

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.18180 of 2001

ORDER:

The Management of Andhra Pradesh Road Transport Corporation (APSRTC) filed this writ petition seeking to issue a writ of certiorari and to call for records relating to the Award, dated 16.09.2000, passed in I.D.No.228 of 1997 on the file of the Labour Court, Guntur and to quash the same.

Brief facts of the case are that the 1st respondent-workman while working as a Conductor at APSRTC Bus Depot, Narasapuram of West Godavari District, and conducting the Bus bearing No.AAZ-3230 on 10.12.1989 on the route Kakinada to Narasapuram, via Dwarapudi, a check was exercised by the TTIs of SCS/Ravulapalem at Stage No.5, i.e., at Kavitham at 15.30 hours and they found some cash and ticket irregularities on the part of the 1st respondent-workman. A charge sheet dated 16.12.1989 was issued to the 1st respondent-workman framing the following charges and he was kept under suspension pending enquiry.

1. "For having failed to issue the tickets to a batch of two passengers even after collecting the requisite fare of Rs.1/- at the time of boarding point itself from the said two passengers who boarded the Bus at Nartur and alighting without tickets at Kavitham village ex.stage Nos.6 to 5 and for having thrown away two tickets bearing No.563/69668 and 68669 of Rs.1/- den. P.T.E.2 from the window on seeing the checking officials while the claimant was conducting the bus No.AAZ 3230 on the route Kakinada-Narasapur via Dwarapudi on 10.12.89 which constitutes misconduct under Reg.No.28 (vi)(a)(x) & (xxxi) & (xxxii) of APSRTC Employees (Conduct) Regulations, 1963, read with regulation No.9(b) Note.2 of APSRTC Employees (CC&A) Regulations, 1967.

2. For having closed the service S.R. upto stage No.5 of all tray numbers of all denomination without completion of the above ticket issues while the claimant was conducting the bus No.AAZ 3230 on the route Kakinada-Narsapur on 10.12.89 which constitutes misconduct under Reg.28 (xvii) (xxxi) & (xxxii) of APSRTC Employees (Conduct) Regulations, 1963.
3. For having not submitted the explanation at the time of check which the claimant was conducting the bus No.AAZ 3230 on the route Kakinada-Narsapur on 10.12.89 which constitutes misconduct under Reg.28 (vii) & (xvii) (xxxi) and (xxxii) of APSRTC Employees (Conduct) Regulations, 1963”

The 1st respondent submitted his explanation to the above charges. Not being satisfied with the explanation given by the 1st respondent, the petitioner Management ordered enquiry. Enquiry was conducted as per the procedure envisaged under the regulation and adhering to the principles of natural justice. The 1st respondent-workman was given full and fair opportunity to defend his case. The Enquiry Officer submitted a report holding that the charges leveled against the 1st respondent were proved in full. The disciplinary authority, based on the Enquiry Officer's report, on appreciation of the evidence on record and on facts and circumstances of the case, came to a provisional conclusion that the charges are proved against the 1st respondent-workman and a show cause notice, dated 01.06.1990 was issued to the 1st respondent asking him as to why he should not be removed from service. The 1st respondent submitted his explanation to the said show cause notice on 12.06.1990. On considering the explanation of the 1st respondent, the disciplinary authority, vide proceedings, dated 16.06.1990, removed the 1st respondent from service. Aggrieved by the same, the 1st respondent-workman filed appeal and the same was rejected, vide proceedings dated

15.12.1990. Against which, the 1st respondent filed revision petition before the Regional Manager (SVR)/Vijayawada. The revisional authority, after considering the entire evidence on record and facts and circumstances of the case, modified the removal order dated 16.06.1990, and directed reinstatement of the 1st respondent into service on the minimum scale of conductor, and further ordered that the 1st respondent is not entitled for any back wages or any other terminal benefits, and the period from the date of removal till he reports for duty is treated as “not on duty” for all purposes. Aggrieved by the order of the revisional authority so far as in denying the continuity of service and back wages, the 1st respondent sought reference under Section 10 (1) (c) of the Industrial Disputes Act, 1947 and the same was referred to the Labour Court, Guntur and numbered as I.D.No.228/1997. The Labour Court, on appreciating the evidence on record, passed an award, dated 16.09.2000 in I.D.No.228/1997, holding that the Regional Manager, Vijayawada is justified in awarding the punishment of placing the 1st respondent on minimum scale of conductor on reinstatement, but not justified denying the back wages and treating the period from the date of removal till he reports for duty as not on duty for all purposes, and the 1st respondent-workman is to be treated as on duty from the date of removal till date of reporting for duty and he is entitled for back wages. Being aggrieved by the same, the petitioner Management preferred the present writ petition contending that the award of the Labour Court dated 16.09.2000 passed in I.D.No.228/1992 is illegal, arbitrary and contrary to the evidence on record.

Sri Aravala Ramarao, learned standing counsel, appearing for the petitioner Corporation, would contend that the 1st respondent-workman

had committed serious cash and ticket irregularities, however, the Regional Manager, Vijayawada, by taking a lenient view, ordered reinstatement of the 1st respondent into service on minimum scale of conductor, but denied the back wages, treating the period from the date of removal till the date of report to duty by the 1st respondent as not on duty for all purposes. He would further contend that the Labour Court, Guntur erroneously without considering the serious misconduct committed by the 1st respondent workman granted back wages treating the period from the date of removal till the date of reporting duty by the 1st respondent as on duty. The learned counsel would further contend the Labour Court grossly erred in exercising its jurisdiction under Section 11-A of the Industrial Disputes Act, 1947 and granting the relief, even though the charges leveled against the 1st respondent are proved in the enquiry, and hence, he prays that the award in so far as granting of back wages and continuity of service is illegal and liable to be set aside.

Sri A.K.Jayaprakash Rao, learned counsel, appearing for the 1st respondent-workman, would contend that though the disciplinary authority removed the 1st respondent from service basing on the enquiry report, the Regional Manager, on re-appreciation of the evidence on record, ordered reinstatement of the 1st respondent into service on the minimum scale of conductor, without continuity of service and without back wages. The learned counsel would further contend that on reference, the Labour Court, on appreciation of evidence, and on facts and circumstances of the case, rightly granted the relief of continuity of service and back wages to the 1st respondent, which does not warrant any interference. The learned counsel would further contend that the 1st

respondent has already retired from service on attaining the age of superannuation and hence, he prays to dismiss the writ petition.

While admitting the writ petition, by order dated 31.08.2001, this court granted interim suspension of the award of the Labour Court in so far as granting of back wages is concerned, on condition of the petitioner Corporation depositing 50% of the back wages. The petitioner corporation has complied with the said order and the 1st respondent appears to have withdrawn the said amount.

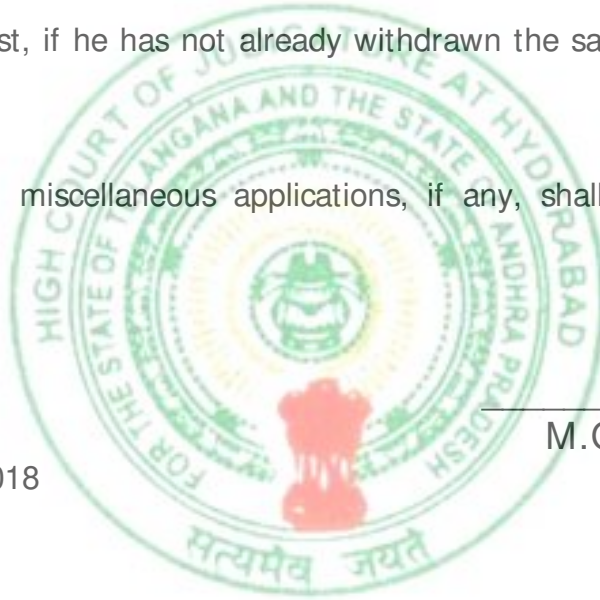
The Enquiry Officer found that the charges leveled against the 1st respondent-workman are proved in full. Basing on the enquiry report, the disciplinary authority of the petitioner corporation awarded punishment of removal from service against the 1st respondent. The 1st respondent was unsuccessful in appeal. Later, on revision, the Regional Manager, Vijayawada, considering the facts and circumstances of the case, has taken a lenient view, ordered reinstatement of the 1st respondent into service with minimum scale of conductor without continuity of service and without back wages. This court is of the considered view that though the charges proved against the 1st respondent, the Regional Manager had taken a lenient view and ordered reinstatement of the 1st respondent into service without continuity of service and without back wages, which is a justifiable. On reference, the Labour Court, without properly appreciating the evidence on record and facts and circumstances of the case, granted back wages for the period not on duty, which is illegal. The Labour Court ought to have granted continuity of service without granting back wages. Admittedly, according to the learned counsel appearing for the petitioner Corporation, the 1st respondent is not in service as of now and he has already retired from service on attaining the age of superannuation.

Considering the fact that the 1st respondent has already retired from service, this court is inclined to confine award of the Labour Court to the extent of granting of continuity of service and 50% of back wages, which in fact, already deposited by the petitioner Corporation. Accordingly, the Award of the Labour Court, Guntur, dated 16.09.2000, passed in ID No.228 of 1997, in so far as granting of continuity of service and back wages, is modified to that of continuity of service with 50% back wages, to meet the ends of justice.

The Writ Petition is allowed to the extent indicated above. The 1st respondent is at liberty to withdraw the deposited 50% back wages with accrued interest, if he has not already withdrawn the same. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

Date: 14.06.2018
Dsr



M.GANGA RAO,J