

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.2759 of 2006

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, by the petitioner-Corporation is directed against the Award, dated 14.05.2004, of the learned Chairman, Industrial Tribunal-cum-Labour Court, Visakhapatnam, passed in I.D.No.82 of 2002.

2. I have heard the submissions of *Sri S.V.Ramana*, learned Standing Counsel appearing for the petitioner/ Corporation, and of *Sri S.A.Razak*, learned counsel appearing for the 1st respondent, and of the learned Government Pleader for Labour (AP) appearing for the 2nd respondent. I have perused the material record.

3. The introductory facts, in brief, are as follows:

The 1st respondent was appointed as Conductor, Grade II, on 13.04.1999 under the deceased employees' quota/ bread winner scheme. As, according to the Corporation, the Transfer Certificate No.222402, dated 27.07.1986, and the Marks List, vide certificate No.2238, dated 23.06.1983, which were produced by the 1st respondent at the time of her recruitment, were found to have been not issued by the Head Master & Correspondent of the school of the 1st respondent, i.e., Lutheran High School, Dhawaleshwaram, the petitioner/ Corporation took the view that the 1st respondent cheated the Corporation while seeking appointment under the aforesaid scheme. Accordingly, the Corporation placed her under suspension and served on her, a charge sheet, dated 04.07.2001. The charge formulated verbatim reads as under:

“For having obtained employment as Conductor, Gr-II in APSRTC by producing fake T.C.No.222402 dt.27.7.86 and marks list vide Admn No.2238/ 23.6.83 said to have been issued by the Head Master and Correspondent, Lutheran High School, Dhawaleshwaram, E.G.District as

having passed 8th class at the time of recruitment, thus cheated the Corporation, which constitutes misconduct under Reg.28 (x)(xvii), (xxii) of APSRTC Employees' (Conduct) Reg. 1963 and Reg. 9(ii)(b) of APSRTC Employees' (CC&A) Reg. 1967".

The 1st respondent did not submit any explanation to the charge sheet. The management ordered an enquiry by appointing an Enquiry Officer. The 1st respondent addressed a letter, dated 14.09.2001, to the Depot Manager and also the Enquiry Officer requesting to supply certain copies of documents. The 1st respondent was informed by letter, dated 15.09.2001, to attend before the Enquiry Officer and go through the records, which are required by her. She filed an explanation before the Enquiry Officer stating that she was not supplied the copies of documents and that merely on the basis of the letters of the Head Master of the School, she was unjustly suspended and that she may be reinstated into service. After conducting a detailed enquiry, the Enquiry Officer submitted a report, dated 04.02.2002, holding that the charge formulated against the 1st respondent is proved. The petitioner Corporation served on the 1st respondent, a notice, dated 06.02.2002, along with a copy of the Enquiry report, and called upon her to submit her explanation. As her explanation, dated 14.02.2002, was found unsatisfactory, a further show-cause notice, dated 20.02.2002, was issued to her proposing the penalty of removal from service. The Depot Manager passed orders, dated 07.03.2002, ordering her removal from service, as her explanation, dated 05.03.2002, to the show-cause notice was found unsatisfactory and unconvincing. The 1st respondent without exhausting the remedy of appeal and review raised an industrial dispute by filing a claim petition. The same was resisted by the Corporation. On merits, the learned Chairman of the Tribunal allowed the claim petition and ordered her reinstatement into service with back wages and continuity of service; but, gave liberty to the Corporation to hold a fresh enquiry in the matter and take appropriate action.

4. Aggrieved thereby, the Corporation preferred this writ petition.

5. As the 1st respondent was reinstated into service, pursuant to the Award of the Tribunal, this Court, by orders, dated 16.02.2006, suspended the Award to the extent of awarding back wages. Though the Corporation was given liberty to conduct a fresh enquiry, no fresh enquiry has been conducted by the Corporation, as per the submissions made before this Court.

6. Learned Standing Counsel for the Corporation would contend as follows:

The 1st respondent secured employment as Conductor, Grade-II, under Deceased Employees' quota, i.e., on compassionate grounds and under bread winner scheme. She was appointed, on 13.04.1999, subject to verification of her educational certificates. At the time of her recruitment, she submitted her IX class Transfer Certificate with E.C No.222402, dated 27.07.1986, and 8th class Marks List with Admn. No.2238, dated 23.06.1983, said to have been issued by the Head Master & Correspondent, Lutheran High School, Dhawaleshwaram. In order to know the genuineness of her said certificates, the Corporation sent copies of the same to the Head Master & Correspondent, Lutheran High School, Dhawaleshwaram, requesting to communicate the genuineness or otherwise of the certificates submitted by the 1st respondent. The said request was made vide letter No.P1/684(1)/2000-KKD, dated 25.04.2001. In response to the said letter, the Head Master & Correspondent, Lutheran High School, Dhawaleshwaram, by his letter, dated 28.05.2001, informed that the Transfer Certificate with the aforesaid number of the 1st respondent has not been issued from their institution. Again, the Photostat copy of the 8th class marks list with Admn. No.2238, dated 23.06.1983, which was produced by the 1st respondent at the time of her recruitment as Conductor and which was said to have been issued by the Head Master & Correspondent, Lutheran High School, Dhawaleshwaram, was also sent to the said authority by the Corporation by registered post acknowledgement due,

along with letter, dated 20.06.2001, for verification. In reply to the said letter, the Head Master & Correspondent, Lutheran High School, Dhawaleshwaram, by his letter, dated 27.06.2001, confirmed that the said marks list was not issued from their institution. Having authenticated information that the certificates produced by the 1st respondent are not genuine, the Corporation placed her under suspension, on 04.07.2001, and served a charge sheet. When she submitted a representation, dated 14.09.2001, requesting for supply of copies of documents, she was advised, by letter, dated 15.09.2001, to appear before the Enquiry Officer and go through the records. She represented by letter, dated 20.12.2001, that the copies of documents are not supplied to her; but, gave an explanation in her said letter by stating that placing her under suspension and conducting an enquiry is not just and proper merely because the Head Master & Correspondent, Lutheran High School, Dhawaleshwaram, gave some reply letters. After a detailed enquiry, the Enquiry Officer found that the charge levelled against her is proved. Her comments and objections in her explanation to the enquiry report were found unsatisfactory. Her explanation to the show cause notice informing the proposed punishment of removal from service also was found to be unsatisfactory. Eventually, the 1st respondent was removed from service accepting the Enquiry Officer's finding that the misconduct was proved. When an employee obtains employment by means of false representation and cheating and when the said acts, which came to light, are confirmed on verification, the Corporation is justified in formulating a charge and conducting an enquiry and removing the 1st respondent from service. The 1st respondent secured employment on a fake Transfer Certificate and fake Marks List. After successive letters were addressed to the Head Master & Correspondent, Lutheran High School, Dhawaleshwaram, and after getting confirmation through his replies that the certificates submitted by the 1st respondent were not issued by the said Institution, a charge sheet was issued and an enquiry was conducted

in accordance with the procedure established by law; and, finally, the 1st respondent was removed from service. She did not exhaust the departmental remedies and straightaway raised an industrial dispute by filing a claim petition. The learned Chairman of the Tribunal was carried away by the submission of the 1st respondent that the copies of letters of Head Master & Correspondent, Lutheran High School, Dhawaleshwaram, were not supplied to her. He ignored the fact that she was permitted and advised to peruse the record before the Enquiry Officer. Though copies were not supplied, she was indeed permitted to verify the record in the presence of the Enquiry Officer. No prejudice has been caused to the 1st respondent on account of non-supply of reply letters received from the Head Master & Correspondent of the school. The learned Chairman of the Tribunal erroneously held that for non-examination of the Head Master & Correspondent, Lutheran High School, Dhawaleshwaram, the charge is not proved. Once, some semblance of material indicating that the certificates produced by the 1st respondent are fake was brought on record, the onus which is upon the management is discharged and the onus to rebut the same is shifted to the 1st respondent. The 1st respondent did not examine any witness to discharge the onus, which is upon her. The learned Chairman of the Tribunal failed to see that the standard of proof is only 'preponderance of probabilities' and that the evidence in the form of letters from the Head Master & Correspondent, Lutheran High School, Dhawaleshwaram, which are placed before the Enquiry Officer by the management sufficiently proved the charge. In the explanation, she simply stated that merely basing on the letters of the Head Master of the school, it is unjust to place her under suspension and conduct an enquiry, but did not specifically affirm that the said certificates are genuine. During the domestic enquiry, she was given an opportunity to produce her evidence. She tried to bank upon the technical pleas and failed to adduce any evidence to show that her certificates are genuine and that she studied in that school and that the

said certificates were issued by the said institution. The learned Chairman of the Tribunal erroneously interfered with the findings of the Enquiry Officer and the Disciplinary Authority. The impugned award is liable to be set aside.

7. Per contra, the learned counsel for the 1st respondent while supporting the award of the Tribunal would contend as follows:

Without the knowledge of the 1st respondent, the Corporation entered into some correspondence with the Head Master & Correspondent, Lutheran High School, Dhawaleshwaram, in which the 1st respondent studied. The copies of the letters addressed by the Corporation to the management of the school and the replies said to have been issued by the Head Master & Correspondent, Lutheran High School, Dhawaleshwaram, to the Corporation were not supplied to the 1st respondent despite a request made by her to supply the same. Therefore, the principles of natural justice are not followed and she was not given a reasonable and fair opportunity to defend herself in the domestic enquiry. Even in a case where the standard of proof is preponderance of probabilities, the Corporation is required to discharge the initial onus of proof. Mere marking of the letters or mere production of the letters of the Head Master & Correspondent, Lutheran High School, during the domestic enquiry is no proof of the contents of the said letters, under the facts and law. The non-examination of a competent employee of the school to prove the contents of the letters issued by the Head Master & Correspondent, Lutheran High School, is fatal to the case of the management and since the letters are merely produced but the contents of the letter are not proved and as the copies of the letters are not supplied and the 1st respondent is only given an opportunity to peruse the same before the Enquiry Officer, the learned Chairman of the Tribunal held that the charge is not proved, as required under facts and law. The learned Chairman of the Tribunal also recorded a finding that sufficient opportunity is not given to the 1st respondent by the Enquiry Officer to adduce evidence on her side and that the Enquiry Officer also did not take steps for

examination of the Head Master & Correspondent of the School, Dhavaleshwaram, to speak to the contents of the letters addressed by the Head Master & Correspondent of the school to the Corporation and also the genuineness or otherwise of the 1st respondent's certificates said to have been issued by the said school and that non-examination of the person, who signed the letters which were received from the school by the Corporation is fatal to the case of the Corporation. The well reasoned findings of the learned Chairman of the Tribunal do not call for interference and the writ petition is devoid of merit and is liable to be dismissed.

8. I have given earnest consideration to the facts and submissions.

9. The service record of the 1st respondent shows that her date of birth is 25.03.1973. She was placed under suspension, on 04.07.2001, and a charge sheet was also served upon her on that date. However, admittedly, pursuant to the award, she was reinstated into service. This Court suspended the award of the Tribunal insofar as payment of back wages. It is apt to note the interim order, dated 16.02.2006, of this Court, which reads as follows: "It is submitted by the learned counsel for the petitioner that in pursuance of the award of the Tribunal in I.D.No.82 of 2002, the 1st respondent was reinstated into service. In that view of the matter, there shall be interim suspension of the award, only to the extent of awarding back wages." In that view of the matter, the Corporation ought to have conducted an enquiry as per the directions in the award, which are not stayed by this Court. Be that as it may. The 1st respondent has got long left over service. Her only contention is that the letters addressed by the Head Master & Correspondent of the school are not supplied to her and that therefore, the principles of natural justice are not followed and that the Corporation failed to examine any person concerned with the letters addressed by the Head Master of the school and thus failed to prove the contents of the said letters. The learned Chairman of the Tribunal agreed

with her said submission. At this stage of the matter, it is not in dispute that the 1st respondent is aware of the contents of the said letters, in view of her participation in the enquiries before the Enquiry Officer and the Tribunal and this proceeding before this Court. Therefore, the exercise that remains to be done is conducting of a fresh enquiry by the Corporation as directed in the award. If a fresh enquiry is conducted, there will not be any room for any doubt. Further, if the Corporation is given a fresh opportunity to prove its stand before the Enquiry Officer by examining any competent witness from among the employees of the school to prove the contents of the letters addressed by the Head Master & Correspondent of the school or to prove the constituents of the gravamen of the charge by any other legal means, and if the 1st respondent is also given an opportunity to cross-examine any such witnesses and to adduce evidence in rebuttal, the matter can be given a quietus. Such a course sub-serves the ends of justice. Therefore, this Court finds that at this distance of time, there is no need to interfere with the award and the writ petition can be disposed of with appropriate directions.

10. In the result, the writ petition is dismissed directing the Corporation to take steps for conducting a fresh enquiry through a competent Enquiry Officer as expeditiously as possible and then take appropriate follow up action depending upon the findings in the fresh enquiry report that may be submitted by the Enquiry Officer, after such fresh enquiry. It is made clear that till such exercise is completed, no back wages need be paid to the 1st respondent. The necessary exercise as directed shall be completed by the Corporation, as expeditiously as possible, and preferably within two months from the date of receipt of a copy of this order.

Pending miscellaneous petitions, if any, shall stand closed.

There shall be no order as to costs.

M. SEETHARAMA MURTI, J

01.06.2017
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