

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT APPEAL Nos.1077 & 1085 of 2018

COMMON JUDGMENT: (per SK,J)

Telangana State Road Transport Corporation (TSRTC) is in appeal aggrieved by the common order dated 09.03.2018 passed by a learned Judge of this Court in W.P.Nos.28031 of 2007 and 1278 of 2008. W.P.No.28031 of 2007 was filed by Md.Abdul Ali, the first respondent in these writ appeals, aggrieved by the Award dated 06.10.2006 passed by the Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad, in I.D.No.1 of 2005 to the extent it denied him back wages. W.P.No.1278 of 2008 was filed by the erstwhile Andhra Pradesh State Road Transport Corporation (APSRTC), the predecessor-in-interest of the TSRTC, aggrieved by the very same Award in so far as it granted the reliefs of reinstatement in service along with continuity of service and attendant benefits to Md.Abdul Ali. By the common order under appeal, the learned Judge allowed W.P.No.28031 of 2007 and dismissed W.P.No.1278 of 2008. W.A.No.1077 of 2018 was preferred by the TSRTC against the common order in so far as it pertains to W.P.No.1278 of 2008 while W.A.No.1085 of 2018 was filed by it against the very same common order in so far as it relates to W.P.No.28031 of 2007.

Heard Sri N.Praveen Reddy, learned counsel representing Sri N.Vasudeva Reddy, learned counsel for the TSRTC, and Sri A.K.Jayaprakash Rao, learned counsel appearing for Md.Abdul Ali.

Perusal of the common order under appeal reflects that the incident in relation to which disciplinary proceedings were initiated against Md.Abdul Ali took place on 13.11.2003. Md.Abdul Ali and Ch.Anjaiah,

Drivers in the service of the APSRTC, were on a Ticket Issuing Machine (TIM) service from Hyderabad to Bangalore on that day. Anjaiah was at the wheel when the bus started at Hyderabad. It is not in dispute that it was Anjaiah who issued tickets to passengers at Hyderabad. The irregularity which formed the basis for the disciplinary proceedings was with regard to failure to issue luggage tickets to a batch of three passengers from whom luggage fare of Rs.250/- had been collected. The case of the APSRTC was that despite collecting the fare, these passengers were not issued luggage tickets and this aspect came to light only when a check was conducted after the bus reached its destination.

The learned Judge proceeded on the assumption that Anjaiah, the other Driver, was not subjected to disciplinary action. However, Sri N.Praveen Reddy, learned counsel, would inform this Court that the APSRTC/TSRTC failed to state the fact that Anjaiah was also subjected to disciplinary proceedings but he was ultimately reinstated in service with continuity of service and attendant benefits but without back wages.

Sri N.Praveen Reddy, learned counsel, would place reliance on the instructions issued by the APSRTC *vide* Circular No.3/159(09)/2004-OPD-T dated 26.02.2004 with regard to checking of TIM services. In this regard, the circular instructions stated to the effect that if checking officials detect any case relating to luggage both the drivers should be issued a charge memo. Significantly, the very same Circular states that the driver who is at the steering is responsible for issuance of tickets through TIM service and that he would be liable for cash and ticket irregularities.

Sri N.Praveen Reddy, learned counsel, would also state fairly that in a TIM service, while one driver is at the wheel the other driver is expected to take rest so that he would be fresh when he takes over the driving of

the bus when it is his turn. That being so, we fail to understand as to how both the drivers could be subjected to disciplinary proceedings when, admittedly, it is the duty of the driver at the steering to issue tickets.

In the case on hand also, it is not in dispute that it was Anjaiah who issued luggage tickets and not Md.Abdul Ali. In the absence of any evidence incriminating Md.Abdul Ali, the APSRTC/TSRTC could not have taken action against him merely because of the circular instructions. Perusal of the record reflects that the passengers concerned did not even name Md.Abdul Ali as the person to whom they paid the ticket fare or that he was present when they did so. Further, given the fact that Anjaiah has already been reinstated in service along with continuity of service and attendant benefits but without back wages, we are of the opinion that the grievance of the TSRTC with regard to the same reliefs being extended to Md.Abdul Ali, *vide* the Award under challenge, cannot be countenanced. Dismissal of W.P.No.1278 of 2018 was therefore justified on all counts.

We find that the learned Judge directed payment of full back wages to Md.Abdul Ali along with interest in view of his long service and as he remained unemployed after the order of removal was passed against him. It is not in dispute that Md.Abdul Ali made a specific statement in his claim petition filed in support of the I.D. that he remained unemployed after his removal from service. Despite the same, no steps were taken by the APSRTC to disprove this statement. In the light of this statement, it was for the employer to disprove the claim of the workman that he remained unemployed after his removal from service. It is only in recent times that case law prescribed that such burden of proof must be placed upon the employee himself to prove the factum of his unemployment. Having failed to abide by the legal principle applicable as on the relevant

date, it is not open to the TSRTC to now state that the present legal position should be made applicable to the case on hand and that the Md.Abdul Ali should be held disentitled to back wages in their entirety. That being said, we are also conscious of the fact that Md.Abdul Ali remained out of employment from 12.05.2004 to 28.02.2007 and did not render any service to the APSRTC. Considering the balance of convenience and the interest of justice, we are of the opinion that payment of 50% of the back wages for this period would suffice.

Md.Abdul Ali is held entitled to only 50% of the back wages for the period 12.05.2004 to 28.02.2007. We also set aside the award of interest upon the back wages from the date of his removal from service as there is no inaction on the part of the APSRTC/TSRTC in making such payment warranting levy of interest. The amount due and payable in terms of this order shall be remitted to Md.Abdul Ali within eight weeks from the date of receipt of a copy of this order. In the event the amount is not paid within the time stipulated, the same shall carry interest @9% per annum after expiry of the stipulated time.

W.A.No.1077 of 2018 is accordingly dismissed and W.A.No.1085 is allowed in part.

Pending miscellaneous petitions in both cases, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR,J

M.GANGA RAO,J

Date:23.10.2018
GJ