

THE HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

WRIT PETITION No.6099 of 2007

ORDER:

Heard and perused the record.

2. The present Writ Petition came to be filed seeking issuance of writ of Certiorari calling for records relating to the impugned Award dated 20.07.2006 passed in I.D.No.27 of 2004 of Additional Labour Court-Cum-Additional Industrial Tribunal, Hyderabad published on 15.11.2006 in G.O.Rt.No.2155, dated 18.10.2006 directing the petitioner to reinstate the first respondent into service with continuity of service, 50% back wages and with all other attendant benefits as illegal and arbitrary.

3. For the sake of convenience, the parties will hereinafter be referred to as arrayed in I.D.No.27 of 2004.

The petitioner who is a driver in the respondent-corporation was appointed in the year 1998. He was issued charge sheet bearing No.01/2(5)/2002, KP, dated 06.07.2002 without furnishing or supplying the relevant documents. The petitioner submitted his representation dated 09.07.2002 requesting the authorities to furnish documents. But the respondent failed to furnish those documents and instead nominated Chief Inspector of Enquiries as an enquiry officer for the charge that he caused major accident while driving double decker bus bearing No.AP9Z 3006. It is stated that on 14.06.2002 at about 10.30 hours the bus hit Oliphant Bridge resulting in heavy damage to the upper decker and head injury to the passenger which constitute misconduct under Reg.28(iv)(a) of APSRTC Employees Conduct Regulations, 1963. It is stated that an exparte enquiry was conducted and without giving any opportunity the petitioner was removed from service basing on the findings given against him. It is further stated that the police booked a case against the petitioner under Section 337 of IPC. On the information given and basing on the

report, a charge sheet was issued to the petitioner on 06.07.2002 with following charge:

“For having cause Major Accident while driving the double decker bus No.AP9Z-3006 on route No.226-A, i.e. the Bus hit to the Olipenta Bridge on 14.05.2002 at about 10.30 hours resulted in heavy damages to the upper decker of the double decler bus and head injuries to a passenger, which constitutes misconduct under Reg.28(iv)(a) of APSRTC Employees (Conduct) Reg.1963.”

Thereafter an appeal preferred by the petitioner was rejected by the Divisional Manager on 29.03.2005 for which the workman submitted a review petition to the Regional Manager, Hyderabad City Region, Secunderabad on 15.04.2003 which was also not considered. Aggrieved thereby, the petitioner preferred I.D.No.27 of 2004 seeking re-instatement into service with continuity of service and with all attendant benefits including backwages. After examining the matter in detail, an award was passed setting aside the order of removal of the petitioner from service vide proceedings dated 25.01.2003 and consequently the respondent was directed to reinstate the petitioner into service with continuity of service and all other benefits with half backwages with costs. Aggrieved by the said award, the present writ petition came to be filed by the respondent-corporation.

4. Learned counsel for the corporation submits that since the petitioner failed to drive the double decker bus by taking necessary precautions, the said accident took place and that the labour Court took a sympathetic view on the ground that the first respondent was awarded as best driver on earlier occasion. It is urged that said fact cannot be a ground to look into while dealing with cases of this nature. He also placed reliance on the judgment of the Apex Court in *Janatha Bazar (South Kanara Central Cooperative Wholesale Stores Limited and others Vs. Secretary, Sahakari Noukarara Sangha and others*¹ in support of his case.

¹ (2000) 7 SCC 517

5. Learned counsel for the petitioner/first respondent herein would submit that he never drove double decker bus earlier and even on that day, there was no proper verification from the officials before entrusting him the duty to drive a double decker. He submits that there is no sufficient evidence to show that the respondent herein is an expert in driving double decker bus.

6. It is to be noted that the petitioner/first respondent herein was appointed as casual driver on 04.02.1999 and his services were regularized with effect from 01.01.2000. He was recognized as one of the best driver. The material further discloses that neither the controller nor the traffic Inspector of the APSRTC, Kukatpally depot made verification from the driver, before entrusting him the duty of driving a double decker bus. It is not the case of the petitioner herein/corporation that the first respondent ever attended double decker duty nor he was having any clear idea about KP 83/1 service route. There is no proper verification from the officials before the driver was booked to attend KP 83/1 double decker duty. The officials has neither given proper explanation before the enquiry officer nor placed any material to show that the petitioner/respondent herein is an expert in driving double decker. Further, the record discloses that the driver was compelled to drive the double decker as he cannot refuse or reject the duty entrusted to him by higher officials. Infact no worker is dismissed from services for the proved misconduct for the first time. Though the respondent-driver could not place sufficient evidence that he took necessary precautions before hitting the bridge, it should be seen that he was recognized as a best driver. Further, it is to be noted that the Apex Court in *K. V. S Ram Vs. Bangalore Metropolitan Transport Corporation*², while referring to various judgments of the Apex Court held as under:

“14. Emphasizing that while exercising jurisdiction under Articles 226 and/ or 227 of the Constitution of India, Court are to keep in view the goals set out in the Preamble and in Part IV of the Constitution while

² 2015 (144) FLR 994

construing social welfare legislations, in *Harjinder Singh Vs. Punjab State Warehousing Corporation* (2010) 3 SCC 192, this Court held as under:

“21. Before concluding, we consider it necessary to observe that while exercising jurisdiction under Articles 226 and /or 227 of the Constitution in matters like the present one, the High Courts are duty-bound to keep in mind that the Industrial Disputes Act and other similar legislative instruments are social welfare legislations and the same are required to be interpreted keeping in view the goals set out in the Preamble of the Constitution and the provisions contained in Part IV thereof in general and Articles 38, 39(a) to (e), 43 and 43-A in particular, which mandate that the State should secure a social order for the promotion of welfare of the people, ensure equality between men and women and equitable distribution of material resources of the community to subserve the common good and also ensure that the workers get their dues. More than 41 years ago, Ganjendragadkar, J. opined that that concept of social and economic justice is a living concept of revolutionary import; it gives sustenance to the rule of law and meaning and significance to the ideal of welfare State (*State of Mysore Vs. Workers of Gold Mines*, AIR 1958 SC 923 at page 928 para 10)”

15. Once the labour Court has exercised the discretion judicially, the High Court can interfere with the award, only if it is satisfied that the award of the Labour Court is vitiated by any fundamental flaws. We do not find that the award passed by the Labour Court suffers from any such flaws. While interfering with the award of the Labour Court, the High Court did not keep in view the parameters laid down by this Court for exercise of jurisdiction by the High Court under Articles 226 and/ or 227 of the Constitution of India and the impugned judgment cannot be sustained.”

7. In *Janatha Bazar's* case (supra) which was relied upon by the counsel for the Corporation, the Court while dealing with a point as to *whether the High Court was justified in confirming the order passed by the Labour Court reinstating the respondent workmen with 25% back wages inspite of specific finding of fact that the charges of breach of trust and misappropriation of goods for the value given in the said charges had been clearly established. The Court held that apparently, it would be an unjustified direction to reinstate an employee against whom charge of misappropriation is established. A proved act of misappropriation cannot be taken lightly even though a number of such misappropriation cases remain undisclosed and such employees or others amass wealth by such means. In any case, misappropriation cannot be rewarded or legalized by reinstatement in service with*

full or part of back wage, it observed that in case of proved misappropriation, in our view, there is no question of considering past record. It is the discretion of the employer to consider the same in appropriate cases, but the Labour Court cannot substitute the penalty imposed by the employer in such cases.

8. But the case on hand stands on a different footing. It is not a case of misappropriation or breach of trust. The driver was made to drive a double decker bus which he never did and the route which was also new to him was covered with bridges.

9. Having regard to the above, the discretion exercised by the labour Court cannot be found fault with.

10. Hence this Court is of the view that the award of the labour Court warrants no interference and the writ petition is liable to be dismissed.

11. Accordingly, the writ petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions, pending if any, shall stand closed in the light of this final order.

27.02.2017
vhb

JUSTICE C. PRAVEEN KUMAR