

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.25365 of 2004

ORDER:

This writ petition is filed by the APSRTC challenging the order passed in ID No.35 of 2002, dated 19.3.2004 by the Labour Court-I, Hyderabad, and quash or set aside the same holding it as arbitrary and illegal.

Heard Sri V.T..M.Prasad, learned Standing Counsel for the Corporation. He contends that the 1st respondent-workman was working appointed as contract conductor 17.02.1984 and regularized on 12.12.1985. When the petitioner was removed from service on the allegation of cash and ticket irregularities, he filed ID No.35 of 2002 on the file of the Labour Court-I, Hyderabad. The Labour Court passed Award on 19.03.2004, but in the meanwhile the respondent workman passed away on 12.07.2004. The deceased workman was bereft of clean record of service. His increments were deferred 8 times. He was suspended once and removed in cash and ticket irregularities case and reinstated in appeal prior to his removal in the present case.

The learned Standing Counsel further contends that the checking officials of Head Qrts. Enforcement Squad/Hyderabad have exercised a check on bus No.1800 conducted by the respondent on route No.85J i.e. Charminar to Jalpally at stage No.7 i.e. Jalpally Gate at about 16.45 hours on 7.12.99 and detected certain serious cash and ticket irregularities. The respondent failed to issue tickets to three passengers even after collecting the concessional fare of Rs.6/- instead of collecting actual fare of Rs.9/-.

They were found traveling ticket from Jalpally X roads to Jalpally Ex-stage 6 to 8.

It is further contended that the charge memo was prepared and attested by the deceased workman without any dispute. Similarly, check sheet was prepared, the contents of which were attested by the workman. He also offered spot explanation. Later charge sheet was issued to him on 7.12.1999 with the charge, which has been extracted in the counter filed by the Corporation in I.D.35/2002. Enquiry Officer was appointed, statement of one of the checking officials Sri K.Devayya was recorded and deceased also was cross examined. He also offered his statement during the enquiry. Thus, a fair enquiry was conducted. The enquiry officer submitted his report stating that the charge leveled against the workman is proved.

The learned Standing Counsel further contended that the deceased employee was called upon to give his objections. He acknowledged the letter and requested for time but did not submit reply. After perusing the report and all other evidences the employee was given a show cause notice on 28.3.2000 by the Falaknuma Depot Manager asking why he should not be removed from service.

The learned Standing Counsel further contended that the deceased employee submitted an explanation and after considering the same orders of removal from service were passed on 12.4.2000. Without filing any appeal or review, he has filed an I.D. The Labour Court erred in coming to a conclusion that the passengers were in a drunken stage and concluding in favour of the employee and that they have paid only Rs.6/- @ Rs.2/- a ticket for alighting at Jalpally village and that he requested the passengers to pay another Rs.1/- each as the fare was Rs.3/- each. The Labour Court

further erred in believing the version of the employee that he could not issue the tickets to the passengers as they have told him that they did not have extra Rs.1/- to pay.

The learned Standing Counsel further contended that the Labour Court erred while it is compelling the closing number in the statistical report and Top punched tickets. It also erred in coming to a conclusion that the checking officials stopped the bus before reaching stage No.7 thus giving a benefit of doubt to the employee.

It is further contended that the Tribunal erred in concluding that the order of removal from service of the deceased employee was victimizing him. It also erred in coming to the conclusion that at the time of exercising the check the petitioner was in the act of dealing with the said passengers in collecting the requisite fare and that it cannot be said that the deceased workman collected confessional fare. The Tribunal erred in ordering 70% of back wages and continuity of service. The said conduct of the respondent-workman was construed as misconduct and the disciplinary authority has initiated the enquiry and, after conducting a detailed enquiry, has imposed a punishment of removal from service for the proven misconduct in the enquiry. The respondent workman filed ID No.35 of 2002 under Section 2-A(2) of Industrial Disputes Act. The Labour Court, vide orders dated 19.3.2002 was pleased to allow the ID preferred by the respondent-workman and set aside the orders of removal and directed the respondent to reinstate the petitioner into service with continuity of service and he shall be entitled for 70% back wages. Challenging the same, the writ petition is filed.

The learned counsel for the petitioner contends that when there is an allegation of cash and ticket irregularities, the Labour Court ought not to have set aside the orders of removal with continuity of service and half of the back wages and contends that atleast Labour Court ought not to have granted half of the back wages.

The learned counsel appearing for the respondent-workman contends that the Labour Court has rightly passed orders in favour of the respondent-workman and no illegality or irregularity has been pointed out by the petitioner in the orders passed by the Labour Court and no interference is called for and the writ petition is liable to be dismissed.

. This Court, having considered the rival submissions made by the parties is of the considered view that the Labour Court erred in awarding 50% of the back wages to the respondent-workman. The Labour Court directed the respondent to reinstate the petitioner into service with continuity of service with half of the back wages. The order of the Labour Court with regard to the granting of 50% of the back wages to the petitioner is set aside and the rest of the order passed by the Labour Court is confirmed. With this observation, the Writ Petition is disposed of.

Consequently, miscellaneous petitions, if any, pending in the writ petition shall stand closed. No order as to costs.

ABHINAND KUMAR SHAVILI, J

17th December, 2018
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