

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION NO.21385 of 2002

ORDER:

This writ petition is filed seeking the following relief:

"For the reasons stated in the accompanying affidavit, it is prayed that this Hon'ble Court may be pleased to issue a Writ or Order or direction more particularly one in the nature of Writ of Certiorari under Article 226 of the Constitution of India to quash the portion of the Award which is against to petitioner in I.D.No.26/99 dt.14-2-2002 and which was published in G.O.Rt.No.645 dt.14-3-2002 and to consequently direct the 2nd respondent and other concerned authorities to pay the full back wages from the date of removal from service i.e. in Proceedings No.02/95(4)/98-ZHB, dt.2-11-1998 and other benefits to the petitioner herein and to add the three increments which were stopped with cumulative effects in the pay scale of the petitioner and to pay all arrears of increments to the petitioner herein and to pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and in the interest of justice".

Heard Sri Sadu Rajeswara Reddy, the learned counsel for the petitioner and the learned Government Pleader for Labour Department.

The brief facts are that the petitioner was initially appointed as Driver on 5-3-1991 and thereafter his services were regularized on 1-7-1992 in Medak Depot and he was transferred to Zaheerabad Depot. The Depot Manager, APSRTC., Zaheerabad, sent 6 buses to Parkal Depot for one week period i.e., for Jatara "Sammakka Saralakka along with double Drivers to each Bus and in his bus also two Drivers were provided i.e., himself and Kishan Driver. After Jatara was over, we waited at Parkal Depot for want of Conductors and when they kept the buses in Parkal Depot, the security of the

Parkal Depot did not permit them to park inside the Depot because the contract period is over and thus the Parkal Depot authorities asked us to stay outside of the Depot.

The learned Counsel for the petitioner contends that as soon as the period of seven days was over, the Zaheerabad Depot authorities ought to have sent the conductors to 6 buses to Parkal Depot where the Drivers of all six buses were waiting at Parkal for want of conductors but the Zaheerabad Depot authorities failed to provide and then they received the phone call from Zaheerabad Depot that too after waiting for 24 hours at Parkal Depot and then the Depot Manager asked all the Drivers of Six buses to start immediately upto Hanmakonda and the Depot Manager further said that he will send the conductors to Hanmakonda and in case, it was not possible, they were asked to go as a one man service.

The learned counsel for the petitioner further contends that as per the telephonic call, all the six buses started from Parkal to Hanmakonda on 15-2-1998. Out of six buses, 3 buses had gone earlier and their bus was the 4th one and other two buses were behind them far away and when the bus reached Gudepad which was a forest area, then 16 persons in a batch and two others stood across the road and the said persons were in the age group of 25 years to 35 years and they said that the other 3 buses were not stopped at that stage though those were ordinary buses. Thus, those persons threatened them by saying that if they do not take them into bus, they would damage the bus and they belong to Naxal group and they would kill the petitioner. Then,

they said that there was no conductor in the bus. Then the said group of persons forcibly boarded the bus and the fare was not collected from the said persons and the check was exercised at a place 13 kilometres away from Hanmakonda i.e. near Oorugonda. The check was exercised by the checking officials on bus No.AP9Z 9383 on 15-2-1998 at 11.20 hours and at the time of check, he was not on steering but his co-driver was on steering and he was driving the bus, but the petitioner was falsely implicated in this case and the charge memo No.0736150 was issued to him on 15-2-1998.

The learned counsel for the petitioner further contends that the petitioner submitted his explanation to the charge memo to the 2nd respondent i.e., by way of common explanation of himself and his co-driver and they both signed on the same but the said explanation was not taken into consideration and later on, the checking officials wrote the explanation of Kishan, Driver and apart from that, the Co-Driver was used as Driver of the checking squad. Thus, it amounts to showing the discrimination in between them and thereafter enquiry was conducted but the statements which were made by the petitioner were not recorded and he does not know the English and he signed in the enquiry and with such irregular enquiry he was removed from service on 2-11-1998. Then, he raised an I.D. before the Labour Court-II at Hyderabad by challenging the said removal order in Proc.No.02/95(4)/98-ZHB dt.2-11-1998 by filing I.D.No.26/99 and the Award was passed on 14-2-2002. Because the Labour Court granted the relief of reinstatement with continuity of service but without back wages and on such reinstatement, the petitioner was subjected to the denial of annual

increments for three years with cumulative effect, the petitioner is challenging the portion of the Award which is against to the petitioner in this Writ Petition under Article 226 of the Constitution of India, seeking to set aside the portion of the Award, which is against to the petitioner in I.D.No.26/99 dt.14-2-2002 passed by the 1st respondent and sought consequential direction to the respondent to pay full back wages from the date of removal from service i.e., from 2-11-1998 and to add three increments in the pay scale of the petitioner which were stopped with cumulative effect.

The learned counsel for the petitioner contends that the fare amount was not collected from the 18 passengers and any how the bus was stopped forcibly by standing across the road and in spite of their saying that it was not route service and the bus was not having conductor, they stated that 3 buses which went earlier did not stop and if they do not stop the bus in the forest area, they would damage the bus and they would kill them, if they do not permit the said persons to board the bus. They further said that they belong to Naxals group. Therefore, to save the property as well as their lives, the petitioner kept quite. The checking officials checked the bus and they collected Rs.5/- from each passenger and TPT was issued to them.

The learned counsel for the petitioner further contends that the said false case was foisted against the petitioner because the Zaheerabad Depot authorities did not send the conductors to the said bus and asked the petitioner to come upto Hanmakonda, but on the way, the said passengers stood across the road and forcibly boarded the bus and the petitioner did not

collect the fare amount from the said persons. To that effect there are statements of the passengers that they have not paid the fare amount to the said Drivers. The said passengers' statements were not taken into consideration even in the domestic enquiry as well as by the presiding officer of the Labour Court-II, Hyderabad and the Labour Court ought to have granted full back wages and ought not to have stopped 3 increments of the petitioner with cumulative effect, due to which, the petitioner was put to loss and much financial hardship. Apart from that, the back wages were denied by the Labour Court, though there is mistake on the part of the corporation in not sending the conductor to the said bus and thus the passengers in the forest area stopped the bus by standing across the road and the petitioner saved the property as well as their lives, and for that, he was illegally removed from service. It is further contended that at the time of check, the petitioner was not on the steering so as to stop the bus, but his co-driver namely Kishan, was on steering and that person was not given any punishment, whereas the petitioner was removed from service and the same is discrimination on the part of the authorities concerned. On that sole ground only, the portion of the Award which is against to the petitioner is liable to be set aside and to consequently direct the respondents to pay the full back wages from the date of removal i.e. from 2-11-1998 till the date of actual reinstatement and to add 3 increments in the pay scale of the petitioner.

The learned counsel for the petitioner further contends that in the special report, Mr. Kishan, Driver was shown as spare Driver but the same is wrong and the said Kishan was on steering, and therefore, the TTIs obtained

the signature on blank paper and they have written the statement of the Kishan Driver and apart from that, the checking officials used Kishan, Driver, as their Jeep Driver and that itself shows that discrimination was shown in between the petitioner and Kishan, who was actually driving the bus, but the petitioner was implicated in a false case and was removed from service, whereas the person who was on steering, was not removed from service.

The learned counsel for the petitioner further contends that the Labour Court-II, Hyderabad passed an Award in I.D.No.26/99 dt.14.2.2002 which was published in G.O.Rt.No.645 dt.14.3.2002 stopping three increments of the petitioner with cumulative effect and denied back wages which is illegal and the said portion of the Award which is against the petitioner, is liable to be set aside under Article 226 of the Constitution of India, with a consequential direction directing the concerned authorities to pay full back wages from the date of removal i.e., 2.11.98 and to add three increments, which were stopped with cumulative effect, in the pay scale of the petitioner. Learned counsel for the petitioner contended that punishment of withholding of three increments is too harsh and the punishment may be modified to that of withholding of three increments without cumulative effect.

Learned Standing Counsel for the respondent-Corporation contended that since the Labour Court had modified the major punishment of removal to that of withholding of three increments, it should be understood that another major penalty of withholding of three increments with cumulative effect has

been imposed by the Labour Court, and accordingly, the Corporation had imposed the punishment of withholding of three increments with cumulative effect.

Having considered the rival contentions of the parties, this Court is of the considered view that when the Labour Court modified the punishment of removal to that of withholding of three increments, it should be understood as that of “without cumulative effect”, and the respondent-Corporation cannot insert certain words in the order and convert the punishment to that of withholding of three increments with cumulative effect. Ends of justice would be met, if a clarification is given by this Court that withholding of three increments should be understood as without cumulative effect. Therefore, the respondent Corporation is directed to treat the modified punishment imposed by the Labour Court as that of withholding of three increments without cumulative effect.

In view of the above, the Writ Petition is allowed, clarifying that withholding of three increments is without cumulative effect and the respondent-Corporation is accordingly directed to grant notional benefits to the petitioner without any monetary benefits. No order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

ABHINAND KUMAR SHAVILI, J

10th December, 2018

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