

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

W.P.No.2859 OF 2009

ORDER:

The present writ petition came to be filed seeking writ of Certiorari to quash the Award dated 10.06.2008 in I.D.No.2 of 2007, passed by the Industrial Tribunal-cum-Labour Court at Warangal, with regard to the denial of continuity of the service of the first petitioner and other attendant benefits, as illegal and unjust.

2. During the pendency of the writ petition, the first petitioner died and hence, his legal representatives are brought on record.

3. The facts in issue are as under:

The petitioner filed an application under Section 2-A(2) of the Industrial Disputes Act, before the 1st respondent, questioning his removal from service by the 2nd respondent, as a driver in APSRTC, Manuguru Depot, vide orders dated 19.12.2003. The petitioner was appointed as a driver in the 2nd respondent-corporation on 02.03.1991 and his services were regularized w.e.f. 01.01.1993. On 22.06.2003, while performing duty on the vehicle bearing No.AP10Z 6965 in route Eturunagaram to Khammam, as he was not feeling well and unable to drive the vehicle properly, informed same to the conductor and fell down on the steering. Thereafter, he was shifted to the hospital. But on a complaint given by one of the passenger, the first petitioner herein was suspended and a charge sheet was issued to him. Though he submitted his explanation, enclosing the medical certificate showing his health condition and his inability to drive the vehicle at that point of time, the first petitioner herein was terminated and punished. The appeal and the review preferred by the petitioner were also rejected. Hence, he filed I.D.No.2 of 2007 before the Industrial Tribunal.

4. A counter came to be filed by the 2nd respondent before the Tribunal contending that several penalties were imposed on the petitioner prior to his removal. On a complaint made by a passenger, the petitioner was suspended and after conducting thorough enquiry and procedure, he was removed from service. During enquiry, no witnesses were examined on either side, but Exs.M.1 to M23 were got marked on behalf of the 2nd respondent herein. After considering the facts and circumstances of the case, and the material on record, the Tribunal directed the 2nd respondent to reinstate the petitioner as 'afresh' in the present scale of pay, but without continuity of service, back wages and other attendant benefits. Challenging the said Award, the present writ petition came to be filed.

5. Learned counsel for the petitioners would submit that there is absolutely no material to show that the first petitioner was driving the vehicle in drunken condition. The conductor, passenger and the driver, who were examined during enquiry did not depose about the petitioner driving the vehicle in a drunken condition. In the absence of the same, the finding of the Tribunal in holding that the petitioner-driver guilty of driving the vehicle in a drunken condition is improper. The second ground urged is that the petitioner drove the vehicle in a rash and negligent manner and that he did not inform about his sickness to the authorities, thereby caused inconvenience to the passengers. According to him, if the evidence of the conductor is taken into consideration, it would clearly show that the bus was stopped, as the petitioner was not feeling well, and thereafter, he took the driver to the hospital admitted him in there and thereafter, made alternate arrangements for transport of the passengers

6. The allegations made in the complaint lodged by the Assistant Manager with the Depot Manager (Ex.M.10) on 22.06.2003 would disclose that the passengers informed him that the petitioner-driver and conductor

did not give the complaint book and that the petitioner was in a drunken condition and was unable to drive the bus properly. The allegations in the complaint further show that the bus was driven in a rash and negligent manner from Eturnagaram to Marampalli Banjara. It is stated that the petitioner-driver was ready to drive the bus to the destination, but the passengers refused to continue their journey, hence, there was a delay of 30 minutes before another driver was allotted to continue the service. The petitioner-driver left the spot and submitted his sickness certificate on 24.06.2003 at about 08.30 hours, showing his absence from 22.06.2003 to 25.06.2003.

7. The complaint states that the petitioner-driver dashed the cyclist near telephone exchange; that he was applying sudden brakes at every stage; drove the bus rashly; dashed a buffalow and then he took the vehicle to the side. During enquiry, the Assistant Manager apart from reiterating the facts mentioned in the complaint, also stated that on enquiry he came to know that the petitioner-driver was not feeling well and he also enquired the doctor about his health. During enquiry, the conductor stated that the petitioner was not feeling well and the passengers complained that he was in an intoxicated condition. Hence, he shifted the petitioner to the hospital and he does not know what happened in the hospital. Basing on the enquiry, the Enquiry Officer recorded a finding holding that the petitioner-driver drove the vehicle in a rash and negligent manner and applied brakes suddenly and thereby issued a show cause notice to the petitioner-driver. Pursuant thereto, the petitioner submitted his explanation stating that he was suffering from low B.P. and also stated that the said passenger gave a false complaint against him.

8. Insofar as the allegation that the petitioner-driver was in a drunken condition, there was no evidence in proof thereof. Even the conductor of the bus, who was examined to speak about the same, never stated that the petitioner-driver drove the vehicle in a drunken condition. But the statement of the conductor is that due to ill-ness, the driver stopped the vehicle and thereafter he shifted the driver to hospital. Even in the complaint, though the complainant stated about the drunken condition of the petitioner-driver and in his telephonic message to the Assistant Manager, during enquiry, he (complainant) stated that he along with other passengers believed that the petitioner was in a drunken condition, but later he came to know about ill-health of the petitioner-driver. On his enquiry, the doctor revealed that the petitioner-driver was sick. When the statements of the conductor, complainant and doctor did not in any way indicate that the petitioner-driver was in a drunken condition, the Tribunal held that no proof was adduced with regard to the drunken condition of the driver.

9. The next question that arises for consideration is 'whether the petitioner-driver was right in abandoning the bus leaving the passengers'?

10. Learned counsel for the respondents would contend that the petitioner-driver has not informed about his sickness to the authorities and in the absence of any such intimation to the authorities about the sickness, his conduct in stopping the vehicle in the middle of the way, is improper. Apart from that, he also submitted that the refusal of handing over the complaint book to the passengers warrants stringent action.

11. It is to be noted here that the plea of the petitioner-driver was that he was suffering from low B.P. and giddiness and hence he stopped the vehicle in the middle of the way. Thereafter, he was taken to the hospital

by the conductor. It is also to be noted that when the passengers demanded for complaint book, the conductor or driver did not handed over the same. Insofar as abandoning the vehicle is concerned, it is to be noted that the plea of the petitioner is that due to sickness he abandoned the vehicle and later he was shifted to the hospital. The said explanation of the petitioner appears to be acceptable.

12. Insofar as not handing over the complaint book, the version of the petitioner-driver appears to be consistent, but abandonment of the vehicle probably would have been due to his sickness. But at the same time, the responsibility devolves on the driver to inform his sickness to the authorities and also that he was suffering with low B.P., before he took charge to drive the bus. Apart from that, it is also to be noted that the passengers in their statement stated that the petitioner was driving the bus in a rash and negligent manner. Though no accident was occurred and nobody was put to any injuries because of his act, but driving the vehicle in a rash and negligent manner is really condemnable. But at the same, it is to be noted that none of the passengers stated as to how he drove the vehicle i.e. as to whether it was in high speed or as to whether he was driving the vehicle in a zigzag manner or over took any other vehicle without taking proper precautions etc. Such being the case, the order of the Tribunal denying the continuity in service, back wages and other attendant benefits appears to be improper and incorrect.

13. Learned counsel for the respondents clearly stated that the petitioner-driver would be allowed with continuity of service and other attendant benefits, but no back wages having regard to the findings arrived at.

14. Learned counsel for the petitioners would submit that at least 50% of the back wages may be given to the family members of the petitioner-driver, pending writ petition.

15. Taking into consideration, the totality of circumstances of the case and having regard to the findings arrived at by the Tribunal, the writ petition is allowed in part to the extent of continuity of service, other attendant benefits and 30% of the back wages to be paid from the date of removal. Arrears shall be paid to the legal heirs of the petitioner-driver, at the earliest. There shall be no order as to costs.

Miscellaneous petitions pending in this writ petition, if any, shall stand closed.

16.08.2017
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JUSTICE C. PRAVEEN KUMAR

