

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
HON'BLE SRI JUSTICE G.SHYAM PRASAD

WRIT APPEAL No.1316 of 2017

Date:02.8.2017

Between.

Bokka Venkateswara Rao,
S/o Late Surya Rao

..... Appellant

And.

The Depot Manager,
APSRTC, East Godavari
District and another.

.....Respondents

Counsel for the appellant: Mr. S.M.Subhan

Counsel for respondent No.1: Mr. S.V.Ramana

Standing Counsel for APSRTC

The Court made the following:

JUDGMENT: *(per Hon'ble Sri Justice C.V.Nagarjuna Reddy)*

This Writ Appeal is filed against order, dated 28.01.2014, in Writ Petition No.24751 of 2002, whereby the learned single Judge has allowed the said Writ Petition by setting aside the order of the disciplinary authority, as confirmed by the Industrial Tribunal-cum-Labour Court, Visakhapatnam (for short 'the Labour Court;') removing the appellant from service. While doing so, the learned single Judge denied attendant benefits and back wages to the appellant. To the extent of this part of the order of the learned single Judge, the appellant has filed this Writ Appeal.

The appellant was subjected to departmental proceedings on the following charges:

“(1) For having collected the total requisite fare amount of Rs.16/- and issued the reissued tickets bearing Nos.720/-886928 and 932 to 934 E.4 of Rs.4/- denomination to a batch of four passengers who boarded your service bus bearing No.AP 9Z 5249 at Jaggampeta and found alighting at Kandregula ex-stages 10 to 8 while you were performing the service on the route Jaggampeta to Yerravaram via Bhavavaram on 20.03.2000 which constitutes misconduct under Reg.28(xxiii) of APSRTC Employees (Conduct) Regulations, 1963.

(2) For having collected the total requisite fare amount of Rs.12/- and issued the reissued tickets bearing Nos.564/787318 to 320 E.3 of Rs.4.50 ps denomination to a batch of three passengers who boarded your service bus bearing No.AP 9Z 5249

at Jaggampeta and found alighting at Kandregula ex-stages 10 to 8 while you were performing the service on the route Jaggampeta to Yerravaram via Bhavavaram on 20.03.2000 which constitutes misconduct under Reg.28(xxiii) of APSRTC Employees (Conduct) Regulations, 1963.

(3) For having closed all the tray ticket numbers up to stage No.8 by the time of check at Kandregula ex-stage No.8 without issuing proper tickets to E.7 passengers pertains to charge Nos.1 and 2 in spite of collecting the total requisite fare amount from them at their boarding point itself while you were performing the service on the route Jaggampeta to Yerravaram via Bhavavaram on 20.03.2000 which constitutes misconduct under Reg.28(xxxii) of APSRTC Employees (Conduct) Regulations, 1963."

After holding enquiry, the enquiry officer held the appellant guilty of all the three charges. Based on the enquiry report, respondent No.1 has removed the appellant from service. The Appeal and the Review filed by the appellant were dismissed. The appellant has, therefore, raised an Industrial Dispute, viz., I.D.No.174 of 2001 before the Labour Court. The Labour Court, after conducting enquiry and on appreciation of the evidence on record, dismissed the said I.D., thereby confirming the orders of the hierarchal departmental authorities. Feeling aggrieved by all these orders, the appellant has filed Writ Petition No.24751 of 2002. While partly allowing the said Writ Petition in the manner as stated above, the learned single Judge has eventually re-appreciated the evidence and

rendered a finding that charges Nos.1 and 2 regarding misappropriation have not been made out while charge No.3 to the extent that the appellant has closed the SR has been proved.

Mr. S.M.Subhan, learned counsel for the appellant, has emphasized on the findings of the learned single Judge regarding charge Nos.1 and 2 and pleaded that in the light of the said findings, denial of attendant benefits and back wages to the appellant is unjust.

Mr. S.V.Ramana, learned Standing Counsel for APSRTC, submitted that the findings of the learned single Judge that charge Nos.1 and 2 have not been made out is contrary to the record and while doing so, the learned single Judge has adopted a principle which normally applies to criminal law where the accused is extended the benefit of doubt.

We have carefully considered the respective submissions of the learned counsel for the parties.

The Labour Court in its award referred to the statements of two passengers, viz., P.C.Kalavathi and B.Atchamma made before the checking officials, which were recorded as Ex.M-4 and compared the same with the later versions given by them before the enquiry officer, recorded as Exs.M-13 and M-14, and observed that the said witnesses were evidently won over by the appellant to depose in his favour in the departmental enquiry by

resiling from their earlier statements made at the spot at the time of the check. The Labour Court has also taken into consideration the fact that the tickets of Rs.4.50 ps denomination were produced by the said passengers as if they were given by the appellant for their journey from Kandregula to Jaggampeta and it is, however, their version that the ticket for the said route was only Rs.4/- and that therefore, the tickets produced by them did not pertain to the route Kandregula to Jaggampeta.

From the impugned order of the learned single Judge, we find that he has adopted an approach which is normally adopted in a criminal case, where proof beyond reasonable doubt is a *sine qua non* for holding the accused guilty, whereas in departmental proceedings, preponderance of probabilities is sufficient to hold a delinquent guilty of misconduct. Therefore, we are not in agreement with the findings rendered by the learned single Judge that when there are two contradictory statements, the statement which supports the plea of the employee must be adopted.

Though the respondents have not filed appeal against the findings of the learned single Judge, under Order-41 Rule-22 of the Code of Civil Procedure while supporting the final result,

they are entitled to state that the findings recorded against them in respect of any issue ought to have been in their favour.

In the light of the above discussion, we are unable to agree with the view of the learned single Judge that charge Nos.1 and 2 are not proved. Since the respondents have not questioned this relief granted to the appellant, the impugned order of the learned single Judge to that extent cannot be disturbed. We are however of the opinion that the appellant is not entitled to the attendant benefits and back wages as, he was found guilty of all the three charges both by the departmental authorities and also by the Labour Court. Indeed, the learned single Judge has shown lenience in allowing the Writ Petition to the extent of reinstatement of the appellant. Hence, denial of the attendant benefits and back wages by the learned Judge does not call for interference by us.

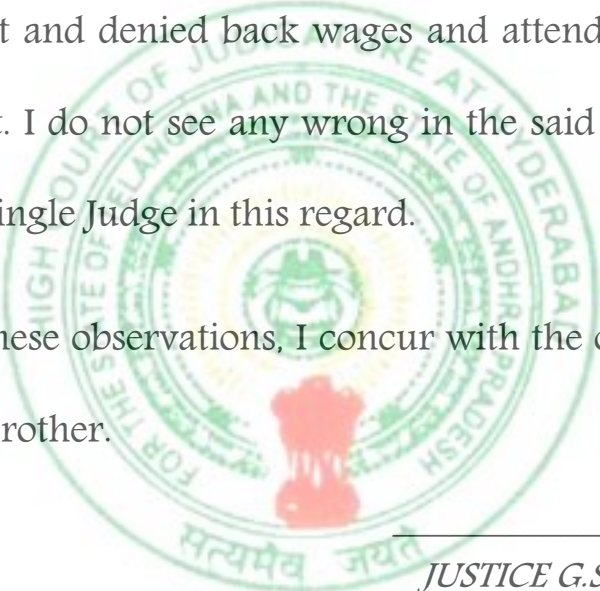
For the afore-mentioned reasons, we do not find any merit in this Writ Appeal and the same is, accordingly, dismissed.

JUSTICE C.V.NAGARJUNA REDDY

ORDER: *(per Hon'ble Sri Justice G.Shyam Prasad)*

I respectfully agree with all the findings of my learned Brother on all the aspects and the result of the Writ Appeal. However, I would like to make an observation in this Writ Appeal with regard to the findings of the learned single Judge. The learned single Judge has reversed the findings of the Labour Court on charge Nos.1 and 2 and held charge No.3 against the appellant and in that view of the matter, he has ordered reinstatement and denied back wages and attendant benefits to the appellant. I do not see any wrong in the said observation of the learned single Judge in this regard.

With these observations, I concur with the observations of my learned Brother.

A large, faint, circular watermark seal of the High Court of Andhra Pradesh is centered on the page. It features the text 'HIGH COURT OF ANDHRA PRADESH' around the perimeter, 'FOR THE STATE OF ANDHRA PRADESH' at the bottom, and 'सत्यमेव जयते' at the very bottom. In the center is a red emblem of the Government of India. The seal is partially obscured by the text of the judgment.

JUSTICE G.SHYAM PRASAD

02nd August 2017

DR