

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Writ Petition No.6037 of 2004

ORDER:

The writ petitioner herein prays the Court for issuance of writ of Mandamus declaring the action of respondents in removing her from service vide proceedings No.02/95(71)/JMD dt.06.01.1999 by the 3rd respondent and the proceedings No.PA/20A(40)/99-RMC dt.23.06.1999 passed by the 2nd respondent denying her past service benefits as illegal, unjust, arbitrary and to set aside the same with a consequential direction to reinstate her from the date of charge sheet and to regularise her services on par with her batch mates w.e.f. 01.01.1998 with all consequential benefits.

2) Briefly stating the petitioners' case is thus:

a) The petitioner was appointed as Conductor in 1996 and working as such on route Jammalamadugu to Gandikota; while so, on 06.08.1999, when she was conducting service to the vehicle No.3620, the checking officials of HES/TTP conducted check at Stage No.3 and found ticketless passengers and issued charge memo on the ground that though she collected Rs.3/- from the passenger, failed to issue ticket for which she filed her explanation; being not satisfied with the explanation offered by her, the respondent authorities kept her out of duty vide orders dated 12.08.1998 and removed her from service vide proceedings dated 06.01.1999 and the appellate authority confirmed the same. Aggrieved, the petitioner filed review. The reviewing authority considering the case of the

petitioner reinstated her into service by denying past service benefits and ordered to appoint afresh vide order dated 23.06.1999.

Hence the writ petition.

b) Respondents filed counter and opposed the petition. It is stated that petitioner was issued show cause notice of removal on 24.12.1998 for which she submitted her explanation. Having not satisfied with the explanation offered by the petitioner, final order of removal was passed on 06.01.1999. Aggrieved, the petitioner filed appeal and appellate authority rejected the same by order dated 09.06.1999. Thereafter, petitioner carried the matter in review. The reviewing authority considering the case of the petitioner took a lenient view and ordered to appoint her as Conductor Grade-II afresh. Against which the petitioner filed the present writ petition without exhausting the alternative remedy before the labour Court. Thus they prayed to dismiss the writ petition.

3) Heard arguments of Sri S.M.Subhan, learned counsel for petitioner and learned Standing Counsel for APSRTC/respondents.

4) Learned counsel for petitioner challenged the review order on two main grounds. Firstly that the punishment itself is illegal and unwarranted since the facts of the case would show that the petitioner who conducted the bus bearing No.3620 on the fateful day was very much diligent and she had issued tickets to all the passengers boarded in the bus and also cautioned the passengers to take tickets if anybody were left. As there was no response from any of the passengers, she closed the S.R. In that view of

the matter, it is not correct to allege that she collected Rs.3/- from a passenger and did not issue ticket to him and while he was getting down at stage 3, the checking authorities who got into the bus ascertained the said fact from that passenger. If that were true, there would have been excess amount with her but the checking authorities did not check the cash balance available with her to establish the said fact. Hence, the authorities ought to have taken note of her submission that the alighted passenger did not pay her Rs.3/- for ticket and only to save his skin he stated falsehood. However, she was unjustly punished in a make believable departmental enquiry.

5) In oppugnation, learned standing counsel for APSRTC/respondents would submit that the spot statement of the alighted passenger was recorded by the authorities at the time of the check which was signed by the petitioner/conductor, would clearly depict that the passenger paid Rs.3/- to the petitioner but she did not issue the ticket till he alighted at Stage no.3 and caught by the authorities. In view of the same, the disciplinary authority rightly punished her and reviewing authority also upheld the punishment.

6) I gave my anxious consideration to the above respective arguments. A perusal of the departmental enquiry proceedings dated 06.01.1999 would show that the alighting passenger during the check made by the authorities represented that he in fact paid Rs.3/- to the conductor at the boarding point itself to travel from Stage 1 to Stage 3 i.e, from Jammalamadugu to Gandikota but forgot to ask the ticket and the conductor also had not given him the ticket. His spot statement was recorded at the check and the same

has been signed by the service conductor. Basing on these facts, the disciplinary authority found the conductor guilty of not issuing the ticket to the passenger even after collecting Rs.3/- from him. She was also found guilty of not issuing ticket to passenger who boarded the bus in Gudemcheruvu and Bheemarayunikottals. In that view of the matter, the contention of the petitioner that she was unjustly punished in the departmental enquiry cannot be accepted.

7) The second ground canvassed by the petitioner is that the order of the reviewing authority accepting the punishment of removal from service imposed by the disciplinary authority and ordering the petitioner to be appointed as a Conductor Grade II afresh on casual basis is illegal and against the canons of law. In expatiation, learned counsel argued that the appointment of the petitioner afresh on a casual basis would render her past service nugatory and it amounts to imposing a punishment which is not prescribed as one of the punishments in regulation 8(1) of the APSRTC Classification Control and Appeal Regulation 1967 (for brevity “the Regulations”). He thus prayed to set aside the order passed by the reviewing authority and remand the matter to the reviewing authority to pass a suitable punishment. He placed reliance on the decision *K.C.Narayana v. Managing Director, APSRTC, Hyderabad*¹.

8) Per contra, learned counsel for respondents argued that the petitioner was found guilty of not issuing tickets and hence she was rightly awarded the punishment of removal from service and same was approved by the

¹ 2007 (5) ALD 416

reviewing authority also. However, the reviewing authority took a lenient view and ordered for her appointment as conductor Grade II afresh on casual basis. Such an order is not a modified punishment, rather, it is an independent order and therefore, it has nothing to do with the various punishments prescribed in the regulations. He placed reliance on the decision in *Regional Manager, APSRTC, Kurnool v. Regional Secretary, APSRTC National Mazdoor Union, Kurnool representing P.M.Gopal, Driver*².

9) I find logic in the argument of learned counsel for respondent. In *Regional Manager, APSRTC, Kurnool*'s case (2 supra) which relates to a similar case, a learned Judge of this Court happened to extract all the relevant decisions including the *K.C.Narayana*'s case (1 supra) and applied the legal position of the earlier decisions to the case on hand. In that case the learned Judge found that the reviewing authority modified the punishment and ordered reinstatement of driver afresh as a casual driver. The learned Judge observed that such an order passed by the reviewing authority fell foul of the statutory regulations particularly Regulation 8(i) thereof and the law laid down by this Court. A close scrutiny of the above judgment would show that in that case the learned Judge having observed the reviewing authority using the words "**orders are modified**", held that the punishment imposed by the disciplinary authority was modified by the reviewing authority and such modification was against Regulation 8(i). In my considered view, the observation of the learned Judge is that if the fresh

² 2015 (3) ALT 35

appointment ordered by the reviewing authority did not amount to modification of the earlier punishment and it was an appointment afresh, such order of the reviewing authority might have come under the ratio in ***P.Habeeb Saheb v. Andhra Pradesh State Road Transport Corporation, rep. by its Managing Director, Hyderabad***³. In the instant case, the relevant portion of the order of the reviewing authority reads thus:

Perused the disciplinary proceedings case and found that the contention of the petitioner is untenable. The passengers in question have boarded the bus at different stages and the strength was also below the capacity. In such a least capacity the conductor can easily identify the ticketless passengers and issue proper tickets, if had no other intentions. The charges against the petitioner are rightly held proved and the action taken by the disciplinary authority is fit and proper. However, in view of the very short service rendered by the petitioner in the Corporation which is not sufficient to know the yieldings of such misdeeds, I am inclined to take a lenient view into the instant case with a hope that she will not commit such type of irregularities in future and work with honesty and enthusiasm in the interest of the Corporation.

I therefore, hereby order that the petitioner Smt. S.Mariamamma, E-411111, EX-CL, conducted be appointed as a Conductor Gr.II afresh on casual basis.

On appointment afresh, the petitioner is posted to Pulivendula depot and advised to report to the Depot Manager, Pulivendula within a period of Seven days from the date of receipt of these proceedings, failing which the same shall stand cancelled.

Her appointment is subject to entering into fresh agreement duly paying the requisite security deposit.

This review petition is allowed to the extent ordered above.”

³ 1995 (1) ALT 553 (DB)

A careful perusal of the above order would show that while agreeing with the findings of the disciplinary authority and punishment of removal from the service, the reviewing authority however took a lenient view with the hope that the petitioner would not commit such type of irregularities in future and work with honesty and enthusiasm in the interest of Corporation. While taking such lenient view the reviewing authority ordered that the petitioner be appointed as a Conductor Grade II afresh on casual basis. Thus in my considered view, the order of the reviewing authority is in two parts. The first part amounts to agreeing with the findings and punishment imposed by the disciplinary authority. The second part relates to ordering the petitioner to be appointed as Conductor Grade II afresh on casual basis. Thus two parts are watertight compartments and have nothing to do with each other. Therefore, the order in the second part directing the petitioner to be appointed afresh cannot be taken as a modification of the punishment imposed by the disciplinary authority. Hence, the order of the reviewing authority falls within the ambit of Habeeb's case but not in K.C.Narayana's case. Hence, I find no merits in the contention of the petitioner.

10) Accordingly, the Writ Petition is dismissed. No costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 07.02.2018

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