

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Writ Petition No. 3752 of 2009

Order:

Heard learned counsel for the petitioner and learned Standing Counsel for the second respondent.

This Writ Petition was filed challenging the award of the first respondent passed in I.D.No.21 of 2004 dated 11.10.2006 to the extent that it went against the petitioner.

The petitioner was appointed as a Conductor on 24.11.1995 and his services were regularized in the year 1998. While so, on 03.07.2002, after completing his duty he surrendered the tickets tray and cash to the concerned ADC and the said ADC did not observe any irregularity. He availed off on 04.07.2002. When he reported for duty on 05.07.2002, it was alleged that the surrendered tray contained some missing tickets of Rs.23/- denomination having value of Rs.3979/-. It was alleged that he sold away 173 TAYL tickets and did not remit the cash. The tickets so sold were also not in a serial order. He was kept under suspension on 08.07.2002 and was issued a charge memo. The charge memo contains the following charges.

“1. For having sold 173 TAYL Tickets of Rs.23/- DENO unserially from Tray Box No.153 permanently allotted to you and failed to account the ticket issues in the Way Bill which constitutes misconduct under Reg.28(vi-a) of APSRTC Employees' (Conduct) Reg.1963.

2. For having misappropriated Corporation legitimate revenues to an extent of Rs.3979/- by carrying out sales of 173 TAYL tickets of Rs.23/- DENO unserially and not accounted in Way Bill and also not remitted the amount in Depot which constitutes misconduct under Reg.28(ix-a), (x) and (xxxii) of APSRTC Employees' (Conduct) Reg.1963.”

A domestic enquiry was conducted, wherein the ADC, who took charge of the tickets on 03.07.2002, and the CI-II, who checked the tickets on

04.07.2002, were examined apart from the petitioner. The Enquiry Officer submitted his report holding that the charges were proved. A show cause notice of removal was issued on 07.01.2003 and the petitioner submitted his explanation on 12.01.2003. He was ultimately removed from service by order dated 20.01.2003 and he preferred an appeal before the Divisional Manager, Hyderabad and the same was rejected on 23.04.2003. He also filed a revision before the Regional Manager and the same was also rejected on 24.11.2003. Challenging the removal order, the petitioner approached the Labour Court and raised I.D.No.21 of 2004. The Labour Court passed an award on 11.10.2006 setting aside the order of removal dated 20.01.2003 and directed the reinstatement of the petitioner into service as a fresh appointment with terminal benefits. In those circumstances, he filed the present Writ Petition challenging the order of reinstatement as a fresh candidate and denying him the past service.

Learned counsel for the petitioner submits that the Tribunal erred in passing the award as aforesaid when it recorded a finding that there was no misappropriation of the amount, though the action of the petitioner gave scope for irregularity.

In coming to the said conclusion, the Tribunal gave a finding to that of scope for committing irregularity with the following observations.

“In the present case tray No.153 particularly allotted to the petitioner alone and none others handle the same for issuing the tickets, before staff who came into the custody of the same after 03.07.2002. But, in the present case check was taken place in his absence but it is not a ground to escape his total responsibility. It is not the case of the petitioner that he verified the entire ticket block and satisfied that the numbers are correct if really he verified the block he would have brought it to the notice of the staff at the time of receiving the tray and ticket if he found any irregularity. It shows that he did not bring to the notice of the depot staff concerned about missing of anything before receiving them but at the

same time the entire responsibility cannot be fixed on him, as it is also came into the custodian of the ADC. There is wide scope of taking away the tickets, but at the same time he has to take precautions to intact the tickets at the time of taking and handing over of the same for taking back on the next day or on the date of his duty as it was particularly allotted to him. He has to take precautions not only in handing over tickets but also for safe custody. He failed to take appropriate precautions as he is the main person to deal with the tickets and the tray as ticket tray No.153 is allotted to him only. The entire material shows that he is having major scope to commit irregularity but it is not sufficient to give major punishment for this irregularity though it is not a clear case of misappropriation as missing of tickets were not found in his custody.

Upon perusing the material available on record, for the reasons mentioned above that there is irregularity on the part of the petitioner by giving wide scope to miss the tickets, as the tray was allotted to him but the evidence on record is not sufficient to show that he has misappropriated the same. I answered this point."

This court carefully perused the record produced before the Labour Court and noticed that the petitioner admitted misappropriation of the amount by his letter dated 08.07.2002 and also gave a statement to that effect on that day. Later on, he retracted and stated that the statement was obtained by coercion. During the course of domestic enquiry, the ADC was examined and she categorically stated that there was no irregularity when the tickets were taken control by her on 03.07.2002. The CI-II who verified the tickets in the absence of the petitioner on 04.07.2002 stated that he found the tickets missing on his verification on 04.07.2002 and there are no instructions to issue any notice before verifying the tickets. Whether the tickets which were surrendered to the concerned ADC at the end of the duty can be verified by another in the absence of the concerned Conductor is not clear. No circular was produced before the Labour Court with regard to that aspect of the matter. The petitioner was put to notice about the irregularity only when he reported for duty on 05.07.2002. The circumstance of not finding any

irregularity on 03.07.2002 and verifying the tickets in his absence was taken advantage by the workman who stated that the irregularity might have been committed by somebody else and the earlier statement given on 08.07.2002 was under force. The Labour Court passed the award on the ground that the petitioner has got the scope for committing the irregularity without a clear finding. In the circumstances, when it set aside the order of removal, it should have ordered for reinstatement of the petitioner but not as a fresh candidate.

In view of the same, this Writ Petition is partly allowed directing the reinstatement of the petitioner with continuity of service for the limited purpose indicated below, but without back wages. The increments which he would have earned should be notionally calculated during the interregnum period from the date of removal to the date of reinstatement. By virtue of continuity of service, if the petitioner is entitled for consideration of his case for promotion on par with similarly placed persons, the same shall be extended to him. However, he is not entitled for any monetary benefit by virtue of continuity of service from the date of removal till the date of reinstatement. 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: 28.06.2017
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