

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.4012 of 2009

ORDER:

Assailing the order dated 07.03.2007 passed by the Industrial Tribunal-cum-Labour Court, Ananthapur, wherein the writ petitioner was reinstated into service as a 'fresh Conductor' without any other benefits as claimed in the petition, is subject matter of challenge in the present Writ Petition.

2) The facts in issue are as under:-

The petitioner joined in the services of the respondent/Corporation, as a conductor, on 17.09.1986 and his services were regularized on 01.08.1987. On 19.02.2003 while he was conducting the bus service, between Bangalore and Tirumala, a check was affected at Mulbagal stage No.16, by the checking squad. A memo was issued alleging that the petitioner was involved in cash and ticket irregularities. Basing on the material available, the respondent suspended the petitioner from service on 28.02.2003 and issued a charge-sheet. An explanation came to be submitted on 04.03.2003 denying the allegations made. Not being satisfied with the explanation given, the respondents nominated, the Chief Inspector as an Inquiry Officer. During the course of inquiry, the statement of one of the checking officials was recorded on 07.03.2003, who was cross-examined on the same day. A report came to be submitted by

the Inquiry Officer on 23.05.2003 holding the charge as proved. A show-cause notice was issued for removal from the service. To the said show-cause notice, an explanation was submitted on 19.04.2003 but since the respondents were not satisfied with the same, removed the petitioner from service. An appeal was filed before the Divisional Manager and later a review application before the Regional Manager, which were rejected on 09.07.2003 and 14.08.2013 respectively. Thereafter, the petitioner approached the Labour Court. Though no oral evidence was adduced by either party, but documentary evidence was adduced. After considering the material available, the Labour Court allowed the I.D., in part i.e., setting aside the order of removal and reinstating the petitioner into service as a fresh conductor. Challenging the same, the present Writ Petition is filed.

3) Learned counsel for the petitioner would submit that when the allegations made against the petitioner were found to be false and when it was found that the inquiry was conducted in violation of the principles of natural justice, the authority ought to have ordered reinstatement with all consequential benefits.

4) Learned counsel for the respondent/corporation would submit that since the Inquiry Officer and the reviewing authority have categorically held that the petitioner as guilty of the charges framed, the question of giving any further benefit would not arise. He submits that incases of cashless ticket travel, the Labour Court

ought not to have even ordered reinstatement as a fresh conductor. In support of the same, he placed reliance on the judgments of this court and Apex Court to show that the petitioner is not entitled for any relief.

5) In reply, the learned counsel for the petitioner would submit that in the absence of any challenge being made to the order of the Labour Court, the respondent herein has no locus to question the findings given by the Labour Court. He reiterates that the petitioner is entitled to all the reliefs claimed.

6) In order to appreciate the same, it would be useful to refer to the findings given by the Labour Court, which are as under:-

"11. In the case on hand as per the above stated charges, three passengers were found holding the previous trip tickets and that they were issued by the petitioner herein. The checking officials have obtained passengers statement Ex.M.3 containing one signature and one thumb impression of two passengers only and there is no reason as to why the signature of another passenger was also not taken, though the said statement Ex.M.3 refers to as three passengers at the preamble. Further, the said passengers statement Ex.M.3 appears in the hand writing of the bus conductor/petitioner himself. The checking officials ought to have taken the passengers statement Ex.M.3 from any other co-passengers if the passengers in question were said to be illiterates. It shows the petitioner was compelled by the checking officials to scribe the passengers statement Ex.m.3 to their dictation implicating himself by showing the incrementing circumstances which would be prejudicial to the interest of the petitioner himself.

12. Nextly after the inquiry officer submitted inquiry report Ex.M.13, the respondents straight away issued show cause notice of removal from service even without furnishing copy of such inquiry report to the petitioner calling upon him to submit his comments/objections as against the findings given by the inquiry officer.

Such being the case it can notes that there was no fair play and principles of natural justice denied to that extent. When the inquiry officer in his findings came to conclusion that the charge was proved basing on the record, the respondent ought to have given an opportunity to the petitioner for personal hearing.

13. In view of the above stated observations and findings given that in proof of the charge so much of acceptable evidence sufficiently not available and further due to the fact that the passengers statement was got scribed by the petitioner himself showing incriminating circumstances and failed to take one more signature of another passengers in the passengers statement and denial of calling upon comments/objections as against the inquiry findings, the petitioner is entitled for reinstatement into service but fresh without there being any other benefits."

7) The findings given by the Labour Court clearly establish that without furnishing a copy of the inquiry report to the petitioner, he was called upon to submit his comments against the findings given by the inquiry officer. Hence, it was held that there was no fair play and the principles of natural justice were violated. It is also held that, when the inquiry officer, came to the conclusion that the charges were proved, the respondents ought to have given an opportunity of personal hearing to the petitioner. Further, the Labour Court held that as the recorded statement are in the handwriting of bus conductor himself, and when the passenger was illiterate, the checking officials ought to have taken the statement of other passengers. It was held that the petitioner was compelled to scribe the passengers statements to their dictation implicating himself by showing the incrementing circumstances which would be prejudicial to the interest of the petitioner himself. Basing on these findings, Labour Court ordered reinstatement.

8) Learned counsel for the respondent/corporation relied upon number of judgments in support of his plea. It is to be noted here that all the judgments relied upon by the learned counsel for the respondent, relate to cases, where the Corporation has preferred appeals before the High Court and the Hon'ble Supreme Court challenging the findings of the Labour Court or the High Court. In **Divisional Controller, N.E.K.R.T.C. v. H.Amaresh¹**, the respondent/employer who was under the influence of alcohol failed to issue tickets to the passengers. Articles of charges were framed, an inquiry was conducted and the disciplinary authority after perusing the material on record, dismissed the respondent from service. Aggrieved by the same, the petitioner raised an Industrial Dispute before the Labour Court. The Presiding Officer of the Labour Court held the inquiry proceedings as illegal and invalid, due to failure on the part of the respondents in providing a reasonable opportunity in defending his case to the respondent. Aggrieved by the order, the Corporation filed Writ Petition before the High Court of Karnataka at Bangalore. The learned Single Judge upheld the finding of the Labour Court in reinstating the petitioner with 75% of the backwages. Aggrieved by the order of the Learned Single Judge, the corporation again preferred an appeal before the Division Bench of the Karnataka High Court, wherein the findings of the learned Single Judge with

¹ (2006) 6 Supreme Court Cases 187

regard to reinstatement were confirmed, but, however, set-aside the findings on backwages. A Special Leave Petition was filed before the Apex Court by the Corporation. The Apex Court set-aside the findings holding that the Labour Court erred by taking a lenient and sympathetic view though charge No.4 was found to be proved beyond any doubt.

9) In **U.P. State Road Transport Corporation, Dehradun v. Suresh Pal**², the Apex Court was dealing with a case where the respondent therein, a Conductor, was alleged to have misappropriated the money by not issuing the ticket, thereby causing loss to the Corporation. After holding the domestic inquiry, the respondent was dismissed from service. Thereafter, he raised an Industrial Dispute. The Labour Court found the charges proved against the respondent and upheld the order of dismissal. However, a learned Single Judge of Utttaranchal at Nainital, while confirming the findings of the Labour Court reduced the punishment. Challenging the same, an SLP was filed before the Apex Court. The question was whether the High Court was right in modifying the punishment? The Apex Court, after considering the various judgments, set-aside the order of reduction in punishment and allowed the appeal filed by the Corporation.

² (2006)8 Supreme Court Cases 108

10) **Bhagwandas Tiwari and others v. Dewas Shajapur Kshetriya Gramin Bank and others**³, was also a case where disciplinary authority, on re-appraisal of the connected records came to the same conclusion, as that of the inquiry officer and removed the name of the respondent from the list of badli conductors. The Conductor therein approached the Labour Court, wherein the Labour Court set-aside the order of termination dated 18.05.1998 and directed the management to take the respondent back on the list of badli conductors. However, it has held that respondent is not entitled to any backwages and continuity of service. Aggrieved by the same, the management approached the High Court of Karnataka by filing a Writ Petition under Article 226 of the Constitution of India. A learned Single Judge of the High Court dismissed the said Writ Petition, which was carried in Appeal vide Writ Appeal No.1565 of 2004. The said Writ Appeal was dismissed by the Division Bench confirming the orders passed by the learned Single Judge. Aggrieved by the same, the management approached the Apex Court. After referring to the various judgments, the Court set-aside the order holding that the High Court gets jurisdiction to interfere with the punishment in the exercise of its jurisdiction under Article 226 of the Constitution only when it finds that the punishment imposed is shockingly disproportionate to the charges proved. It was also held

³ (2006) 12 Supreme Court Cases 574

that a person who is guilty of breach of trust, should be imposed punishment of removal from service. It was held that the respondent's conduct in not collecting the requisite fare at the designated place from persons who have travelled, was in violation of the regulations and as such allowed the Appeal.

11) In **U.P. State Road Transport Corporation v. Suresh Chand Sharma**⁴, the Apex Court was also dealing with a case of misappropriation, by an employee of the State Road Transport Corporation. It was also a case where the Corporation approached the Apex Court, aggrieved by the orders of the High Court, wherein the petitioner was directed to be reinstated, but without backwages. The facts in the said case show that the conductor collected fare from 13 persons but failed to issue any ticket. Though the employee was found guilty for the charges, levelled by the Labour Court and also by the Departmental officials, the High Court allowed the Writ Petition partly and directed reinstatement of the employee without backwages. The said order was challenged before the Apex Court by State Road Transport Corporation and the said appeal was allowed.

12) A Full Bench of this Court in **V.Ramana v. APSRTC and others**⁵, dealt with a case, where the disciplinary authority, not being

⁴ (2010)6 Supreme Court Cases 555

⁵ 2001(5) ALD 427 (FB)

satisfied with the explanation given by the employee, found him guilty of the charges leveled against him. After giving an opportunity of hearing as regards the quantum of punishment, to be imposed, ordered removal from service. Questioning the same, a Writ Petition was filed. It was a case where the action was sought to be taken basing on the findings given. The Counsel also relied upon judgments of this Court in **W.P.Nos.616/2004 & 727 of 2012**.

13) In all the cases referred to above, it is clear that the decision of either removal from service or for setting aside the orders of the High Court, took place in the appeals filed by the State Road Transport Corporation. In the instant case, the order of the Labour Court reinstating the petitioner as a fresh conductor, was never challenged. The said findings of the Labour Court have become final. Only the employee, who is aggrieved by the quantum of punishment awarded, preferred the present Writ Petition, on the ground that in view of the findings given, which have become final, he is entitled for reinstatement with all benefits. The fact that the orders of the Labour Court were not challenged, is not disputed by the learned counsel for the Corporation. But, however, submits that since the petitioner is involved in acts of misappropriated, he cannot be given any further benefit. But, the Labour Court found that there was no adequate evidence to show that the petitioner was involved in the act of misappropriation.

It would be relevant to extract the relevant para from the judgment of the Labour Court, which is as under:-

"13. In view of the above stated observations and findings given that in proof of the charge so much of acceptable evidence sufficiently not available and further due to the fact that the passengers statement was got scribed by the petitioner himself showing incriminating circumstances and failed to take one more signature of another passengers in the passengers statement and denial of calling upon comments/objections as against the enquiry findings, the petitioner is entitled for reinstatement into service but fresh without there being any other benefits."

14) Having held so and in the absence of any appeal or writ by the Corporation, the petitioner is entitled for all the reliefs.

15) Even on facts, this court in W.P.No.25216 of 2008, dealt with an identical situation. It was a case where the third respondent therein, while denying the consequential benefit of continuity of service, imposed a penalty of deferment of annual increment for a period of two years by treating the period of removal from service as on not on duty. It was also a case where in the cross-examination done by the petitioner, the TTI stated to the following effect: "The ticket-less passenger is an illiterate person. His statement was obtained by getting it scribed through a co-passenger. The statement of the ticket-less passenger was scribed by a co-passenger while the bus was running from Radhika Theater to Neredmetta X road. The ticket-less passenger has not travelled upto stage no.4. After the charge was framed, they got down at stage no.4." Thus, the evidence brought on record discloses that the ticket-less passenger was found

alighting the bus at ex. stages 8 to 8/7 and did not travel upto stage no.4.

16) The original file, which has been placed before this Court show that during the inquiry proceedings the passengers for questions, clearly reveal to TTI, at the time of check, that they have tendered fare to the conductor at boarding point and the conductor gave the above tickets. The conductor himself wrote the statement as told by the passengers and attested it. The statements also reveal that the denomination and the number of the tickets, which were issued to two passengers by conductor. Apart from that, the record itself would clearly disclose that the enquiry report was not furnished to the employee and without furnishing the same he was directed to submit his explanation which is also reflected in the order passed by the Labour Court. The findings of the Labour Court show that the evidence on record does not establish the guilt and that the proceedings by the authorities gets vitiated due to violation of principles of natural justice. But the issue is whether the Court was right in only ordering reinstatement without any consequential benefits.

17) One other aspect which needs to be noted is that the petitioner has categorically stated in his affidavit that he was not gainfully employed during the period of his suspension/removal. The said aspect is not disputed by the counsel for the respondent.

18) In **APSRTC, Hyderabad and another v. N.V.Subbaiah and another**⁶ this Court held as under:-

17.Infact, in **Union of India v. P.Gunasekaran**, the Court was dealing with a situation where the findings of charge No.1 having attained its finality was directed to be re-considered by the Administrative Tribunal, which view was endorsed by the High Court. Basing on which the order of dismissal was converted to compulsory retirement. The Apex Court held that such a finding cannot be re-opened in subsequent round of litigation at the instance of the respondents as it was only the punishment that was open to challenge. Hence, the Apex Court found fault with the High Court in re-appreciating the evidence, which was placed before the disciplinary authority, in arriving at a different conclusion in spite of earlier findings becoming final. Therefore, the two judgments relied upon by the learned Standing Counsel for the Corporation, more particularly the Judgment of the Apex Court in Syed Yakoob case (8 supra) which was referred by the Apex Court in **Union of India v. P.Gunasekaran** may not apply to the case on hand.

22. In **A.L.Kalra v. The Project and Equipment Corporation of India Limited** a three Judge Bench of the Apex Court, while dealing with the issue of payment of back wages after holding his removal from service as illegal, held that though he was employed elsewhere during the period of his removal still he is entitled to 50% of the back wages. In **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyala and others** the Apex Court after referring to all the judgments on the subject, including the judgments of the Apex Court in **J.K.Synthetics Ltd. V. K.P.Agrawal** and **Zilla Parishad, Gachiroli v. Prakash**, held as under:

- i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.
- ii) The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

⁶ 2016(3) ALD 517

iii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

iv) The cases in which the Labour Court/Industrial Tribunal exercises power under [Section 11-A](#) of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and / or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

v) The cases in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the concerned Court or Tribunal will be fully justified in directing payment of full back wages.

23. Similarly, the Apex Court in *Raghubir Singh* (4 supra), after referring to the judgments of the Apex Court in *Deepali Gundu Sarwase* (10 supra), *Hindustan Tin Works (P) Ltd. V. Employees* and *Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court*, held as under: the critical analysis of law laid down is very much relevant to the case on hand, which is neither discussed nor considered and examined by the courts below while answering the reference made by the State Government and passing the award, judgments and orders in a cavalier manner. Thus, the lives of the appellant and his family members have been hampered. Further, on facts, we have to hold that the order of termination passed

is highly disproportionate to the gravity of misconduct and therefore shocks the conscience of this Court. Hence, we hold that the appellant is entitled for the reliefs as prayed and the respondent is directed to reinstate the appellant workman with back wages from the date of raising the industrial dispute till the date of his reinstatement with all consequential benefits such as continuity of service, wage revisions and other statutory monetary benefits."

19) In view of the judgments of the Apex Court referred to above and also the judgment of this court in **APSRTC, Hyderabad and another v. N.V.Subbaiah and another**⁷, the Writ Petition is allowed modifying the order under challenge and the respondent/Corporation is directed to reinstate the petitioner into service with full backwages from the date of filing of the I.D., till the date of reinstatement and with all consequential benefits. Miscellaneous Petitions pending if any in this Writ Petition, shall stand closed.

Dt: 01.09.2017
GM

C. PRAVEEN KUMAR, J

⁷ 2016(3) ALD 517