2009 under Section 2-A(2) of the Industrial Disputes Act, 1947 (for short 'the Act') before the 2nd respondent-Labour Court.

7. By Award dt.22.12.2010 the 2nd respondent directed reinstatement of the 1st respondent with continuity of service and attendant benefits, but did not grant back wages applying the principle 'no work no pay'.

8. Assailing the said order, the present Writ Petition is filed by the petitioner-Corporation.

9. On 27.01.2012 while admitting this Writ Petition, this Court directed reinstatement of 1st respondent into service and granted stay of continuity of service and attendant benefits which had been granted by the 2nd respondent. Admittedly no back wages had been granted by the 2nd respondent.

10. On an application filed by the 1st respondent to vacate the said order in W.V.MP.No.1652 of 2012, this Court did not modify the said interim order and made it absolute.

11. The Standing Counsel for petitioner-Corporation contended that in the facts and circumstances of the case and as per the

evidence available on record, the 2nd respondent could not have directed reinstatement of the 1st respondent as well as granting other reliefs mentioned above since the charges leveled against the 1st respondent were held proved in the disciplinary enquiry and she had herself admitted that she had made a mistake in the spot statement given by her. He therefore, contended that the 2nd respondent should have dismissed the claim of the 1st respondent for setting aside the order of removal passed against her.

12. The finding of the 2nd respondent was that one of the passengers who had given spot statement during the time of check by the checking officials and who was examined during domestic enquiry stated that due to fear of imposition of fine, she stated that they paid ticket fare to the conductor but in fact the fare was not paid to the conductor. The said witness also stated that the 1st respondent-Conductor was concentrating in counting the passengers and in short time the stage arrived and there was no mistake on the part of the Conductor. The 2nd respondent further held that the 1st respondent had been rendering service in the Corporation since 1998 and that the punishment of removal in light of the above evidence imposed on the 1st respondent was not warranted and was disproportionate to the gravity of misconduct warranting exercise of power under Section 11-A of the Act. It relied on the decision of this Court in **C.Basaiah v. Depot Manager, APSRTC, Tandur, R.R.District and others**¹

¹ 2009(1) ALT 183

wherein this Court had held that for minor lapses, an employee should not be deprived of his job.

13. The evidence of the witness in the enquiry referred to supra by the 2nd respondent in the impugned order supports the 1st respondent's explanation. When the witness herself stated that no amount has been paid to the 1st respondent by the 15 passengers and that when the 1st respondent was in the process of collecting the fare from each of the passengers, the check occurred, it cannot be said that the charges leveled against the 1st respondent were proved in the enquiry. Therefore, in my considered opinion, the 2nd respondent rightly set aside the order of removal imposed on the 1st respondent by the petitioner-Corporation without back wages by awarding continuity of service and attendant benefits.

14. It cannot also be disputed that the 2nd respondent had the jurisdiction to re-appreciate the evidence and interfere with the gravity of punishment imposed by the petitioner's management in appropriate cases by giving cogent reasons in the award.

15. Therefore, I see no reason to interfere with the impugned award passed by the 2nd respondent.

16. Accordingly, the Writ Petition is dismissed. There shall be no order as to costs.

17. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S. RAMACHANDRA RAO, J

15th June, 2017.

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