

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 26619 OF 2007

ORDER :

This Writ Petition is directed against the Award dated 15.12.2005 in I.D. No. 10 of 2002 on the file of the 3rd respondent Labour Court, *Guntur*,

The case of the petitioner is that he joined the erstwhile Andhra Pradesh State Road Transport Corporation (for short, 'the Corporation') as a Conductor on 14.04.1987 and had been rendering unblemished service. While so, on 29.12.2000, the 1st respondent Depot Manager issued a charge sheet alleging that the petitioner had issued un-punched tickets of Rs.100/- and Rs.60/- denomination, while he was conducting the bus on route *Vijayawada-Udayagiri* on 21.12.2000 which attracts the misconduct under Regulation 28 of the APSRTC Employees' (Conduct) Regulations, 1963. The explanation submitted by the petitioner was found to be not satisfactory and hence, he was removed from service *vide* order dated 05.07.2001 of the 1st respondent. The appeal preferred thereagainst was rejected. The review petition preferred before the 2nd respondent also met the same fate. Having no other go, the petitioner filed I.D.No. 10 of 2002 before the 3rd respondent Labour Court, *Guntur*. The said I.D. was also dismissed through the Award dated 15.12.2005, against which, this Writ Petition has been preferred.

On behalf of Respondents 1 and 2, a counter-affidavit has been filed denying the averments made by the petitioner in the

affidavit filed in support of the Writ Petition. It has been further stated that since the enquiries revealed that there was a *mala fide* intention on the part of the petitioner in not punching the tickets, which was considered to be a grave offence, he was removed from service.

Sri K.R. Srinivas, learned counsel for the petitioner submits that no allegation of misappropriation of monies has been levelled against the petitioner. Therefore, the learned counsel submits that for a technical breach, major punishment of removal from service is not warranted, particularly in view of the unblemished service rendered by the petitioner for more than two decades. The learned counsel further submits that the Labour Court miserably failed to consider the proportionality of the punishment, so also failed to exercise the jurisdiction vested in it under Section 11-A of the Industrial Disputes Act, 1947.

On the other hand, learned Standing Counsel *Sri P. Durga Prasad* appearing for the respondent Corporation opposes the Writ Petition. He submits that but for the check that had been conducted, the petitioner would have pocketed the money of high value of Rs.100 and 60/-. The learned Standing Counsel tries to establish the *mala fide* intention on the part of the petitioner by contending that when the petitioner punched the tickets of Rs.10/- and Rs.4/- denomination, what prevented him from punching the tickets of Rs.100/- and Rs.60/- denomination. The learned Standing Counsel also would point out that the entries in SR were made with respect to Rs.10/- and Rs.4/- denomination but the

entries in relation to Rs.100/- and Rs.60/- were made wrongfully. He further submitted that the Appeal and the Review preferred against the order of dismissal were dismissed, so also the Industrial Dispute, hence, on the ground that the petitioner had rendered unblemished service in the past, the present order of removal cannot be said to be either illegal or arbitrary.

Having considered the respective submissions, it may be noted that there is no challenge in the Writ Petition as regards the perversity of the findings of fact recorded either by the Inquiry Officer or by the Labour Court. In the present case, the charge alleged against the petitioner is that he issued un-punched tickets of higher denomination. Since the Inquiry Officer, Appellate Authority as well as Reviewing Authority have recorded concurrent findings of fact that the petitioner had issued the un-punched tickets, with a fraudulent motive, which is a serious irregularity, the punishment of removal was imposed on the petitioner. When the same is challenged before the Labour Court, it came to the conclusion that the charges having been proved, the petitioner had not made out any case for interference with the findings of fact. Hence, the same cannot be found fault with.

However, a perusal of the Award of the Labour Court does not disclose consideration of the petitioner's case vis-à-vis proportionality of punishment, as is required under Section 11-A of the Act. So far as this aspect is concerned, in one sentence, the Presiding Officer had merely stated that "this is not a fit case for exercising discretion under Section 11-A of the I.D.Act". Therefore,

considering the unblemished service said to have been rendered by the petitioner for about two decades, in the interests of justice, it is appropriate to remand the matter to the Labour Court for the limited purpose of considering the proportionality of punishment, within six months from the date of receipt of a copy of this order. It is made clear that the credence that is required to be given to his past service is to be considered under Section 11-A of the Act.

With this, the Writ Petition stands allowed. No costs.

Consequently, the miscellaneous Applications, if any shall stand disposed of.

05th January 2017

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CHALLA KODANDA RAM, J

