

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Writ Petition No.8339 of 2003

ORDER:

This Writ Petition is filed by the petitioner challenging the Award dated 22.07.2002 in I.D.No.107 of 2000 passed by the Chairman-cum-Presiding Officer, Industrial Tribunal-cum-Labour Court, Warangal (for short "the Industrial Tribunal"), whereunder the petitioner was reinstated into service as a 'Fresh Conductor' but without continuity of service or back wages.

2) The factual matrix of the case is thus:

a) The petitioner was appointed as Cleaner in 2nd respondent—Corporation on 06.02.1976 and he was promoted as Helper on 24.05.1978 and thereafter he was posted as Conductor on 12.12.1980. On 27.03.1999, while the petitioner was conducting a Bus bearing No.AP 10 Z 6803 on the route from Tirupathi to Khammam, the Chief Inspector of Tenali Depot, who was travelling in it, checked the Bus and issued a check memo for having reissued used tickets of Rs.60/-, Rs.50/- and Rs.8/- denominations to a batch of two passengers boarded at Guntur and bound for Vijayawada even after collection of requisite fare @ Rs.10/- per head and failed to issue ticket to one passenger, who barded the bus at Guntur bound for Vijayawada and closed tray numbers of all denominations at stage 11 without completing issuance of the aforesaid three tickets. Basing on the statements of passengers found travelling without tickets and spot

explanation of the petitioner, charge sheet was issued to the petitioner on 05.04.1999 and the petitioner submitted his explanation on 10.05.1995. But the 2nd respondent without considering the petitioner's explanation, appointed an Enquiry Officer to conduct enquiry into the charges. The Enquiry Officer conducted enquiry without following the principles of natural justice and held the petitioner guilty of the charges vide his enquiry report dated 06.09.1999. Consequently, the 2nd respondent issued show cause notice dated 15.09.1999 to the petitioner, for which, the petitioner submitted his explanation but without considering the same, 2nd respondent issued proceedings dated 27.09.1999 terminating the services of the petitioner. Aggrieved by the said termination order, the petitioner filed an appeal to the appellate authority and the same was rejected on 30.03.2000. The petitioner filed a review petition and the same was also rejected on 09.11.2000 without giving any reasons. Thereafter, the petitioner raised a dispute in I.D.No.107/2000 before the 1st respondent, whereunder the Tribunal modified the punishment of removal from service to reinstatement as a 'fresh conductor' but without continuity of service or back wages.

Hence, the instant writ petition.

b) Respondent No.2/APSRTC filed counter and opposed the petition contending that during the check done by the official of the Corporation on 27.03.1999, the petitioner was found committing certain serious cash and ticket irregularities. Basing on the report of TTIs, charge sheet was issued to the petitioner and he was placed under suspension. It is submitted that the explanation given by petitioner to the charge sheet was neither

convincing nor satisfactory and hence domestic enquiry was ordered, wherein the Enquiry Officer after following due procedure, submitted a report dated 06.09.1999 holding that charges levelled against the petitioner were proved in full. Consequently, the disciplinary authority issued show cause notice dated 15.09.1999 to the petitioner calling for his explanation. The petitioner had submitted his explanation but the same was not considered as there was nothing new. Hence, final proceedings dated 27.09.1999 was issued removing the petitioner from service. Aggrieved, the petitioner filed an appeal and review and the same were considered and rejected by proceedings dated 30.03.2000 and 09.11.2000 respectively. Finally, the petitioner raised a dispute in I.D.No.107/2000 before the 1st respondent and the Tribunal took a lenient view and passed Award dated 22.07.2002 directing the Corporation to reinstate the petitioner into service as 'fresh conductor' but without continuity of service and back wages. It is further submitted that the past conduct of the petitioner was not satisfactory because 9 punishments were imposed against him. Thus the 2nd respondent prayed to dismiss the Writ Petition.

3) Heard arguments of Sri G. Ravi Mohan, learned counsel for petitioner and Sri B.Mayur Reddy, learned standing counsel for APSRTC/2nd respondent.

4) The points for determination are:

- i) *Whether the Industrial Tribunal-cum-Labour Court at Warangal, is right in concurring with the finding of the Management that the petitioner was guilty of the charges?*

ii) *If point No.1 is held affirmatively, whether the Industrial Tribunal was right in passing modified punishment from removal from service to reinstatement as a 'fresh conductor'?*

5) **POINT No.1:** I have given my anxious consideration to the Award passed by the learned Chairman-cum-Presiding Officer of Industrial Tribunal. In respect of the charges of i) reissuing of two used tickets to two passengers, ii) failing to collect the fare and issue ticket to one passenger and iii) closing the tray numbers of all the denominations at the Stage No.11 without completing the above ticket issue, learned Presiding Officer, having considered the evidence on record, more particularly the spot statement of the passengers and spot explanation of the petitioner and also the unshaken evidence of CTI has, held that the charges against the petitioner were established. On a conspectus of the entire material, I see no reason to come to a different conclusion. Thus the finding of the Tribunal to that extent is correct. Accordingly, this point is answered.

6) **POINT No.2:** This point is concerned, the Award shows that the Industrial Tribunal, keeping in view the laudable services rendered by the petitioner reported in Udayam Telugu news paper dated 14.09.1986 and Eenadu Telugu news paper dated 26.05.1986 and also considering that the family of the petitioner is solely depending on his job earnings, has observed that though the management was justified in finding him guilty of misconduct, the punishment imposed on him by removing him from service was shockingly disproportionate to the gravity of his proven misconduct. On such observation, learned Presiding Officer considered to

modify the punishment from removal from service to reinstatement as a fresh conductor but however, without continuity of service or back wages.

7) This Court is of the considered view that the above modified punishment is unsustainable in law in view of the fact that a punishment in the nature of appointment afresh is not prescribed in Regulation 8(i) of APSRTC Employees (Classification, Control & Appeal) Regulations, 1967 (for brevity “the Regulations”). In ***Regional Manager, APSRTC, Kurnool vs. Regional Secretary, APSRTC National Mazdoor Union, Kurnool representing P.M.Gopal, Driver***¹, which relates to a similar case, a learned Judge of this Court happened to extract all the relevant decisions including the decision in ***K.C.Narayana vs. Managing Director, APSRTC, Hyderabad***² 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 appointment ordered by

¹ 2015 (3) ALT 35

² 2007 (5) ALD 416

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. However, in ***Regional Manager, APSRTC, Kurnool***'s case (1 supra), the words used were "orders are modified". Therefore, learned Judge held that such modified punishment was against regulation 8(i).

8) The above judgment squarely applies to the case on hand. In the instant case also, the Presiding Officer of the Industrial Tribunal used the similar words while modifying the punishment. The order reads thus:

"Keeping in view his laudable services reported in Udayam Telugu news paper on 14.09.1986 and Eenaadu Telugu news paper on 26.05.1986 and the fact that his family is solely dependant on his job earnings, though the management was justified in finding his guilty of misconduct, the punishment imposed on him, removing him from service, was shockingly disproportionate to the gravity of proved misconduct, which, in my considered opinion, calling for modification from removal from service to reinstatement as a 'fresh conductor' but, however, without continuity of service or back wages."

Therefore, the above order would clearly indicate that the Presiding Officer has only modified the previous punishment of removal from service to reinstatement as a 'fresh conductor' without continuity of service or back wages, which is against regulation 8(i). Therefore, the said modified punishment is not sustainable in law. This point is answered accordingly.

³ 1995 (1) ALT 553 (DB)

9) In the result, this Writ Petition is disposed of by setting aside the modified punishment imposed against the petitioner in the Award and the matter is remitted back to the Industrial Tribunal-cum-Labour Court, Warangal, with a direction to impose a suitable punishment in accordance with law.

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

U. DURGA PRASAD RAO, J

Date: 06.03.2018
scs

