THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.4689 of 2006

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed by the Employees Union of APSRTC (hereinafter, 'the petitioner-union') questioning the order, dated 16.02.2006, passed by the 2nd respondent, Depot Manager, Kuppam Depot of the Corporation, ordering recovery of amount from the members of the petitioner-union in ten (10) equal monthly instalments commencing from 01.03.2006.

2. I have heard the submissions of *Sri A.K. Jaya Prakash Rao,* learned counsel for the writ petitioner, and of *Sri A. Rama Rao,* learned standing counsel for APSRTC representing the respondents. I have perused the material record.

3. The case of the petitioner-union and the submissions made on its behalf, in brief, are as follows:

The members of the petitioner-union have applied for sick leave well in advance on 25.01.2006 and 26.01.2006 along with Doctor's certificates. The 2nd respondent treated the availment of the sick leave by the members of the petitioner-union as 'Cat Call Strike'. Thereafter, the 2nd respondent has neither given any notice individually to the members of the petitioner-union nor served any notice on the petitioner-union or its members. However, the 2nd respondent issued office order, dated 16.02.2006, *inter alia,* stating as if a show cause notice, dated 03.02.2006, for recovery of an amount of Rs.3,26,894/- was issued. Since neither a notice was issued nor served, the petitioner-union did not submit any explanation. Out of 91 employees, 7 employees belong to the rival union, that is, APSRTC National Mazdoor Union.

The Corporation is showing favouritism to the said union on account of its recognition. Be that as it may, the petitioner-union is not aware of any show cause notice, dated 03.02.2006, referred to in the impugned office order, dated 16.02.2006. No charge sheets were issued to the members of the petitioner-union. They did not go on any strike as alleged by the 2nd respondent. Therefore, it is incorrect to state that the members of the petitioner-union wilfully struck work and that the said acts resulted in loss of earnings in a sum of Rs.3,26,894/- due to deficiency in service. All the 84 members of the petitioner-union are permanent members of the union. Under the control of the 2nd respondent, 450 employees are working at the relevant time. Even though the members of the petitioner-union were on sick leave, the 2nd respondent was in a position to operate the buses without detaining any bus for want of members of crew. No loss has been caused by the members of the petitioner-union to the Corporation. The 2nd respondent did not furnish any details of the estimated loss. The action of the 2nd respondent is in violation of principles of natural justice for the reason that before ordering for recovery of the alleged loss estimated by the 2nd respondent from the members of the petitioner-union in ten equal monthly instalments commencing from 01.03.2006, neither a notice was issued nor was served upon the petitioner-union. The fact that the said order was displayed on the notice board itself establishes the *mala fide* intention of the 2nd respondent. If the orders of the 2nd respondent, which are impugned in the writ petition, are allowed to stand, manifest injustice would be caused to the petitioner-union and they would be put to irreparable loss and hardship. Hence, the writ petition is filed.

4. The case of the Corporation, in brief, is this: -'One K. Ramesh, driver of Kuppam Depot was suspended on 24.01.2006 for involving in insubordination and misbehaviour towards Assistant manager (T), Kuppam Depot, on 15.01.2006. The said suspension order was issued after conducting

a preliminary enquiry. After suspension of the said driver, some of the employees gave mass sick intimation on 25.01.2006 and 26.01.2006. For that reason, 53 services (32+21) were cancelled out of 149 services and only 96 services were operated during the above said two days. Due to dislocation of services, inconvenience was caused to the travelling public. The petitioner-union erected a tent and conducted a dharna in front of the bus station and obstructed employees from attending to duties; and, 74 drivers, 34 conductors and 40 mechanical staff were either sick or absented from attending to their duties and 22,356 Kms were not operated during the two days because of the agitation/mass sick. For that reason loss of earnings of Rs.3,26,894/- was caused to the Corporation. Hence, show cause notice was exhibited on 04.02.2006 calling upon the employees concerned to explain why the proposed recovery of loss of earnings of Rs.3,26,894/- should not be imposed besides initiating suitable disciplinary action. Some of the employees have submitted their explanations. The order, dated 16.02.2006, for recovery was displayed on the notice board. As sudden stoppage of work by the employees caused inconvenience to the travelling public and loss to the Corporation and as such stoppage of work is illegal, the final orders of recovery were issued. The employees reported sick enmass in support of the suspended driver with an intention to threaten the management by causing dislocation of work and absented to duties without any intimation and abstained from their scheduled duties on the said two days. No strike notice was served by the employees and they have suddenly reported sick enmass and some of them have absented to duties. The said action tantamounted to illegal strike. The Government of Andhra Pradesh prohibited strikes in APSRTC for a period of six months with effect from 02.01.2006 vide G.O.Ms.No.292, dated 27.12.2005. As the concerted action of these employees in abstaining from duties by reporting sick enmass or absenting unauthorisedly on flimsy grounds tantamounted to illegal strike, a show cause notice treating it as individual notice was exhibited on notice boards. To the office order, dated 16.02.2006, the statement showing the details of 91 employees who abstained from work with other details was annexed. As the show cause notice was exhibited on the notice board by duly treating the same as individual notice to the members of the petitioner-union and as explanations were also submitted by some of the employees, the contentions of the members of the petitioner-union are incorrect. Hence, the writ petition may be dismissed.

5. Petitioner-union filed a reply affidavit, *inter alia*, stating that the counter by the Corporation was filed more than 11 years after the writ petition was filed and that as per Rule 12 of Writ Proceeding Rules a counter ought to have been filed within six months; and hence, the counter of the Corporation shall not be received on file in view of the decision of this Court reported in 2012(4) ALD 366. It is also submitted in the reply affidavit that the members of the petitioner-union never resorted to any strike much less cat call strike and that the loss alleged was not based on any factual aspects and that it was approximately calculated or assessed without any basis and the fact that as the vehicles did not ply no diesel/oil has been consumed and the cost of fuel was saved was not considered while assessing the alleged loss.

6. Learned counsel for both the sides advanced arguments in line with the respective pleadings of the parties.

7.1 The first contention of the petitioner-Union is that the individual show cause notices were not given to the employees of the Union and that only a notice was allegedly displayed on the notice Board. On this aspect, it is apt to refer to the decision in D.Balaiah v. The Secretary, Indian Detonators Ltd, Kukatpalli, Hyderabad[1], wherein the issue was as to whether a notice ought to have been given to each individual employee before the penal wage

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[1] 1976 Andhra Weekly Reporter 406

cut was imposed. The facts of the decision disclose that a general notice was displayed on the notice board but, individual notices were not given to the workmen. This Court held that 'while it is true that notice should be given, it is not necessary it should be given in any particular form nor is it necessary that it should be sent individually.' This Court also held that a general notice is sufficient so long as the workers concerned were made aware of the proposed deduction. In the case on hand, it is the case of the Corporation that a general notice was displayed on all notice boards. Though the same was disputed, such a contention cannot be countenanced as it is also the case of the Corporation that some of the employees gave explanations in answer to the show cause notice displayed on the notice board.

7.2 The next aspect is as to whether the Corporation is justified in ordering recovery of estimated amount of loss of revenue from the members of the petitioner-Union in instalments. From the facts borne out by the record, it is clear that one K. Ramesh, driver of Kuppam Depot, was suspended, on 24.01.2006, after conducting a preliminary enquiry, for involving in insubordination and misbehaviour towards Assistant Manager (T), Kuppam Depot on 15.01.2006 and that after such suspension of the said driver, some of the employees gave mass sick intimation on 25.01.2006 and 26.01.2006. The contention that a huge number of members of the petitioner-Union fell sick at one time is unbelievable and a far fetched explanation of the petitioner-union. The conduct of the members of the petitioner-union in going on sick leave enmass after the suspension of a driver and the further fact that they staged a dharna are sufficient indicia to come to a safe conclusion that they resorted to an illegal strike/cat call strike and abstained from work without any justification and without any prior notice. On account of the members of the petitioner-union not attending to work, bus services were disrupted and the Corporation was forced to cancel services and that their acts resulted in inconvenience to the travelling public and loss of revenue to the Corporation cannot be disputed. As per the regulations of the Corporation striking work or enticing others to strike work in contravention of the provisions of law is misconduct. As participation in the subject cat call strike is prohibited and is a serious misconduct, this Court finds no illegality in the Corporation issuing orders for recovery of loss of revenue that had occasioned to the Corporation from the members of the petitioner-union.

7.3 Now the final question is as to whether the Corporation is justified in estimating the amount of revenue loss at Rs.3,26,894/-.

7.4 Learned standing counsel for the Corporation relied upon the order, dated 12.09.2016, of this Court in W.P.No.10652 of 2011 (G.R.Prasad v. The Depot Manager, APSRTC, Kuppam). The facts of the cited case show that suddenly the employees of the Corporation participated in work-to-rule agitation and in an illegal strike and wilfully refused to perform duties that were assigned; and, therefore, loss of earnings was caused to the Corporation; hence, disciplinary proceedings were initiated; such employees were served with charge memo and were requested to submit their explanations; against each of the petitioners charge memo was issued fixing the amount of loss caused on account of their conduct in not attending to the work; explanations filed by the petitioners were considered and orders were passed directing recovery of amount quantified in respect of respective petitioners; challenging the said orders of recovery the writ petition was filed. This court having referred to Regulation 28 of the APSRTC Employees' (Conduct) Regulations, 1963, held that the petitioners conduct amounted to misconduct and, therefore, there is no illegality or irregularity in taking disciplinary action and imposing punishment. This Court also, *inter alia*, held as follows: 'It cannot be said that the quantum of amount ordered to be recovered from each of the petitioners is excessive since the amount was quantified basing on average revenue generated on the concerned route to which they were assigned duty.'

7.5 Learned counsel for the petitioner-union relied upon the interim order, dated 30.01.2015, in W.P.No.1302 of 2015 (APSRTC Employees Union and others v. APSRTC). The facts of the cited case show that on account of the employees of the Corporation resorting to cat call strike, the Corporation according to its submissions cancelled 51 services on 13.11.2014 and 14.11.2014; and, only in the afternoon of 14.11.2014 services were restored after the employees have withdrawn from the cat call strike; therefore, the Corporation estimated the revenue loss caused to the Corporation and issued an office order for recovery of the losses of revenue from the salaries of the employees in 2 to 10 equal instalments. Challenging the said order, the writ petition is filed. This Court passed the following interim order:

> " Insofar as the justification for the cat call strike is concerned, it is not for the petitioner trade union to raise such a plea at this stage. If the petitioner trade union has any grievance in that regard, it will have to take recourse elsewhere. Without going into the question of justification, an opportunity may be provided to the petitioners to establish that the assessment of revenue loss made by the Corporation is not realistic. For that purpose alone, the petitioner trade union may be provided an opportunity of hearing. For the said purpose, the proposed recovery of wages for the month of January 2015 payable during February, 2015 only may not be affected. In case the petitioner union demonstrates that the loss of revenue is proportionately far less than what has been estimated by the Corporation, an appropriately-modified recovery order be passed and given effect to immediately. The recoveries will be affected from March, 2015 onwards. It shall be open to the petitioners to draw a detailed representation and submit the same in support of their cause within a period of one week from today and the same will be taken into consideration by the Corporation."

Learned counsel for the petitioner would submit that pursuant to the aforesaid interim order, the loss was re-estimated by the Corporation and the loss to be recovered was reduced. He also placed reliance on the order of this Court, dated 13.03.2015, in W.P.No.3921 of 2015. In this cited case, this Court while referring to the facts and interim order in W.P.No.1301 of 2015, allowed the Corporation to calculate the loss of revenue occurred to the corporation and then recover the same as agreed to by the trade union itself and further held as follows: 'While calculating the loss of revenue, the possible saving of cost of diesel not utilised for the operations has to be kept in view. Similarly, while effecting recoveries, such of those drivers who are on approved sick leave and those who are on reserve but not booked for duties on the days when the cat call strike has been called have to be spared from the recoveries.' Learned counsel for the petitioner-union alternately submitted that the writ petition may be disposed of giving similar directions as was done in the earlier cases relied upon the petitioner-union. Learned counsel emphasised that in earlier cases when an opportunity is given to recalculate the estimated loss, the figure of estimated loss has come down and, therefore, such a course would meet the ends of justice. However, learned Standing Counsel for the Corporation forcefully submitted that in the case on hand, the loss was estimated correctly and that the loss to be recovered was quantified basing on average revenue generated on the routes concerned and, therefore, there is no need to give any further directions and the writ petition is liable to be dismissed. He drew the attention of the Court to the annexure to the order of the Corporation. Per contra, learned counsel for the petitioner-Union forcefully contended that the estimation of loss of revenue was not assessed by the Corporation on a reasonable basis and that the Corporation did not take into consideration the saving of cost of diesel/oils due to cancellation of services and that, therefore, it is, in the interests of justice, to direct the Corporation to redo the estimation. He would re-emphasise that in similar cases when directions were issued by the Court to redo the estimation, the Corporation did the necessary exercise and that in certain cases the revised estimate was less than the initial estimate of loss of revenue of the Corporation.

8. Having given detailed and thoughtful consideration to the facts and submissions, this Court is of the considered view that the Writ Petition can be disposed of with appropriate directions to redo the estimation of loss of revenue in order to not to leave the matter to even a semblance of doubt.

9. Accordingly, the Writ Petition is allowed in part directing the 2nd respondent to redo the estimation of loss of revenue to the Corporation in a realistic manner by considering the aspects like savings on cost of diesel/oils due to cancellation of services. The Corporation shall complete the said exercise within one month from the date of receipt of a copy of this order. Needless to state that after such re-estimation of the loss of revenue, the Corporation shall affect the recovery of such freshly estimated amount from the members of the petitioner-union in ten equal monthly instalments commencing from two (02) months after such re-estimation.

Miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

JUSTICE M. SEETHARAMA MURTI

21.04.2017
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