

HON'BLE SRI JUSTICE M.S.K. JAI SWAL

WRIT PETITION No.6615 of 2006

ORDER:

This writ petition is filed challenging the award passed in I.D.No.239/1997, dated 14.07.2000, on the file of the 1st respondent-Labour Court-III, Hyderabad.

2. Heard both sides and perused the material on record.
3. The petitioner, a regularly appointed helper in the Andhra Pradesh State Road Transport Corporation (APSRTC), was removed from service under proceedings dated 28.09.1996 of the 2nd respondent-Depot Manager, APSRTC, Narayanpet Bus Depot, Mahabubnagar District. The same was however modified by the Labour Court by order dated 14.07.2000, whereby the petitioner was directed to be reinstated in service with continuity of service, with attendant benefits and without back wages, but the lesser punishment of stoppage of his annual increment for a period of three years with cumulative effect was imposed upon him.
4. The charge leveled against the petitioner is that while discharging his duties on DGT Vehicle No.3646 to collect the material from work shop, he collected the material from the Depot stores room on 16.10.1995 under the check and lock of the Security Guard, but the petitioner in connivance with other DGT staff loaded 13 window frames and 26 window shutters in the DGT cabin without any valid gate pass or permission from the material Supervisor and left the premises. On 16.10.1996 near Kishanguda, while the material was unloading, the checking officials of Vigilance Squad, Kadapa, found and caught him red-handed and issued

charge memo to the petitioner, and ordered enquiry. Basing on the enquiry report, the petitioner was removed from service. Aggrieved by the same, the petitioner approached the Labour Court and the Labour Court by the impugned order, reduced the punishment imposed against the petitioner and directed him to be reinstated into service with continuity of service, attendant benefits, but without any back wages and imposed lesser punishment of stoppage of three consecutive annual increments with cumulative effect.

5. The 2nd respondent contended that the petitioner is a habitual offender and during his service, he was imposed with number of punishments. The enquiry officer, after considering the oral and documentary evidence, recommended for imposition of punishment of removal of the petitioner from service. The Labour Court also on reappraisal of evidence on record imposed lesser punishment. The petitioner was granted more relief and hence, the award of the Labour Court cannot be interfered with.

6. The petitioner is working as a Helper in the Road Transport Corporation having joined the Department as a Cleaner in 1963. He was promoted as Helper in 1973. He was working in Narayanpet Bus Depot. The allegation is that on 15.10.1995 he along with the driver V.V.Reddy and Cleaner Mohd.Osman were going in DGT Vehicle No.3646 from Narayanpet Depot to Hyderabad with certain goods. On way, the vehicle got some mechanical problems due to which it was stopped. At that time, a Vigilance Squad was coming from Cuddapah side and having noticed the vehicle, they checked and found that the petitioner and two others were trying to sell away 13 window frames and 26 window shutters from the DGT Cabin of the vehicle and hence charge was framed. The Enquiry

Officer found him guilty and imposed the punishment of removal. The petitioner preferred I.D.No.239 of 1997 and by Order dated 14.07.2000, the Labour Court found that the punishment of removal is disproportionate and accordingly modified the sentence from removal of service to the one of stoppage of three increments with cumulative effect and denied the back-wages. The petitioner was directed to be re-instated with continuity of service and attendant benefits.

7. Learned Counsel appearing for the petitioner and the respondent-Corporation have taken me through the material on record including the evidence and the report of the Enquiry Officer and the award of the Tribunal. When the charge against the petitioner is that he along with two others were found carrying 13 window frames and 26 window shutters in the cabin without gate-pass and since they were being unloaded at Kishanguda with a *mala fide* intention to steal the same, he is liable for punishment. In nutshell, the allegation is that the petitioner being a Helper along with the driver and cleaner have carried away 13 window frames and 26 window shutters without gate-pass and trying to dispose of the same. If the evidence on record is perused, the charges against the petitioner cannot be said to be conclusively established. It is a clear case where the evidence on record has not been properly appreciated by the authority. During the course of enquiry, the evidence of one D.S.R.C.Murthy, who was the M.C. of Narayanpet Depot was recorded. He gave the following statement before the Enquiry Officer:-

“AEZ 9355 was sent for C.O. on 04.10.1995 to ZWS/Uppal, the R&D Deartment of ZWS given discrepancies behnd the 68/A of the above said vehicle stating that 13 window frames and 26 window shutters were not supplied along with vehicle. This vehicle was carried by Sri Buchanna, Helper to

ZWS/Uppal, he brought the 678/A to the depot for getting the material for acceptance on 15.10.1995. By that time, the DGT was already loaded in the presence of Security Head Guard and sealed. As the DGT goes to ZWS once in a week i.e., on every Monday. I thought to send the above said material in the cabin of the DGT to avoid delay by one week duly giving endorsement in the 68/A as it is equal to a gate pass. If I issue a gate pass for this material Audit objection may arise since the material is not returnable, in order to avoid all these complications, I had endorsed and informed the Head Security Guard as well as the Helper Sri Buchanna who followed along with the material in the DGT. In my opinion there was no scope for steal the above said material by the said employees since they had to submit the material at workshop for acceptance of C.O. vehicle and bring the acknowledgment (one folio of 68/A) to the depot.”

8. Similarly, the statement of one ARK Reddy on whose complaint the action was initiated was also recorded and he stated that he found the petitioner and two others on 16.10.1995 unloading certain material from the cabin and counting them. At that time he also found one unknown person who claims himself to be a dealer in purchase and sale of scrap material.

9. Excepting the above, there is no other evidence before the Enquiry Officer. As a matter of fact, if the evidence of DSRC Murthy is perused, the charge that the petitioner and two others have taken away 13 window frames and 26 window shutters from the Depot without gate-pass falls to the ground for the reason that he himself admit the circumstances in which 13 window frames and 26 window shutters were allowed to be taken out by the petitioner who was a Helper and the driver and cleaner.

10. In the face of such evidence, learned Counsel appearing for the petitioner submits that even the imposition of the minor punishment by

the Labour Court cannot be sustained. As already stated, when the petitioner was removed from service and he preferred Industrial Dispute Case before the Labour Court, the petitioner was directed to be re-instated into service with continuity of service and attendant benefits, but, however, without any back-wages. Further more, the Labour Court also imposed the punishment of withholding of three increments with cumulative effect. I feel that this punishment was also slightly disproportionate and it needs to be further modified to the effect that withholding of three increments of the petitioner should be without cumulative effect but not with cumulative effect, as ordered.

11. In the result, the writ petition is disposed of subject to the above modification. No costs.

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

30th August, 2017
Dsr/smr

M.S.K.Jaiswal, J

