

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.1274 of 2012

ORDER:

This Writ Petition is filed challenging the award dt.11-01-2011 in I.D.No.94 of 2007 of the Industrial Tribunal-cum-Labour Court, Anantapur (for short “the Tribunal”).

2. The 1st respondent was employed as driver in the petitioner-Corporation since 1997. On 08-05-2006, checking officials detected that 1st respondent, who was driving the bus bearing No.AP-10Z-4982 on route Obulayapalli to Srikalahasti, had occupied the seat of a passenger and had allowed another passenger to drive the vehicle from Chodavaram to Senagalagutta.

3. Accordingly, the following charges were framed:

“1) For having violated the rules of the Corporation which constitutes misconduct under Reg.28(xxxii) of the APSRTC Employees (Conduct) Reg., 1963.

2) For having allowed a passenger unauthorisedly to drive the service bus No.AP-10Z-4982 on 8-5-2006 from Cghowavaram to Senagalagutta at about 17-30 hrs., who boarded the bus at Yellakaru and purchased Rs.8/- den. Ticket bearing No.814/756221, which constitutes misconduct under Reg.(ix a) & (b) of the APSRTC Employees (Conduct) Reg., 1963.”

4. The 1st respondent gave an explanation to the charge memo stating that while he was driving the vehicle, he suddenly got severe stomach ache, that there were no hospitals available nearby the place

where he developed the stomach ache; that he was able to drive the bus till Chodavaram, and at that place his stomach ache increased and he was not in a position to drive the bus since he felt that if he drives the bus, it might result in an accident; and so he handed over the bus to a passenger who knew how to drive it.

5. A disciplinary enquiry was conducted against the 1st respondent and an order of removal was passed against him on 26-09-2006.

6. Assailing the same, the 1st respondent filed an application under Section 2-A(2) of the Industrial Disputes Act, 1947 before the Tribunal. The same was numbered as I.D.No.94 of 2007 and the Tribunal passed the impugned award directing the 1st respondent's reinstatement into service with continuity of service and attendant benefits, but denied back wages. It also directed to defer one annual increment with cumulative effect after reinstatement of the 1st respondent.

7. Assailing the same, the present Writ Petition was filed.

8. On 23-01-2012, while admitting the Writ Petition, this Court directed reinstatement of the 1st respondent into service pending disposal of the Writ Petition.

9. Heard the learned Standing Counsel for petitioner and Sri S.D. Goud, learned counsel appearing for 1st respondent.

10. Learned Standing Counsel for 1st respondent contended that it is against the Rules of the Corporation to allow a passenger to drive the bus, that the 1st respondent ought not to have allowed the passenger to drive the bus and the Tribunal ought not to have interfered with the punishment of removal imposed on 1st respondent. He also contended that in the disciplinary proceedings, the 1st respondent has been found guilty of misconduct and the same could not have been interfered with by the Tribunal.

11. Learned counsel for 1st respondent refuted the above contentions and supported the award passed by the Tribunal.

12. A perusal of the order passed by the Tribunal shows that the Tribunal relied on the evidence of 1st respondent and the passenger, who drove the vehicle apart from the service conductor, to come to the conclusion that 1st respondent suffered from severe stomach ache and that he had therefore handed over the vehicle to the passenger who new driving; that 1st respondent's idea was only to take the bus ahead and he had not thought that he was doing an act which was not permitted by petitioner's Corporation. It also held that when the intention of the 1st respondent was only to solve the problem in the circumstances when he was suffering from severe stomach ache, so that he may reach a destination to get some medical aid to his pain, he could not have been removed from service.

13. Having regard to the fact that admittedly the incident in question occurred at 17.30 hours at the time of sun set and having

regard to the fact that night would fall shortly inconveniencing the other passengers also, and since 1st respondent was unable to drive the vehicle, though the 1st respondent might have violated the Rules in permitting a passenger to drive the vehicle, it cannot be said that he deserves to be removed from service. As rightly held by the Tribunal, the 1st respondent's intention was to reach a destination so that he could get some medical aid for his pain and the passengers also would not suffer because of his inability to drive the vehicle on account of his severe stomach pain. If he had not done so, he would have exposed all the passengers to risk of other calamities, which might have occurred at that stage including robbery etc. in the night, which was to fall shortly. Therefore I am satisfied that the Tribunal correctly exercised its discretion under Section 11-A of Act and directed reinstatement of the 1st respondent while substituting the punishment of removal with punishment of deferment of one annual increment with cumulative effect and denied the 1st respondent back wages.

14. The Writ Petition is devoid of merits and it is accordingly dismissed. No costs.

15. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 15-06-2017

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