

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.16513 OF 2004

ORDER:

The petitioner, who worked as a Conductor in the 2nd respondent-Corporation, filed this writ petition being aggrieved by the award passed in I.D.No.136 of 2002 dated 07.04.2004 by the 1st respondent-Labour Court, whereby his claim petition for reinstatement was dismissed, as being illegal and arbitrary.

2. The brief facts of the case are that the petitioner was appointed as a Conductor in the 2nd respondent-Corporation on 01.07.1991. While the petitioner was conducting the bus bearing No.5604 on 26.06.2001 on route Koilakuntla - R.Lingamdinne, a check was exercised by the checking officials at stage No.3/4 and found cash and ticket irregularities. Thereafter, the petitioner was issued with a charge sheet dated 28.01.2001 with the following charges:

“i) For having collected the requisite fare of Rs.5/- each and Rs.3/- each from a batch of passengers (7 full + 4 half) at the boarding point itself and failed to issue full and half tickets to them who boarded your bus at Koilakuntla and bound for Eggoni ex.stages 1 to ¾ with malafide intention and fraudulent motive which constitutes in terms of clause (vi.a) of APSRTC Employees (Conduct) Regulations, 1963.

2. For having closed the S.R. of all denominations up to stage No.3 without completing the issue of above ticket with malafide intention and fraudulent motive which constitutes misconduct in

terms of clause (xxxii) of APSRTC Employees (conduct) Regulations, 1963.

3. For having violated the rule issue and start while you were conducting the bus No.5604 on route Koilakuntla – R.Lingamdinne on 26-6-2001 which constitutes misconduct in terms of clause (xxxii) of APSRTC Employees (conduct) Regulations, 1963.”

The petitioner submitted his explanation to the charge sheet on 28.05.2001 denying the charges. The 2nd respondent being the disciplinary authority, having not satisfied with the explanation, appointed an Enquiry Officer. The Enquiry Officer conducted enquiry as per the regulations of the Corporation and in strict adherence to the principles of natural justice. The petitioner was given full and fair opportunity in the enquiry. The Enquiry Officer submitted his enquiry report on 01.02.2002 holding that the charges were proved against the petitioner. Basing on the Enquiry Officer's report, the 2nd respondent issued a show-cause notice of removal on 08.02.2002. The 2nd respondent, disciplinary authority, having considered the enquiry report carefully along with the explanation submitted by the petitioner, passed the termination order dated 20.03.2002 terminating the petitioner from service. Aggrieved by the same, the petitioner preferred an appeal and revision unsuccessfully. Being aggrieved by the same, the petitioner approached the 1st respondent – Labour Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (for short 'the Act')

and raised an industrial dispute in I.D.No.136 of 2002 seeking reinstatement into service with continuity of service and all other attendant benefits. The Labour court having considered the evidence before it and came to a conclusion that the charges were proved in the enquiry and there was no perversity in the finding of the Enquiry Officer. The Labour Court having found that the petitioner though collected the fare of Rs.47/- from 7 adults + 4 chargeable children, failed to issue tickets to them and closed the S.R. against stage No.3 before check was exercised at stage No.3/4, held that the petitioner is not entitled for any relief under Section 11-A of the Act. Being aggrieved by the dismissal of the award, the petitioner filed the present writ petition.

3. Sri G.Ravi Mohan, learned counsel for the petitioner, would contend that while the petitioner was conducting the bus on 26.06.2001 at 17.15 hours on route Koilakuntla – R.Lingamdinne, the checking officials exercised check at stage No.3/4. A charge memo was issued alleging cash and ticket irregularities. The petitioner submitted explanation to the charge sheet contending that the passengers referred in the charge boarded the bus in the outskirts of Koilakuntla; that they are factionists and were in drunken state; that they quarrelled with him with regard to the fare amount; that though the half ticket is Rs.3/-, the said passengers wanted to pay only Rs.2.50 Ps.; that when the total amount is Rs.47/- but they wanted to give only Rs.45/- and in such

circumstances there was delay in issuing tickets and in the meantime check took place. The said fact was accepted by the TTIs in their evidence. He would further contend that without considering the petitioner's explanation, the 2nd respondent got conducted a farce enquiry. Basing on the enquiry report and without an independent application of mind to the evidence on record, the disciplinary authority passed the removal order. The Labour Court, on an erroneous appreciation of fact and law, held that the charges were proved. Having held that the petitioner committed serious misconduct of ticket irregularities, the Labour court could not extend the discretionary power vested in it under Section 11-A of the Act. The disciplinary authority as well as the Labour Court committed grave error of fact and law in holding that the charges were proved and that the petitioner was committed serious cash and ticket irregularities, without there being any legal evidence and thereby the finding of the Enquiry Officer is perverse as well as the conclusions of the Labour Court is not based on any legal evidence. As such, both the disciplinary authority as well as the Labour Court have not considered the petitioner's explanation to the charge memo as well as the charge sheet and his depositions in the enquiry. The evidence in support of the petitioner is simply brushed aside and non-consideration of the said evidence amounts to perversity of the finding on the part of the Enquiry Officer and Labour Court. Hence, the termination

order and the award of the Labour Court are liable to be set aside.

4. Per contra, Sri Aravala Rama Rao, learned counsel appearing for the respondent No.2, while reiterating the contents of the counter-affidavit would contend that the petitioner had committed serious misconduct of cash and ticket irregularities, for which charge sheet was issued and departmental enquiry was conducted. The petitioner was given full and fair opportunity before the Enquiry Officer and the Enquiry Officer submitted his report holding that the charges were proved. The disciplinary authority, on an independent application of mind to the evidence on record and basing on the Enquiry Officer's report, provisionally came to the conclusion that the petitioner was liable for removal from service. Accordingly, a show-cause notice was issued to the petitioner. On considering the explanation of the petitioner and report of the Enquiry Officer, the petitioner was removed from service on 20.02.2002. The appellate authority and the revisional authority have carefully considered the appeal and revision and dismissed the same confirming the removal order. The petitioner raised an industrial dispute in I.D.No.136 of 2002 under Section 2-A(2) of the Act. The Labour Court, having considered the evidence before it, came to the conclusion that the charges were proved. Since serious charges of cash and ticket irregularities were proved against the petitioner and came to the conclusion that he defrauded

the revenue of the Corporation, the Labour Court declined to exercise its discretionary power under Section 11-A of the Act considering the past conduct of the petitioner which was not satisfactory. The petitioner was once removed from service and involved in number of cash and ticket irregularity cases and in those circumstances, the Labour Court dismissed the claim of the petitioner. The award of the Labour Court does not suffer from any irregularity or illegality.

5. In the facts and circumstances of the case and in considered view of this Court, it is found that the charge of cash and ticket irregularity against the petitioner was proved as held by the Labour Court. There is no error of fact and law which warrants interference of this Court under Article 226 of the Constitution of India. Hence, the writ petition is liable to be dismissed.

6. Accordingly, the Writ Petition is dismissed. No order as to costs.

7. Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE M.GANGA RAO

10-08-2018

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