THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.2061 of 2012

ORDER:

Heard Sri Vanam Viswanadham, learned counsel for the petitioner and Sri P.Durga Prasad, learned counsel for the respondents.

2. Petitioner was appointed as a casual conductor in A.P. State Road Transport Corporation on 25-02-1989. A charge sheet dt.08-04-1991 was issued to him alleging certain cash and ticket irregularities. He submitted explanation to the said charge sheet. Enquiry was conducted. On 14-08-1991, the Depot Manager, Giddalur imposed penalty of postponing petitioner's future regularization for a period of one year.

3. Subsequently petitioner was issued an office order dt.25-08-1992 regularizing his service as casual conductor without reference to the penalty imposed by the Depot Manager, Giddalur Depot on 14-08-1991 and he was appointed on time scale basis and posted to Kandukur Depot by order dt.25-08-1992.

4. This state of affairs continued and the petitioner was given Special Grade Increments also in the post of Conductor from 01-08-2004.

5. Suddenly in August, 2007, petitioner's actual increments were stopped without assigning any reason. When petitioner

enquired, he was informed that respondents had reopened his case in 2007 for implementing the penalty imposed on dt.14-08-1991, that 16 years after the punishment was imposed, it remained unimplemented and so it was suddenly implemented.

6. Petitioner gave a representation to the respondents in 2008 seeking information as to why increments were stopped.

7. He alleged that he came to know that 2nd respondent accorded permission to regularize petitioner's service w.e.f. 01-08-1993 instead of 01-08-1992 while implementing the punishment and to regularize pay fixation.

8. Petitioner contends that the action of the respondents in seeking to impose penalty imposed 17 years back on 14-08-1991 in 2007 is arbitrary and in any event, the impugned order issued by 3rd respondent on 09-11-2011 seeking to recover sum of Rs.88,000/- from the petitioner's salary has to be set aside.

9. Learned counsel for the petitioner further contended that the very punishment imposed on 14-08-1991 on the petitioner by postponing petitioner's future regularization for one year is not contemplated under any regulations issued by the Corporation and such punishment could not have been imposed as per the decision of the Supreme Court in **State Bank of India Vs. T.J.Paul[1].** He contends that since the very imposition of punishment itself is

[1] (1999) 4 S.C.C 759

contrary to law, the respondents cannot give effect to the same and recover any amount from the petitioner.

10. Sri P.Durga Prasad, learned counsel for the respondents, however contends that the petitioner having suffered punishment of 14-08-1991, did not choose to question it and at this point to time, he may not be allowed to contend that non-implementation being beneficial to him, no action should be taken in that regard. He contended that the audit department pointed out about the penalty imposed on the petitioner on 14-08-1991 and that was why his increments were stopped and he was asked to refund a sum of Rs.88,005/- periodically from his salary.

11. From the contentions of the respective parties, it is clear that the punishment dt.14-08-1991 imposed on the petitioner by the Depot Manager, Giddalur postponing the petitioner's future regularization for a period of one year was not implemented till August 2007. But in reply to a query from the Court as to whether such punishment is contemplated in the regulations at all, the learned Standing Counsel for respondents stated that there is no such punishment prescribed in the regulations as far as casual conductor is concerned or of any other employee.

12. The Supreme Court in **T.J.Paul** (1 supra) held that a punishment which is not provided in the service regulations cannot be imposed. This principle of law is not disputed by the Standing Counsel for respondents.

13. Therefore it has to be held that the order dt.14-08-1991 imposing the punishment of postponement of petitioner's future regularization for a period of one year is contrary to law and cannot be sustained.

14. The respondents cannot take a stand that petitioner should have questioned the same as soon as it is imposed when the respondents have not given any explanation as to why for 16 years after imposing the punishment, they have not implemented it. In the absence of any valid explanation by the respondents as to why they have not implemented the said punishment dt.14-08-1991, they cannot blame the petitioner for approaching this Court as soon as the said punishment is implemented and recovery is sought to be made based on the punishment. If the said punishment is allowed to be implemented at this point of time, it would amount to allowing the respondents to take advantage of their own wrong in imposing a punishment which is not provided under their regulations.

15. Therefore, the impugned orders dt.01-02-2008 and dt.24-04-2008 of 2nd respondent as well as the office order dt.09-11-2011 of 3rd respondent are declared as illegal, arbitrary and contrary to Article 14 of the Constitution of India and are accordingly set aside. Any amount recovered from the salary of the petitioner shall be refunded to the petitioner in four weeks from the date of receipt of a copy of this order.

16. With the above directions, the Writ Petition is allowed. No costs.

17. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 10-07-2017
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