

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO**W.P.No.16810 of 2017****ORDER:**

Heard the learned counsel for the petitioner and the learned Government Pleader for Labour appearing for respondents.

2. This Writ Petition is filed by the Telangana State Road Transport Corporation challenging the award dt.08-08-2016 in I.D.No.03 of 2015 of the Labour Court-III (for short 'the Labour Court') published vide G.O.Rt.No.871 dt.23-11-2016 in the notice board of the Labour Court, Hyderabad.

3. The 1st respondent was employed as driver in the above corporation.

4. A charge memo dt.08-06-2012 was issued to the 1st respondent framing the following charges:

"For having driven the 09:00 hours NRPT-MMB N/O Service with vehicle No.AP 28Z 4508 on 22-04-2012 with intoxicated condition and negligent manner caused hit the bus to the chat bhandar vehicle at subash road at NRPT. The service bus was returned back to the depot by the co-driver and you have absconded from your duty at that time and the service was sent online with another driver caused danger to the lives of the passengers and damaged the image of the corporation which constitutes misconduct under Reg.28 (ix) (a) of APSRTC Employees Conduct Reg. 1963.

(ii) For having violated the standing instructions of the corporation and driven the vehicle in intoxicated condition

which constitutes misconduct under Reg.28 (XXXII) of APSRTC Employees Conduct Reg. 1963.”

5. The 1st respondent submitted his explanation on 11-06-2012.

6. Not satisfied with the said explanation, an enquiry officer was appointed and he submitted a report on 06-10-2012 stating that the charges levelled against 1st respondent were proved. On the basis of the said enquiry report, on 02-01-2013, punishment of ‘removal from service’ was imposed on 1st respondent.

7. He preferred an appeal to the Deputy Traffic Manager, Mahabubnagar. It was rejected on 02-05-2013. The 1st respondent then preferred a review before the Regional Manager which was dismissed on 07-09-2013. A mercy petition filed by 1st respondent was rejected by the Executive Director of the petitioner-Corporation on 18-12-2013.

8. The 1st respondent then filed an application under Section 2 A(2) of the Industrial Disputes Act, 1947 (for short ‘the Act’) before the Labour Court challenging the order of removal dt.02-01-2013 passed by the petitioner and sought reinstatement into service.

9. The 1st respondent did not adduce any evidence but the petitioner marked Exs.M-1 to M-25.

10. On 08-08-2016, the Labour Court passed the impugned award setting aside the award of removal dt.02-01-2013 and directing

the petitioner to reinstate the 1st respondent into service with continuity of service and with 50% of back wages and other attendant benefits.

11. It held that though the charge against the 1st respondent was that he was driving the bus in an intoxicated condition, no breath analyzer test was conducted and he was also not referred to any doctor to verify whether he was in an intoxicated condition; that when the vehicle came out from the depot, the security guard had a duty to check the 1st respondent with breath analyzer; and that it is not the case of the petitioner that when the bus came out from depot, driven by 1st respondent, it was detected that 1st respondent has consumed alcohol. It thus, held that there was no evidence that the accident was caused because the 1st respondent was driving the bus in an intoxicated condition.

12. It also held that the incident took place on 22-04-2012 whereas a report was submitted by the Assistant Traffic Manager (T) on 03-05-2012 more than ten days after alleged incident; and basing on newspaper clippings, the petitioner had framed charges against 1st respondent. It also took note of 1st respondent's defence that he was suffering from giddiness because he had not taken breakfast on that day after he had taken blood pressure tablets, because of which the incident occurred. It relied on the decision of the Supreme Court in **Munna Lal Vs. Union of India and others**¹

¹ 2010 (3) SLR (SC) 768

and came to the conclusion that the charges levelled against 1st respondent were not proved and it was an abuse of process of law. It therefore directed the reinstatement of 1st respondent into service with continuity of service and with 50% back wages and other attendant benefits.

13. Challenging the same, this Writ Petition is filed.

14. Learned counsel for the petitioner-Corporation contended that the charge against 1st respondent was held proved in the enquiry conducted against 1st respondent and the punishment imposed on 1st respondent by the petitioner was just and proper. He also stated that in the domestic enquiry, charge against 1st respondent was proved on balance of probabilities and therefore the Labour Court grossly erred in interfering with the findings and the punishment imposed by the disciplinary authority. He also stated that in the past, the 1st respondent was twice removed from service for unauthorized absenteeism, that he was censured three times earlier and his annual increment was deferred sixteen times on other allegations. Lastly he contended that granting of continuity of service and 50% back wages is not proper.

15. Firstly, the charge against the petitioner is admittedly that he was driving the vehicle in an intoxicated condition. Though it is not disputed that the security guard was to check the driver before the bus left the depot by a breath analyser, it is not the case of the

petitioner that there was any detection at the time when the 1st respondent took bus out of the depot that he had consumed alcohol. Also no medical evidence had been adduced in the disciplinary proceedings in support of the plea of the petitioner that 1st respondent was under the influence of alcohol when he drove the bus resulting in the accident. In the absence of any evidence to show that 1st respondent was driving a vehicle in an intoxicating condition, the 1st respondent's defence that he was suffering from giddiness because he had not taken breakfast on that day after he had taken blood pressure tablets, because of which the incident occurred, appears possible. So I am of the considered opinion that the Labour Court rightly took the view that the charge against 1st respondent was not proved.

16. It is on record that on the basis of newspaper reports, a charge was framed against 1st respondent and though the incident took place on 22-04-2012, the report was submitted by the Assistant Traffic Manager (T) on 03-05-2012, ten days after the incident, for initiation of the disciplinary proceedings. No valid reason has been given for this delay.

17. Therefore, I do not find any error of law in the finding recorded by the Labour Court that the charge leveled against 1st respondent by the petitioner is not proved.

18. In this scenario, merely because in the past 1st respondent had been subjected to removal twice for unauthorized absenteeism or because he was censured or annual increment was deferred, the punishment of removal for the alleged misconduct on intoxication, which was not proved by the petitioner, cannot be imposed. In fact in the inquiry the past service record was not even pleaded by petitioner.

19. As regards the contention regarding award of 50% back wages, the issue is squarely covered by the judgment of the Supreme Court in **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others²**. The Supreme court in the said case reviewed the entire case law and held that if termination of services of the employee is illegal, normally full back wages should be ordered while directing reinstatement and that if any employer wants to deny back wages or contest the employee's entitlement to get consequential benefits, the employer has to plead and prove that employee was gainfully employed during the intervening period. It held that otherwise denial of back wages would amount to indirectly punishing the employee and rewarding the employer by relieving him of the obligation to pay back wages.

20. In the present case, no evidence was adduced by petitioner that the employee was gainfully employed between the date of termination of the date of award. Therefore, I see no reason to

² (2013) 10 S.C.C. 324

interfere with the direction of the Labour Court to award 50% back wages and attendant benefits to 1st respondent.

21. In this view of the matter, I find no error of law or of jurisdiction in the award passed by the Labour Court. Consequently, the Writ Petition is dismissed at the admission stage. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 15-06-2017
kvr

