

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WP.No.6397 of 2017

ORDER :

Heard the counsel for petitioner, and Sri S.V. Ramana, learned Standing Counsel for APSRTC, for respondents.

2. This Writ Petition has been filed by petitioner questioning the order dt.06.10.2016 passed by the 3rd respondent, removing the petitioner from service.

3. It is not in dispute that petitioner was issued a charge-memo on the basis of a complaint that when he was conductor of a bus No.AP 11 Z 2594 plying between Bhimavaram and Eluru on 20.05.2016 he abused a passenger by name Sri N. Tagoor of Eluru in unparliamentary language.

4. The petitioner denied the said charge.

5. An enquiry was held on 30.07.2016 and 05.09.2016.

6. To prove the charge against the petitioner, the respondents did not examine the complainant or the service driver. Though they examined Assistant Manager (Personnel), who conducted the preliminary enquiry, since she is not an eye-witness to the incident, and her evidence about the misconduct of petitioner could not be accepted.

7. However, on the basis of the sole evidence of Assistant Manager, the enquiry officer found that the charge against the petitioner was proved; and on that basis, the 1st respondent passed the impugned order, removing the petitioner from service.

8. Assailing the same, the present Writ Petition is filed.

9. The counsel for petitioner contended that there is no legal evidence adduced in the disciplinary enquiry against petitioner by the respondents warranting any finding about the guilt of petitioner or passing of any order imposing punishment of removal on him; and that even assuming that the charge is true, for a first misconduct punishment of removal from service cannot be imposed as per Guideline No.8 notified vide Circular No.4/2008-OPD(HES) dt.08.02.2008.

10. Counter-affidavit has been filed by the respondents supporting the impugned order.

11. The learned Standing Counsel, appearing for respondents, stated that preliminary enquiry had been conducted in which the complainant was examined and on the basis of the statement of the complainant recorded in the preliminary enquiry, the punishment of removal imposed on the petitioner is warranted.

12. I am unable to accede to this contention, because the charge against the petitioner needs to be proved by evidence adduced in the disciplinary enquiry. The complainant therefore was required to be

examined in the disciplinary enquiry, and his statement in the preliminary enquiry, recorded behind the back of the petitioner, cannot be used against the petitioner since the petitioner had no opportunity to cross-examine the complainant.

13. The other contention raised by the learned Standing Counsel for respondents is that there is an effective alternative remedy in the form of an application under Section 2-A(ii) of the Industrial Disputes Act, 1947, and that the Writ Petition could not have been directly filed by the petitioner without availing the same.

14. It is settled law that existence of an alternative remedy is not a bar to the entertaining of a Writ Petition by this Court under Article 226 of the Constitution of India, when there is violation of fundamental right or there is violation of principles of natural justice or where the order is passed without jurisdiction.

15. In the present case, the finding of the disciplinary authority that petitioner is guilty of misconduct in the absence of any legal evidence against the petitioner, makes his order as one without jurisdiction and therefore entitles the petitioner to approach this Court.

16. Accordingly, the Writ Petition is allowed and the order dt.06.10.2016 passed by the 3rd respondent removing the petitioner from service is set aside; and the respondents are directed to reinstate the petitioner into service with all attendant benefits and backwages

from the date of removal till the date he is reinstated into service with continuity of service. No order as to costs.

17. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 27-06-2017

Ndr/*

