

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.15750 OF 2002

ORDER:

The petitioner, who worked as a Conductor with the first respondent-Private Owner of bus No.AHJ-2432, filed this Writ Petition being aggrieved by the award dated 29.06.2001 passed in I.D.No.47/1993 by the Labour Court, Guntur, whereby the claim petition filed by the petitioner under Section 2-A (2) of the Industrial Disputes Act, 1947 (for short 'the I.D.Act') seeking reinstatement with continuity of service and back wages was dismissed, being arbitrary and illegal.

Brief facts of the case are that the petitioner joined as a Conductor on 01.08.1988 on the bus bearing No.AHJ-2432 of the first respondent. The first respondent plied the bus on route Pedani-Chennur. Petitioner worked continuously on the said bus till February, 1991 for which he was paid monthly wages of Rs.680/-. Due to nationalization of bus route, the second respondent A.P. State Road Transport Corporation started plying busses in the said route, due to which, the petitioner had become unemployed. The second respondent-Corporation framed various schemes for absorption of the displaced employees due to nationalization of the routes and issued circular instructions. A notification was also issued in newspaper on 28.08.1991 inviting applications from the displaced employees for absorption into the second respondent-Corporation as Conductors, Drivers and Cleaners. As per the scheme, qualified and eligible persons were absorbed at the rate of two drivers and three conductors not exceeding 5 in number for each bus. Interviews were held on

26.08.1991 by the Selection Committee. The Selection Committee verified the documents produced by the workers and list of owners with that of Labour Enforcement Office and conducted interviews and identified the genuine displaced workers and the Selection Committee identified two conductors and one Supervisor-cum-Conductor and other persons including Babu Rao, the petitioner herein, could not be identified as genuine workers. The eligible displaced workers were absorbed into the services of the Corporation. Under the Scheme, the case of the petitioner was rejected on the ground that he is not a genuine worker worked against bus No.AHJ-2432.

Being aggrieved by the same, the petitioner filed I.D.No.47/1993 before the third respondent-Labour Court, Guntur, under Section 2-A (2) of the I.D. Act claiming reinstatement with continuity of service stating that he was displaced due to nationalization of the bus routes and plying of the bus by the Corporation. As the Corporation had taken over the bus of the first respondent's establishment, the Corporation became the successor of the first respondent and hence termination/disengagement of the petitioner is contrary to the provisions of the I.D.Act. The Labour Court having considered the case of the petitioner for absorption and reinstatement into the Corporation, dismissed the I.D. holding that there is no employer and employee relationship between them. Being aggrieved by the same, petitioner filed the present writ petition.

Sri M.Pitchaiah, learned counsel for the petitioner, would contend that the petitioner was engaged as a Conductor on 01.08.1988 on the bus bearing No.AHJ-2432 owned by the first

respondent and the petitioner was paid Rs.680/- per month. Due to nationalization of the bus route, the route was taken over by the Corporation from 01.03.1991, the Corporation started plying the bus on route Pedane-Chennur, due to which, the petitioner was disengaged and became unemployed. Though the Corporation formulated a Scheme for absorption of the displaced employees of the Private Bus Operators, who plied in the routes nationalized, even though the scheme is framed for absorption of all the displaced employees due to nationalization of routes and issued Circular instructions, the Corporation had absorbed only two drivers and three conductors against each bus not exceeding five in number for each vehicle. Petitioner also appeared before the Selection Committee for absorption in pursuance of the notification dated 28.08.1991, but on erroneous appreciation of the evidence produced by the petitioner, the Corporation declared the petitioner as not genuine and he was not absorbed as a displaced employee against the bus bearing No.AHJ-2432. He would further submit that since the Labour Court held that the petitioner was engaged as per Ex.W.1 dated 01.01.1989, he ought to be considered as a genuine employee worked against the bus No.AHJ-2432 of the first respondent, his disengagement due to nationalization amounts to retrenchment of the petitioner from service, which is contrary to the provisions of Section 25-F of the I.D.Act.

Learned counsel for the petitioner would vehemently contend that the Corporation is the successor to the first respondent-owner due to nationalization of routes, there exist employer and employee relationship between the Corporation and the petitioner, as such disengagement of the petitioner amounts to retrenchment and

contrary to the provisions of Section 25-F of the I.D.Act and the petitioner is entitled for reinstatement with continuity of service and with back wages. In support of his contention, he placed reliance of the judgment in ***Miss Snigdha Sardar vs. Chief General Manager, South Eastern Coalfields Limited***¹ wherein the South Eastern Coalfields Limited which was financing the school run by the Black Diamond Public School was taken over and handed over to OAV Management Trust, thereby the petitioner therein was disengaged from service, illegally and thereby disengagement amounts to termination. In those circumstances, the Orissa High Court concluded that the present Management has taken over the school and thereby directed the subsequent management to absorb the petitioner as on date in the school in which she had acquired a confirmed status and which at present is being run by it and thereby ordered to reinstate the petitioner as a teacher from the date other teachers of the Black Diamond Public School had came to be appointed by the successor Management but the petitioner shall not get any arrears of salary for the period for which she was out of employment.

Learned counsel also relied on ***Gurmail Singh vs. State of Punjab***² wherein the Hon'ble Supreme Court having held that under the provisions of Section 25-F of the I.D.Act, the employees of the predecessor have no right to claim re-employment by the successor in business, some exceptional circumstances where the predecessor and successor are the Stated Owned Corporations or State entitled for absorption, continuation in the successor Corporation/State and it is based on the terms and conditions of

¹ 1992 Law Suit (Ori) 311

² (1991) 1 SCC 189

the transfer the successor is the wholly owned State instrumentality bound to act at the behest of the State. In those circumstances, the Supreme Court directed the successor in interest to continue the services of the petitioners therein.

But, the cases relied by the petitioner's counsel have no help to the case of the petitioner as the facts in those cases are different. Here in the present case, there is no taking over of the establishment or ownership of the first respondent by the Corporation. Due to nationalization of the bus routes, temporarily the first respondent-owner of the private bus had not plied the bus and thereby the petitioner had become unemployed. The Corporation has also framed a scheme for absorption of the displaced employees due to nationalization of the routes. Accordingly, the employees who worked on the buses of the private operators, who plied the buses on the routes nationalized, were absorbed into the Corporation. The petitioner was not absorbed as he was not identified as a genuine employee who worked against the bus.

Per contra, Sri P.Durga Prasad, learned Standing Counsel appearing for the Corporation, would contend that the route Pedani-Chennur was nationalized, due to which, the bus bearing No.AHJ-2432 plied by the first respondent private bus operator was stopped plying. The Corporation plied the bus after obtaining permission from the competent authority. However, the Corporation has formulated a scheme for absorption of the displaced employees who worked on the buses plied in routes nationalized and according to the scheme two drivers and three conductors not exceeding five in number were absorbed against

each vehicle as per the norms. A notification was issued on 28.08.1991 inviting applications from the displaced employees of the buses, which stopped operations due to nationalization of the routes, interviews were conducted and genuine employees of the busses were absorbed into Corporation. Against the first respondent's bus bearing No.AHJ-2432, the Selection Committee identified two conductors and one Supervisor-cum-Conductor only and other persons including the petitioner herein could not be identified due to non-production of documents to proof that they worked against the said vehicle and for non-fulfilling conditions of the circulars. Petitioner raised I.D.No.47/1993 claiming to be the genuine employee/ worker of the bus owned by the first respondent and seeking reinstatement with continuity of service and back wages. But, the Labour Court having framed the issue 'whether there exist employer and employee relationship between the second respondent and petitioner?', considering the entire evidence, came to the conclusion that the petitioner was never employed by the Corporation at any point of time, as such, there is no employee and employer relationship between the petitioner and the Corporation and he worked from 01.08.1988 up to 01.03.1991 and he was displaced employee due to nationalization of the bus route. A copy of the appointment order marked as Ex.W.1, the appointment letter was issued on 01.01.1989. Therefore, the version of the petitioner, who was examined as W.W.1, that he joined the services of the first respondent on 01.01.1988 is not correct in view of Ex.W.1 appointment letter. If he was issued on 01.01.1989, he can claim notice pay under the provisions of Section 25-F of the I.D.Act, but he cannot claim relief against the

Corporation for reinstatement as there is no relationship of employer and employee, but the petitioner has not made any claim for reinstatement against the first respondent-owner of the bus as he was terminated by the first respondent. In those circumstances, the Labour Court rightly dismissed the I.D. and there is no illegality or irregularity in dismissing the I.D.

Having considered the rival contentions of the counsel and in the facts of the circumstances of the case, this Court found that the main contention of the learned counsel for the petitioner is that the petitioner who worked as a Conductor in the first respondent's bus was disengaged due to nationalization of the bus routes and the route was taken over by the Corporation and thereby the Corporation is the successor of the first respondent as the Corporation is plying the bus on the routes, could not be countenanced. The Corporation due to nationalization of the bus route in which the first respondent's bus was plied, framed a scheme for absorption of the displaced employees. As per the scheme, the case of the petitioner was considered and for non-fulfilling of the conditions of the scheme and circular instructions, his case for absorption was rejected by the Selection Committee. Having held that there is no employer and employee relationship between the parties, the Labour Court cannot direct the Corporation to reinstate the petitioner. As the petitioner had not claimed any relief against the first respondent, the first respondent can not be directed to reinstate the petitioner. Hence, the petitioner failed to establish the relationship of employee and employer between himself and the Corporation and that the Corporation is the successor of the first respondent. Hence, the

finding of the Labour Court is not found fault with. There is no error of fact and error of law in the impugned award of the Labour Court, which warrants interference of this Court under Article 226 of the Constitution of India.

Accordingly, the Writ Petition is dismissed.

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

(M.GANGA RAO, J)

.08.2018
sur

