

THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.26542 OF 2006

ORDER:

In the present writ petition, challenge is to the award, dated 28.04.2006, passed by the Industrial Tribunal – cum – Labour Court, Anantapur (hereinafter, referred to as “the Tribunal”) in I.D.No.379 of 2003.

2. Heard and perused the material available on record.

3. Followed by a check conducted on 28.05.2002, respondent No.1 herein/workman was suspended from service on 07.06.2002 and a charge sheet was issued on the same day, framing the following charges:

“i) “For having collected the Rs.70/- being the ticket fare from a passenger at the boarding point (i.e.,) at Hyderabad itself instead of actual fare of Rs.83/- i.e., less collected by Rs.13/- and failed to issue tickets to the said passenger, found traveling without tickets to the said passenger, found traveling without tickets from Hyderabad to Pebbair – Ex.stages 7 to 5, which constitutes misconduct under Regulation 28(vi)(a) of APSRTC Employees (Conduct) Regulations, 1963.

ii) For having failed to observe the rule ‘Issue and Close and Start’ which constitutes misconduct under Regulation 28(vi)(a) of APSRTC Employees (Conduct) Regulations, 1963.”

In response to the said charge sheet, respondent No.1 submitted his explanation on 19.06.2002, denying the said charges framed against him. Thereafter, the petitioner Corporation appointed an Enquiry Officer, who after holding enquiry, submitted a report on 16.12.2002, holding the charges as proved.

4. Enclosing a copy of the said report of the Enquiry Officer, a show cause notice, dated 08.01.2003, was issued, proposing the punishment of removal from service. The Depot Manager, Adoni Depot passed an order, dated 21.01.2003, removing respondent No.1 herein from service. After unsuccessfully availing the remedy of appeal before the departmental authority, respondent No.1 herein raised I.D.No.379 of 2003 on the file of the Tribunal under Section 2-A(2) of the Industrial Disputes Act, 1947, praying for a direction to the Corporation to reinstate him into service with continuity of service, attendant benefits and backwages.

5. The Tribunal framed the following point for consideration:

“Whether the petitioner herein is entitled for setting aside the order of removal from service issued by the respondent in his proceedings dated 21.1.2003, for reinstatement into service and other consequential benefits as prayed for?”

6. No oral evidence was adduced either by the management or the workman before the Tribunal. The petitioner Corporation filed Exs.M-1 to M-15.

7. The Tribunal, by way of the impugned award, allowed the industrial dispute in part, directing reinstatement of the workman herein while holding that he would be entitled for continuity of service and attendant benefits but without backwages.

8. According to Sri Aravala Rama Rao, learned Standing Counsel for the petitioner Corporation, the questioned award is highly illegal, arbitrary and opposed to the very spirit and object of the provisions of the Industrial Disputes Act. It is also the submission of the learned Standing Counsel that only after giving

complete opportunity to respondent No.1 workman, order of removal was passed and the same was confirmed by the appellate authority also. It is also the submission of the learned Standing Counsel that the Tribunal grossly erred in passing the impugned award without finding fault with the mode of enquiry. In support of his submissions and contentions, learned Standing Counsel placed reliance on the order of the Hon'ble Apex Court in **Divisional Controller, N.E.K.R.T.C. vs. H.Amaresh**¹ and the order, dated 23.03.2015, of this Court in W.P.No.616 of 2004.

9. The material available before this Court discloses that learned Presiding Officer of the Tribunal took note of the explanation offered by respondent No.1 herein stating that respondent No.1 was not supplied with MTD 141 card to find out the correct fare from Hyderabad stage No.7 to Pebbair stage No.5 and this version was not denied by the management either in the enquiry report – Ex.M-10 or in the show cause notice – Ex.M-12. It is also to be noted that the Tribunal also recorded a categorical finding about the non-availability of the record to show as to when actually Ex.M-12 show cause notice was served on respondent No.1 herein. While saying so, the Tribunal found that sufficient opportunity was not given to respondent No.1 herein and eventually, found that cumulative effect of all the observations would not warrant removal of respondent No.1 herein from service.

10. In the considered opinion of this Court, the Tribunal, having regard to the facts and circumstances of the case, and keeping in view the provisions of Section 11-A of the Industrial Disputes Act,

¹ (2006) 6 Supreme Court Cases 187

passed the impugned award, directing reinstatement of respondent No.1 herein with continuity of service and attendant benefits, but without backwages. In this context, it would be appropriate to refer to the judgment of the Hon'ble Apex Court in the case of **Syed Yakoob vs K.S. Radhakrishnan and others**² wherein the Hon'ble Apex Court held that a writ in the nature of writ of certiorari can be issued under Article 226 of the Constitution of India only for correcting the errors of the jurisdiction and when there is violation of the principles of natural justice. The Hon'ble Apex Court, in the said judgment, also ruled that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising the powers under Article 226 of the Constitution of India is not entitled to act as an appellate Court.

11. In the impugned order, this Court does not find any such error of jurisdiction, as such, this Court is not inclined to meddle with the award impugned in the present writ petition. The judgments cited by the learned counsel for the petitioner, in the facts and circumstances of the case, do not render any assistance to the petitioner herein.

12. For the aforesaid reasons, the Writ Petition is dismissed. There shall be no order as to costs.

13. Miscellaneous Petitions pending consideration, if any, in this Writ Petition shall stand closed.

JUSTICE A.V.SESHA SAI

Date : 01.11.2017
AMD

² A.I.R. 1964 SC 477

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