

HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

W.P.No.2847 OF 2009

ORDER

This writ petition is filed for the following relief:

“to call for the records from the 1st respondent in I.D.No.84 of 2005 and issue an appropriate Writ, Order or direction, particularly one in the nature of Writ of Certiorari, and quash the Award passed by the 1st respondent in I.D.No.84 of 2005, dated 7.2.2007, published on 24.5.2007, in so far as denying me back wages, continuity of service and other attendant benefits as illegal, unjust, contrary to law and perverse and pass such other order or orders as deemed fit and proper under the circumstances of the case.”

The petitioner was appointed as Driver in the 2nd respondent-Corporation in the year 1983 and his services were regularized with effect from 01.08.1984. While so, the Traffic Supervisor, Bhadrachalam, submitted a report on 24.6.1996 stating that the petitioner was absent from duty from 22.6.96 to 24.6.1996 without prior intimation or sanctioned leave. Hence, a charge sheet was issued on 25.06.1996, for which, the petitioner submitted his explanation. A domestic enquiry was conducted and the charge was held to be proved. Thereafter, the petitioner was

removed from service on 16.07.1997. The appeal and the review preferred by the petitioner were rejected. However, after eight years, he approached the Labour Court *vide* I.D.No.84 of 2005. The Labour Court *vide* its Award dated 7.2.2007 set aside the order of removal and directed the respondent-Corporation to reinstate the petitioner into service as Driver afresh in the present scale of pay, but without continuity of service, back wages and other attendant benefits. Challenging the portion of the Award, which went against the petitioner, the present writ petition was filed.

Learned counsel appearing for the petitioner submits that when the Labour Court found that the punishment imposed on the petitioner for the charge was disproportionate, it should not have directed his reinstatement afresh, and should have imposed suitable punishment. He further submits that during the enquiry by the Committee, no one was examined and only on the basis of the documentary evidence, the charge was held proved.

The charge levelled against the petitioner reads as follows:

“For having reported private sick from 22.6.96 to 24.6.96 duly absenting to your duties from 22.6.96 to 24.6.96 without prior permission or intimation to your Supervisor so as to cover the absence thus causing inconvenience to the Traffic Supervisor in arranging substitutes in your place simultaneously causing inconvenience to the travelling public besides loss of revenue to the Corporation, which constitutes misconduct under Reg.28 (xxvii) & (xxxii) of APSRTC Employees (Conduct) Reg.1963”

The defence taken by the petitioner-driver was that he requested the Traffic Supervisor to grant three days leave due to his sickness, but the latter refused the same. In those circumstances, the petitioner went to Samatha Nursing Home, where the Doctor advised him to take bed rest and issued a medical certificate. He further stated that he informed the same to the Traffic Supervisor two hours prior to his duty and sent the medical certificate through his colleague driver, who has not submitted the same in time. Thus, the charge against the petitioner for being absent from 22.6.96 to 24.6.96 stood proved. However, the management stated that on earlier occasion also, the petitioner was removed from service on the ground of absenteeism, but in

spite of the same, there was no change in his attitude. The labour Court while modifying the punishment observed as follows:

“But in this case no doubt petitioner submitted a private medical certificate to the depot authorities within 48 hours as per the records of the Corporation, but even during the pendency of proceedings he was permitted to perform duties, but he absented to the duties subsequently without any prior permission or sanction of leave on several occasions and also failed to submit the explanation for the show cause notice. However, the respondent Corporation consented for reinstatement afresh in absenteeism cases. The punishment of removal was imposed in the year 1997 and the appeal and review were dismissed of in the year 1997-98, but the petitioner kept quiet for nearly 8 years and approached the Court only on 16.7.2005 and also failed to submit the reasons for his inordinate delay. Respondent contended that petitioner might have engaged in any profitable employment during that period. Therefore, considering the facts and circumstances of this case and the nature of allegations made against the petitioner and also the other factors placed before the Court, the Court feels it reasonable to direct the respondent to reinstate the petitioner as a ‘Driver afresh’ in the present pay scale, but without continuity of service, back wages and other attendant benefits.”

The reasoning given by the labour Court does not appear to be sound and though the decision reported in *Syed Zaheer Hussain vs. Union of India others*¹ was brought to the notice of the Labour Court, the same was not considered by it. In the said decision, the Supreme Court directed reinstatement of the employee without continuity of service and all other benefits, but with 50% of the back wages from the date of dismissal till the date of reinstatement. Though the case of the petitioner shows intermittent absenteeism, it is not a fit case for dismissal from service. The Labour Court was correct to that extent, but, what is the appropriate punishment in a case like this has to be seen. The petitioner was removed from service on 16.7.1997 and he approached the Labour Court on 16.7.2005. Pursuant to the award of the Labour Court dated 7.2.2007, he was reinstated into service and died while in service on 2.2.2013.

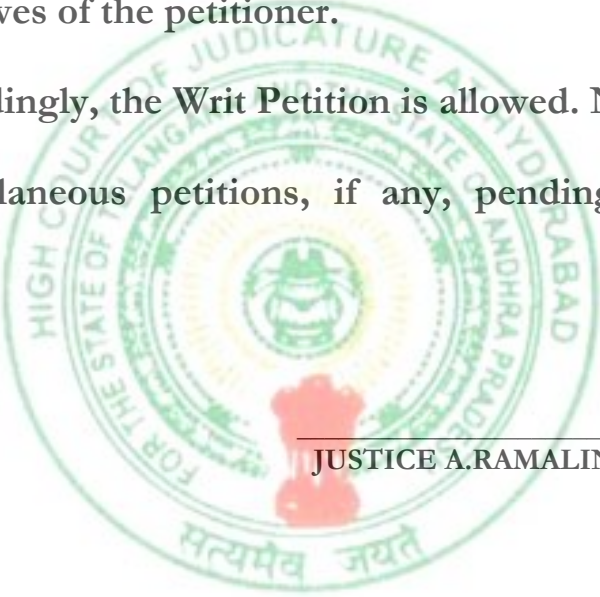
Hence, keeping in view the above facts and circumstances, the award of the labour Court is set aside and the order of removal dated 16.7.1997 is modified by directing

¹ (1999) 9 SCC 86

the respondent-Corporation to reinstate the petitioner into service as 'driver afresh' with continuity of service, back wages and other attendant benefits except for the period from 16.7.1997 to 7.2.2007. However, the said interregnum period i.e., from 16.7.1997 to 7.2.2007 shall be reckoned for the purpose of terminal benefits payable to the legal representatives of the petitioner.

Accordingly, the Writ Petition is allowed. No costs.

Miscellaneous petitions, if any, pending shall stand closed.



JUSTICE A.RAMALINGESWARA RAO

26th July, 2017
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