

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.20766 OF 2001

ORDER:

The petitioner, who is the workman, filed this Writ Petition being aggrieved by the award of the Labour Court passed in I.D.No.196 of 1996 dated 09.09.1998 whereby the Labour Court directed reinstatement of the petitioner into service with the benefit of notional incremental, however, without back wages.

Brief facts of the case are that the petitioner was appointed as a casual conductor in the year 1987 and his services were regularized on 01.01.1989. On 28.04.1995 while the petitioner was conducting the bus bearing No.AP9Z 6516 on the route Jayapore-Bhadrachalam on return trip, a check was conducted by the S.I. of Police, Seileru, and case was booked against him in crime No.9/1994 on the allegation that liquor bottles were found in petitioner's bag and he was remanded to Chintapally Sub-jail from 29.04.1995 to 03.05.1995. Based on the registration of crime against the petitioner, a charge sheet dated 19.05.1995 was issued to the petitioner with the following charges:

“1.For your illegally bringing of (3) whisky (liquor) bottles while you were conducting the Jayapore-Bhadrachalam Service with vehicle No.AP9Z 6516 on 28.04.1995 which is a prohibited articles in A.P. State which constitutes misconduct under Reg. 20 (xv) of APSRTC Employees (Conduct) Reg.1963

2. For having detained the vehicle No.AP 9Z 6516 at Seileru at 10.30 hrs. on 28.04.1995 by the Police officials of Seileru due to tracing the (3) whisky bottles, in your bag as a result of which the passengers were put into trouble and which constitutes misconduct under Reg.28 (ix) (a) of APSRTC Employees (Conduct) Reg. 1963.

3. For having detained the Jayapore-Bhadrachalam service by the Police officials at about 10.30 hrs. on 28.04.1995 due to illegal carrying of 3 whisky bottles by you and the vehicle was brought by the relief Conductor from Seileru to Bhadrachalam on 29.04.1995 at about 17.30 hrs. i.e. late by more than 24 hrs. consequently you have damaged the image of the corporation before the eyes of the public besides loss of revenues which constitutes serious misconduct under Reg. 28 (ix) (a) and (xxxii) of APSRTC Employees (conduct) Reg. 1963”

Having not convinced with the explanation submitted to the charge sheet by the petitioner, the disciplinary authority ordered for domestic enquiry into the charges framed against the petitioner. The Chief Inspector of Manugoor Depot was appointed as an Enquiry Officer and the same was informed to the petitioner. The petitioner participated in the enquiry. The Enquiry Officer conducted enquiry giving opportunity to the petitioner, duly following the principles of natural justice and in accordance with the CCA Rules, 1963. Based on the Enquiry Officer's report, the disciplinary authority issued a show cause notice of removal to the petitioner along with copy of Enquiry Report. Petitioner submitted his explanation to the show cause notice and the disciplinary authority after going through the entire material on record came to the conclusion that punishment of removal from service is fit and proper and accordingly the petitioner was removed from service vide proceedings dated 07.10.1995. Petitioner was unsuccessful in the appeal and revision preferred against the order dated 07.10.1995. Being aggrieved by the same, the petitioner approached the Labour Court, Warangal, by raising an Industrial Dispute vide I.D.No.196/96. The Labour Court after considering the entire material and on re-appreciation of the evidence available

before the Enquiry Officer, came to the conclusion that the Enquiry Officer, without any basis, brushed aside the evidence of material witness T.S.Rao, driver, and the Enquiry Officer had mainly relied on the reports of the Police and S.T.I. and also the letter written by the petitioner, while he was in police custody, under coercion and threat and thereby held that the Enquiry Officer's report is perverse and illegal. The Labour Court also held that the finding of the Enquiry Officer's report that the petitioner was guilty of all the charges is perverse, illegal; removing the petitioner from service based on the said enquiry report, is illegal; and petitioner is entitled for continuity of service. The petitioner filed this writ petition questioning the impugned award insofar as denying the back wages while ordering reinstatement of the petitioner into service.

Sri B.Sudhakar Reddy, learned counsel for the petitioner, would contend that the Labour Court having come to the conclusion that the petitioner was illegally removed from service, based on the perverse findings of the Enquiry Officer's report; the Labour Court having held that the petitioner was illegally removed and ordered his reinstatement into service with continuity of service, denying the back wages in the facts and circumstances of the case, is arbitrary and illegal and the petitioner is entitled for back wages as he was reinstated into the service with continuity of service and notional benefit. When the Labour Court having found that termination is illegal, ought to have granted back wages in view of the decision of the Hon'ble Supreme Court in ***Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya***

(D.Ed.) and others¹ wherein it has been held that reinstatement follows granting of full back wages and denial of back wages would amount to indirectly punishing the employee and rewarding the employer by reliving him of the obligation to pay back wages. Hence, the petitioner is entitled for full back wages for his illegal termination.

Per contra Sri B.Mayur Reddy, learned Standing Counsel for the respondent-Corporation, would contend that the petitioner was removed from service on proved mis-conduct. The Labour Court on re-appreciation of the evidence held that the charges are not proved and thereby exercising its power under Section 11-A of the I.D. Act ordered reinstatement of the petitioner into service with continuity of service and rightly denied the back wages. The petitioner was removed from service on 07.10.1995 and award was passed on 09.09.1998. As per the award, he was reinstated into service. The petitioner is not entitled for back wages for the period he was not in service as per the principle of 'no work no pay'. The Labour Court rightly denied the back wages and he is not entitled for back wages. Reliance is placed **on Fisheries Department, State of Uttar Pradesh vs. Charan Singh²** and **Kurukshetra University vs. Prithvi Singh³** in support of the contention that the Labour Court had committed an error of law and fact and reinstated the petitioner for which the petitioner is not entitled for payment of any back wages. He would further submit that payment of back wages is burdensome to the Corporation, which is already under financial crisis.

¹ (2013) 10 SCC 324

² (2015) 8 SCC 150

³ (2018) 4 SCC 483

In the facts and circumstances of the case and in considered view of this Court, the petitioner was removed by the disciplinary authority mainly basing on the Enquiry Officer's report for the proved charges that he was found in illegal possession of three whisky bottles in his bag during the prohibition period for which Police detained him, the passengers were put to serious inconvenience and damage was caused to the image of the Corporation in the public. The Enquiry Officer mainly relied on the reports of the Police and the statement given by the petitioner to the Police while he was in custody, which is not admissible. The Labour Court rightly held that the Enquiry Officer's finding and report are perverse and charges against the petitioner are not proved by any legal evidence and thereby the Labour Court rightly passed the Award ordering reinstatement of the petitioner into service with continuity of service and other benefits. As regards the issue of grant of back wages, this Court is of the view that the Labour Court has not adjudicated the said issue properly. As per the guidelines of the Apex Court in a catena of judgments in particular in ***Deepali Gundu Surwase (1 supra)***, wherein the at para 22 it has been held as follows:

“The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer-employee relationship, the latter's source of income gets dried up. Not only the employee concerned, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of

education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi-judicial body or court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. The denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the employee concerned and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments.

In the said decision, the Supreme Court also relied on its earlier decision in ***Novartis India Ltd. Vs. State of W.B.***⁴ wherein it has been held that:

21. There can, however, be no doubt whatsoever that there has been a shift in the approach of this Court in regard to payment of back wages. Back wages cannot be granted almost automatically upon setting aside an order of termination inter alia on the premise that the burden to show that the workman was gainfully employed during interregnum period was on the employer. This Court, in a number of decisions opined that grant of back wages is not automatic. The burden of proof that he remained unemployed would be on the workmen keeping in view the provisions contained in Section 106 of the Evidence Act, 1872. This Court is the matter of grant of back wages has laid down certain guidelines stating that therefore several factors are required to be considered including the nature of appointment; the mode of recruitment; the length of service; and whether the appointment was in consonance with Articles 14 and 16 of the Constitution of India in cases of public employment, etc.

⁴ (2009) 3 SCC 124

22. It is also trite that for the purpose of grant of back wages, conduct of the workman concerned also plays a vital role. Each decision, as regards grant of back wages or the quantum thereof, would, therefore, depend on the facts of each case. Back wages are ordinarily to be granted, keeping in view the principles of grant of damages in mind. It cannot be claimed as a matter of right.”

In the case on hand, when the reinstatement into service was ordered having held that the Enquiry Officer's report is perverse and charges are not proved, the workman was illegally terminated and was out of employment and put to severe financial difficulties as he was not gainfully employed. It is also to be noted that the petitioner was acquitted in the criminal case in ACC no.211/1995. Hence, this Court is of the view that it is fit and proper to grant 50% of back wages to the petitioner, to meet the ends of justice, as the petitioner was not gainfully employed. On facts, it is held that as the petitioner was illegally terminated in first instance, the principle of 'no work no pay' has no application to this case. The Enquiry Officer's also has not considered the evidence of the petitioner and driver, which is to the effect that the bag containing whisky bottles was not belonging to the petitioner, but the passengers on seeing the Police left the bag and got down the bus.

Accordingly, the Writ Petition is allowed in part modifying the award of the Labour Court to the extent of granting 50% of back wages. Except the said modification, remaining portion of the impugned Award stands confirmed.

Miscellaneous petitions pending in this petition, if any, shall stand closed. There shall be no order as to costs.

(M.GANGA RAO, J)

11th July, 2018
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