

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Writ Petition No. 2216 of 2009

Order:

Heard learned Standing Counsel for the petitioner and none appeared for the first respondent in spite of service of notice on him.

The first respondent was appointed as a casual Conductor on 25.11.1986 and later on he was absorbed as temporary Conductor. On 30.05.2000, he was allotted Tray No.191 to perform duties on route No.76/2 i.e., Kothwalguda (night out). It was alleged that he did not remit the bus cash to a total of Rs.1174/- towards sale of tickets and imprest amount and he simply handed over the SR and Tray in ERC section and left the depot without informing to the concerned ADC. A preliminary enquiry was conducted through the Chief Inspector and on perusal of the preliminary enquiry report he was kept under suspension and a charge sheet was issued on 08.06.2000. The first respondent did not submit his explanation and a domestic enquiry was conducted. The Enquiry Officer submitted his report holding that the charge levelled against the first respondent was proved. The comments of the first respondent were called for and the first respondent submitted his objections. After perusing the same, an order of removal from service was passed on 13.11.2000. The appeal and review filed against the said order were dismissed on 23.01.2001 and 12.04.2001 respectively. Challenging the order of removal, the first respondent raised an industrial dispute in I.D.No.5 of 2005. On 19.02.2008, the Tribunal held that the domestic enquiry was valid. However, while considering the issue whether the order of removal of the first respondent herein from service is justified or not, the Tribunal came to the conclusion that the punishment

is disproportionate to the charge levelled against the first respondent herein and accordingly modified the punishment by deferment of one annual increment for a period of three years without cumulative effect and denying back wages. However, the first respondent was directed to be reinstated into service with all other attendant benefits, by award dated 04.04.2008. Challenging the same, the present Writ Petition was filed.

Learned Standing Counsel for the petitioner submits that in view of the submission of the enquiry report which was not disputed, the Labour Court ought not to have interfered with the punishment.

The charge levelled against the first respondent herein was as follows:

“For having not remitted the bus cash amount Rs.1174/- of service No.76/2 on 31.05.2000 after completion of your duty on the said service until today duly misappropriating the same amount and left from the depot without intimation which shows gross negligence on your part, which constitutes misconduct under Reg.28(x) & (iv)(a) of the APSRTC Employees (Conduct) Regulations, 1963.”

The first respondent stated that he went to the cash counter for remitting the bus cash and as no ADC was available to receive the cash he handed over the tickets and tray box to another ADC and left the earning section and went to hotel for taking meals. Since he was due of an amount of Rs.300/- to the hotel, the said amount was collected from him. On 01.06.2000 when he approached the Chief Inspector of Rajendranagar he was asked to give explanation for not remitting the bus cash and he admitted the non-remittance of the cash and requested him to deduct the same from his salary in the next month.

Taking the above circumstances into consideration, the Tribunal held that the punishment was disproportionate to the charge by observing as follows:

“I have given my earnest consideration to the respective submissions made by the counsel for either side and the material available on record.

The charge levelled against the petitioner is that he had misappropriated the bus cash at Rs.1174/- as he did not remit the bus cash on 31.05.2000 soon after performing his duties. It is a admitted case of the petitioner that he did not remit bus cash. He submitted explanation to the charge sheet issued against him on 06.10.2000 admitting that he has utilized the bus cash amount to meet his personal expenditure. But he explained that he was not keeping good health and he was not taking food in time on account of disputes in his family. He utilized the said amount for his personal use. However before the enquiry officer he was examined and he gave his statement stating that on 30.05.2000 he was booked for service 76/2 on route No.251/K, Rajendernagar to Kushaiguda. On completion of schedule service he returned to the depot at 12.00 hours on 30.05.2000. He went to the cash counter for remitting the bus cash, as no ADC was available to receive the cash he handed over the tickets and tray box to another ADC and left the earning section and went to hotel for taking meals. The Hotlier has collected Rs.300/- from him as it was due to him. He later returned to the earning section and informed that there is a shortage of Rs.300/- in his bus cash. On 01.06.2000 when he approached the Chief inspector of Rajendernagar he asked him to give his explanation for not remitting the bus cash for which he replied that the amount of bus cash not remitted by him may be deducted from his salary in the next month. Accordingly, he did not remit the bus cash and he was issued with a charge sheet. It is stated that the petitioner/conductor is responsible to remit the bus cash on completion of his duty schedule immediately. If he had any personal problem he must borrow money from other sources and meet his personal expenses but he cannot utilized the amount of bus cash for his personal needs. The statement given by the petitioner/conductor that he was under compelling circumstances to discharge the dues to the hotel. Therefore he fell in short fall of the amount. The poor conductor who was not able to fetch funds from other sources or staff etc., and he was put to suffer. In fact there is no fraud or any deceitful nature of the petitioner for causing loss to the respondent corporation. He had clearly admitted that a sum of Rs.300/- was taken away by the Hotlier and he fell in short of money. On the next day when he reported to the Chief inspector he was in helpless

condition and nobody came to his rescue. The petitioner had put up with 13 years of continued service. The amount which was not remitted by him had already recovered from his salary by the respondent corporation. Since I do not find any deceitful nature to defraud his employer, the punishment imposed by the respondent corporation for causing removal of the petitioner from service appears to be not commensurate with gravity of misconduct committed by the petitioner. In the circumstances the appropriate punishment for the petitioner for not remitting the bus cash in time which amount to a temporary misappropriation, for which differ one annual increment for a period of 3 years without cumulative effect will serve the ends of justice. Accordingly the order of removal of petitioner from service is set aside.”

On a reading of the above appreciation of evidence by the Tribunal, this Court feels that the interference of the Tribunal with the punishment imposed is proper and it does not warrant any interference by this Court.

The Writ Petition is, accordingly, dismissed. There shall be no order as to costs.

As a sequel thereto, the miscellaneous petitions pending in this Writ Petition, if any, shall stand closed.

A. RAMALINGESWARA RAO, J

Date: 21.06.2017
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