

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

HON'BLE SRI JUSTICE G.SHYAM PRASAD

WRIT APPEAL No.1058 of 2017

Date:31.7.2017

Between:

H.Ramudu,

S/o H.P.Kambagiri

..... Appellant

And:

The Depot Manager, APSRTC,
Koilkuntla Depot, Kurnool District
and another.

.....Respondents

Counsel for the appellant: Mr. C.Raghu

Counsel for respondent No.1: Mr. Aravala Rama Rao

Standing Counsel

Counsel for respondent No.2: GP for Labour (AP)

The Court made the following:

JUDGMENT: *(per Hon'ble Sri Justice C.V.Nagarjuna Reddy)*

The appellant, who was a Conductor in the Andhra Pradesh State Road Transport Corporation (for short 'APSRTC'), filed this Writ Appeal feeling aggrieved by order, dated 14.7.2017, in Writ Petition No.727 of 2012, whereby the learned single Judge has reversed the award, dated 19.11.2010, in Industrial Dispute No.87 of 2006 on the file of the Chairman-cum-Presiding Officer, Industrial Tribunal-cum-Labour Court, Anantapur (for short 'the Labour Court').

The facts leading to the filing of Writ Petition No.727 of 2012 have been briefly narrated by the learned single Judge in the impugned order. Therefore, they need not be repeated here in detail.

The gravamen of the charge against the appellant is that he has closed the Way Bill regarding tickets of certain denominations on 14.3.2004, 23.3.2004, 22.4.2004 and 04.5.2004, which is at variation with the details regarding the sale of tickets entered in the Statistical Returns (STAR) and that the same tickets were reissued on subsequent dates. The four charges framed against the appellant were enquired into. The appellant, however, failed to submit his explanation. The enquiry officer found the appellant guilty of all the four charges. Based on the enquiry report, respondent No.1 has

removed the appellant from service. The appellant raised Industrial Dispute under Section-2-A(2) of the Industrial Disputes Act, 1947 before the Labour Court. By award, dated 19.11.2010, the Labour Court has set aside the order of removal and substituted the same with the penalty of postponement of two annual increments without cumulative effect after the appellant's reinstatement, while ordering that he is not entitled to any back wages on the principle "No work, no pay". Feeling aggrieved by this award, the respondents filed Writ Petition No.727 of 2012.

As there was no stay of reinstatement of the appellant during the pendency of the aforesaid Writ Petition, he was reinstated into service on 05.02.2011. More than six years thereafter, the learned single Judge has set aside the award of the Labour Court and confirmed the order of removal of the appellant.

Mr. C.Raghu, the learned counsel appearing for the appellant, submitted that the respondents have failed to prove the charges against the appellant as, even as per the charge sheet, the Way Bill has not tallied with the entries in STAR, which necessarily means that the appellant had properly entered the details of the issued tickets in STAR and further, the allegation that the same tickets were reissued on another day

itself shows that the tickets were not removed from the tray. Learned counsel further submitted that the Labour Court, having appreciated the evidence on record, held that the order of removal of the appellant from service is disproportionate to the gravity of the charges and therefore, the learned single Judge ought not to have interfered with the award of the Labour Court. Lastly, the learned counsel submitted that his client has been working for nearly 6 ½ years after his reinstatement in pursuance of the award of the Labour Court and therefore, his removal at this point of time would cause serious prejudice to the interests of himself and his family.

Mr. Aravala Rama Rao, the learned Standing Counsel for the APSRTC, however, sought to support the impugned order of the learned single Judge.

We have carefully considered the respective submissions of the learned counsel for both parties with reference to the record.

A perusal of the award of the Labour Court shows that no specific findings were recorded on the delinquency or otherwise of the appellant. On the contrary, it has found fault with lack of proper supervision by the Depot Clerks in thoroughly checking the cash, STAR and the Way Bill, which disabled the appellant to make good the shortfall in cash. To this extent of reasoning of

the Labour Court, the learned single Judge is justified in not agreeing with the same.

In ordinary course, we would not have interfered with the impugned order of the learned single Judge, but for the sole factor that the appellant was reinstated into service on 05.02.2011 in pursuance of the award of the Labour Court. When we have enquired with the learned Standing Counsel as to whether the appellant has come to adverse notice during this 6 ½ years period after reinstatement, he has replied that he does not have any instructions in this regard.

Considering the fact that the appellant has been working for the last 6 ½ years, after his reinstatement, in pursuance of the award of the Labour Court, we feel that equity warrants his continuity, however, subject to imposing appropriate penalty on him. When we proposed that the minimum penalty that the appellant must suffer is withholding of two increments with cumulative effect, Mr. C.Raghu, the learned counsel for the appellant, has fairly accepted the same.

In view of the above, the impugned order of the learned single Judge is set aside and the same is modified to the extent that in place of removal of the appellant, the penalty of withholding of two increments with cumulative effect is substituted.

The Writ Appeal is, accordingly, allowed to the extent indicated above.

As a sequel to disposal of the Writ Appeal, WAMP.No.2037 of 2017 filed by the appellant for interim relief is disposed of as infructuous.

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE G.SHYAM PRASAD

31st July 2017
DR

