

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.19999 OF 2006

ORDER:

This writ petition is filed against the award dated 12.09.2005 passed under ID.No.21/2003 wherein the Labour Court dismissed the petition filed by the petitioner, confirming the order passed by the respondent Corporation removing the petitioner from service.

The case of the petitioner is that he was working as Conductor in the Respondent Corporation (APSRTC) and that on 06.10.1998, at about 16.06 hrs, when the petitioner was conducting bus No.8752, Route No.13G, the checking officials exercised check at Mahanthi Market, Beasent Road and issued charge memo to the petitioner alleging that he has committed serious cash and ticket irregularity. Basing on their report the respondents issued charge sheet dated 28.10.1998 to the petitioner framing six charges and kept the petitioner under suspension pending enquiry. The Enquiry Officer conducted enquiry without following the principles of natural justice and given a finding that the charges leveled against the petitioner were proved and basing on the same petitioner was removed from service vide proceedings dated 24.05.1999. Questioning the removal order the petitioner filed ID.No.21 of 2003 and the same was dismissed on 12.09.2005. Aggrieved by the same present writ petition is filed.

The respondents filed counter stating that the petitioner was appointed as casual conductor on 19.06.1991 at Gannavaram Depot and subsequently he was disengaged from service on 12.07.2001 and again he was reengaged as casual conductor on 12.08.1991 and disengaged on 28.09.1991 and again he was reengaged as casual conductor on 31.03.1993 on daily wage basis and posted to Bhaskarraopet Depot and he was decasualized on 10.01.1994. It is stated that the petitioner was suspended while he was working at Bhaskarraopet Depot on 17.10.1994 in an unauthorized curtailment of a trip of service on route No.31 on 23.09.1994 and later his suspension was lifted on 15.04.1995 and posted to Vidyadharapuram Depot. While so, on 06.10.1998, when the petitioner was conducting bus No.8752 on Route No.13G, at 16.06 hrs., the TTIs of CES/VJA checked the bus at Mahanthi market, Beasant road and found that a batch of four passengers alighting the bus without tickets and when the checking officials questioned the same they replied that they have given Rs.10/- to the Conductor for their tickets and the Conductor refunded Rs.1/- but failed to issue the tickets to them. The petitioner instigated the passengers saying that the TTIs are not original TTIs and they need not gave any statement to the TTIs and abused the TTIs and torn the service SR No.A5/0735183, and thrown away the cash bag on the boinet of the bus and ran away from the bus. Basing on the report of the checking

officials, the petitioner was issued charge sheet and placed under suspension. It is also stated that though the respondent corporation, basing on the requisition made by the petitioner, has supplied necessary documents and reports in Telugu, so as to enable him to submit explanation, the petitioner failed to submit explanation to the charge sheet within the stipulated period even after receipt of required documents. It is also stated that the Enquiry Officer conducted enquiry after issuing notices informing about the dates of enquiry through RPAD to the residential address, but the petitioner did not attend the enquiry, and hence, the Enquiry Officer has submitted his report. Thereafter, basing on the enquiry report, petitioner was issued show cause notice dated 05.05.1999 and inspite of receipt of show cause notice, the petitioner failed to submit his explanation and hence, after considering the material on record, the petitioner was removed from service w.e.f.24.05.1999. The appeal and review preferred by the petitioner were rejected by the Appellate Authority and Reviewing Authority. The petition filed by the petitioner under Section 2(A)(2) of the Industrial Dispute Act before the Labour Court was also dismissed by Award dated 12.09.2005.

Learned counsel for the petitioner submits that though the petitioner asked for documents, the same were not supplied to him and without supplying the documents the

respondent conducted enquiry and submitted report and final order of removal was passed which is in violation of principles of natural justice. He also submits that the complaint filed by the checking officials against the petitioner in C.C.No.735 of 1999 on the file of the V Metropolitan Magistrate, Vijayawada, ended in acquittal by Judgment dated 29.11.2000, but the said aspect was not considered by the Labour Court. He also submits that the Labour Court has not given proper reasons and that only by relying on the exhibits, the Labour Court passed the impugned award which is liable to be set aside as the same is without application of mind.

On the other hand, learned Standing Counsel for the respondent Corporation submits that several opportunities were given to the petitioner during the course of enquiry by issuing notices, but, the petitioner has not availed the said opportunities and that the Labour Court after considering the material available on record came to a conclusion that the charges leveled against the petitioner were proved. In view of the serious cash and ticket irregularity and acts of insubordination, petitioner does not deserve any sympathy and no relief can be granted.

In this case, basing on the check exercised by the checking officials the following charges were framed against the petitioner.

“i. For having failed to issue tickets to a batch of passengers found alighting at Mahanthi market who boarded the bus at Jammichettu ex stages 11/12 to 12/13 even after collecting the requisite fare on 06.10.1998 while operating 16.06 hrs., service on route No.13G with bus No.8752, which constitutes misconduct under Reg: 28(iv) (a) of APSRTC Employees (Conduct) Regulations, 1963.

ii. For having instigated the passengers over the TTIs duly saying that the TTIs not original TTIs and they need not give any statement to the TTIs, which constitutes misconduct under Regulation (xxx) of APSRTC Employees (Conduct) Regulations, 1963.

iii. For having abused the TTIs at the time of check and snatched the service SR No.A5/0735183, dated 06.10.1998 from the boinet of the bus and ran away from the bus, which constitutes misconduct under Regulation 28 (viii) of APSRTC Employees (Conduct) Regulations, 1963.

iv. For having had an amount of Rs.243.0 ps. (including imprest) short in your cash bag thrown by you in the bus as per the cash in your cash bag counted by your service driver in the presence of the TTIs, and actual amount to be your cash bag arrived by the CI/VDPM as per the S.R.No.A5/0735183, dated 06.10.1998 (as per sale of tickets in your tray) which constitutes misconduct under Regulation 28(x) & (XXXii) of APSRTC Employees (Conduct) Regulations, 1963.

v. For having absconded for your duties upto 13.10.1998, without giving any intimation to the depot authorities which constitutes misconduct under Regulation 28 (xxvii) of APSRTC Employees (Conduct) Regulations, 1963.

vi. For having refused to receive the 43/R No.1127288, dated 6.10.1998 and charge memo No.0674592, dated 06.10.1998, when served by the CI/VDP on 13.10.1998, which constitutes misconduct under Regulation 28(viii) & (xxxii) of APSRTC Employees (Conduct) Regulations, 1963.”

The petitioner was also issued charge memo, but he never replied and participated in the enquiry, and as such,

the Enquiry Officer submitted report holding charges are proved. Though it was alleged that relevant documents were not supplied, the same was disputed in the counter affidavit. No reply is filed to the same by the petitioner. Even in the writ affidavit, there is no assertion with regard to non-supply of documents to the petitioner. Even, after conducting enquiry when the petitioner was issued show cause notice, the petitioner has not submitted explanation, as such, removal order was passed. Appeal filed against the removal order was also rejected by the appellate authority and the review filed by the petitioner was also rejected by the Reviewing Authority.

The Labour Court by relying on Ex.M22-Acknowledgment in receipt of M21-Charge sheet, found that charge sheet is received by the petitioner. The Labour Court also came to a conclusion that the documents requested by the petitioner vide Ex.M24 were supplied to the petitioner by relying on Ex.M25. It was also found that the petitioner has not submitted any explanation to the charge sheet inspite of call letter vide M27, M28, M29, M31, M33 and M35. The Labour Court by analyzing the enquiry report thoroughly held that the charges leveled against the petitioner were proved and punishment of removal was upheld and also found that the punishment of removal is proportionate to the charges leveled against the petitioner. The Labour Court also held that

it is not a fit case to exercise discretion under Sec.11 A of the Industrial Disputes Act.

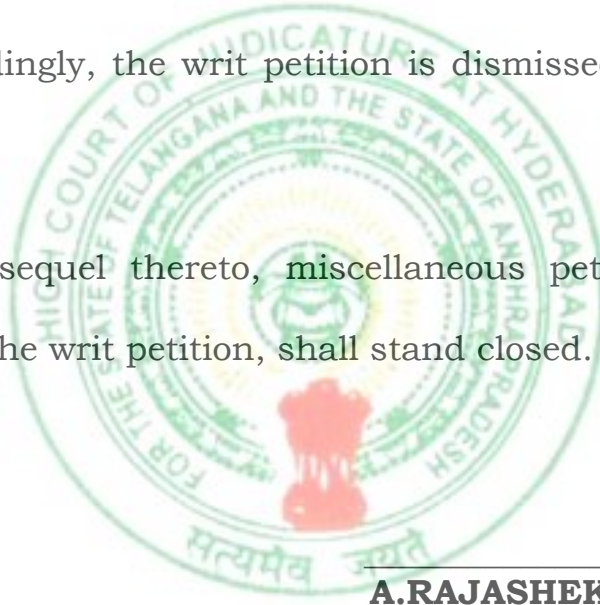
It is to be seen that though the learned counsel for the petitioner submitted that petitioner was acquitted in CC.No.735/1999 vide Judgment dated 29.11.2000, the same was not filed in the material papers of the writ petition. When the petitioner was asked to produce the same, a copy of the Judgment in CC.No.735/1999 was produced before this Court. The charges framed in the criminal case as well as in the Disciplinary Enquiry are not one and the same. More so, the petitioner was acquitted by giving benefit of doubt. Proof beyond reasonable doubt is required for convicting an accused in the criminal case, whereas, mere probability or preponderance of evidence is sufficient for taking action against the delinquent in the disciplinary enquiry. Enquiry under criminal proceedings and disciplinary proceedings is not one and the same. In view of the same, acquittal of petitioner in CC.No.735/1999 cannot be a ground for quashing the award of the Labour Court.

In view of aforesaid facts and circumstances, since the original authority, appellate authority, the reviewing authority and the Labour Court basing on the material available on record have confirmed the orders of removal, this Court by exercising power of judicial review under Article 226 of the Constitution of India, cannot re-appreciate the evidence and

disturb findings of fact arrived at by authorities and the Labour Court and also interfere with the discretion exercised by the Labour Court. This Court is not sitting in the appeal on the order of the Labour Court. Serious cash and ticket irregularities and acts of insubordination were alleged and proved against the petitioner. In view of the same, it is not a fit case where this Court can interfere by exercising its extraordinary equitable jurisdiction under Article 226 of the Constitution of India.

Accordingly, the writ petition is dismissed. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand closed.



A.RAJASHEKER REDDY, J

12.07.2017
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