

THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT APPEAL No. 315 of 2018

ORAL ORDER: *(Per the Hon'ble Sri Justice Suresh Kumar Kait)*

Vide the present appeal, appellant has challenged order dated 12.12.2017 passed by learned Single Judge of this Court in W.P.No.13454 of 2009.

2. Brief facts of the case are that the appellant was appointed in the respondent Corporation on 04.04.1998 and later his services were regularized with effect from 01.08.1998. While he was conducting bus on 10.11.2003 on route Jaggaiahpet-Chintraial, the checking officials checked the bus at 3/4th stage and based on the report of the checking officials, a charge memo was issued. Thereafter, the 2nd respondent issued a charge sheet on 18.11.2003 and kept the appellant under suspension. Pending departmental enquiry in respect of the charges, the appellant submitted explanation on 24.11.2003 and since the explanation was not proper, an Enquiry Officer was appointed. The Enquiry Officer submitted his report on 05.02.2004 holding that the charges were proved. When the respondents called for objections on the enquiry report, the appellant submitted his comments on 17.02.2004 and after considering the same, a show-cause-notice for removal from service was issued on 29.03.2004. However, the appellant was removed from service vide order dated 19.04.2004 and same was confirmed by the appellate authority and the reviewing authority by orders dated 29.07.2004 and 06.09.2005 respectively. Challenging the

removal order dated 19.04.2004, the appellant filed I.D.No.185 of 2005 before the Labour Court, Guntur, and the said Court by its award dated 19.02.2009 dismissed the application upholding the order of dismissal from service. Being aggrieved, the appellant filed W.P.No.13454 of 2009 and same was also dismissed vide order dated 12.12.2017.

3. Learned counsel appearing on behalf of the appellant submits that the appellant was removed from service, duly recovering an amount of Rs.21/- towards three re-issued tickets of Rs.7/- each and forfeiting the security deposit to the revenues of the respondent Corporation besides treating the suspension as not on duty. Learned counsel further submits that the punishment imposed upon the appellant is disproportionate to the misconduct if admitted by the appellant. Thus, the learned counsel prayed that the removal order dated 19.04.2004 may be set aside.

4. On the other hand, learned counsel appearing on behalf of the respondent Corporation submits that the appellant re-issued three tickets for an amount of Rs.7/- each to the passengers. Thus, he has caused loss to the revenue of the Corporation to an extent of Rs.21/-. This misconduct of the appellant has been proved in the departmental enquiry and the removal order passed by the respondents affirmed by the Labour Court as well as the writ Court. Thus, no interference is required in the present case.

5. The charges levelled against the appellant are as follows:

“(1) For having reissued the ticket Nos.206/913315, 316 and 318 of Rs.7/- denm. to a batch of 3 passengers, who boarded the bus at JPT and bound for Dondapaud, ex-stages 1 to 5 which were already issued in 13-45 hrs. Chintrial-JPT trip from stages 5 to 1 and accounted the same tickets against stage No.5 in STAR

No.037739203, which constitutes misconduct vide Reg.28 (xxiii) of APSRTC Employees (Conduct) Reg. 1963.

(2) For having knocked away the legitimate revenues of the Corporation to an extent of Rs.21/- by reissuing the above tickets of Rs.7/- while were performing duty on route JPT-Chintrial on 10.11.03 which constitutes misconduct vide Reg.28 (xxxi) of APSRTC Employees Conduct Reg. 1963.”

6. On perusal of the order dated 12.12.2017 impugned before this Court, it is revealed that the learned Single Judge has observed that the Labour Court has noticed that the appellant did not challenge the legality of the enquiry. The appellant also did not produce any documentary or oral evidence before the Labour Court. Whereas, the aforesaid observation of the learned Single Judge is contrary to the proviso of 11-A of the Industrial Disputes Act, 1947 which reads as under:

“Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely on the materials on record and shall not take any fresh evidence in relation to the matter.”

7. As per the said proviso, the Labour Court has to rely only on the materials on record and shall not take any fresh evidence in relation to the matter.

8. It is not in dispute that the appellant was held guilty against the charges mentioned above and accordingly removed from service vide order dated 19.04.2004. The said removal order has been confirmed by the Labour Court as well as the writ Court. We are not relying upon the submission of the counsel for the appellant that the appellant denied the charges in the reply and his reply was not considered by the disciplinary authority, appellate authority, Labour Court and the writ Court.

9. However, we are of the considered view that the appellant caused loss of Rs.21/- to the exchequer of the Corporation by re-issuing the tickets for an amount of Rs.21/-. It is not in dispute that an amount of Rs.21/- has been recovered with security deposit to the respondent. There is no loss caused to the exchequer. It is not our opinion that the amount is less, but we are of the view that punishment of removal from service is disproportionate to the misconduct committed by the appellant. The appellant was removed from service on 19.04.2004 and now we have entered in 2018. From the last 14 years, the appellant is out of service and without any salary. Thus, he has suffered lot and more than sufficient punishment caused to him for the misconduct committed as above.

10. Therefore, we are of the opinion that interest of justice would be met, if we direct the respondent Corporation to reinstate the appellant into service without back wages, but service from 19.04.2004 till the date of reinstatement shall be counted for retrial benefits.

11. With the above direction, the Writ Appeal is disposed of.

Consequently, miscellaneous applications if any pending in the appeal shall stand closed. No order as to costs.

SURESH KUMAR KAIT, J

ABHINAND KUMAR SHAVILI, J

7th June, 2018
cbs

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