

HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

W.P.Nos.28031 of 2007 and 1278 of 2008

COMMON ORDER :

Both these Writ Petitions have been preferred, the former by the workman and the latter by the Management, challenging the Award dt.06.10.2006 in I.D.No.1 of 2005 on the file of the Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad (for short, 'the impugned order').

The brief facts of the case :

2. The workman was employed as a Driver in the Andhra Pradesh State Road Transport Corporation. He along with another Driver, viz., Anjaiah was deputed on a trip from Hyderabad to Bangalore on 13.11.2003.
3. A check was exercised at Gooty which is Stage No.11 on the way from Hyderabad to Bangalore by the checking officials of the Corporation.
4. It was alleged that the workman, who is the petitioner in WP.No.28031 of 2007, had collected fare of Rs.250/-, but failed to issue luggage tickets to a batch of three passengers who were carrying three packages of 60 kg weight each.
5. Charge-memo was issued containing the said allegation to the workman.

6. The workman denied the said charges.
7. Thereafter, the Management ordered enquiry which was conducted *ex parte*, and a punishment of removal from service was inflicted on the workman on 12.05.2004.
8. The workman challenged the order dt.12.05.2004 imposing punishment of removal from service on him by filing an application under Section 2-A(2) of the Industrial Disputes Act, 1947 (**for short, 'the Act'**) before the Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad (for short 'the Tribunal').
9. The said application was numbered as I.D.No.1 of 2005 by the said Tribunal.
10. In its order dt.12.05.2004, the Tribunal held that domestic enquiry conducted by the Management was invalid. Thereafter, evidence was adduced by both the workman and the Management afresh before the Tribunal.
11. Before the Tribunal, the workman examined himself as WW.1, while the Management examined MWs.1 and 2, and marked Exs.M.1 to M.14.
12. By Award dt.06.10.2006, the Tribunal held that the bus service from Hyderabad to Bangalore had two drivers, i.e., the workman as well as Anjaiah; that it was Anjaiah who was driving the vehicle when it started at Hyderabad at 06:30 p.m.; that it was a double driver

service bus without a conductor with TIMS machine for issuance of tickets; and the workman's defence that it was Anjaiah who issued the tickets to passengers at Hyderabad, and there was no other passenger who boarded the bus subsequently, was correct. It therefore concluded that the workman was not the driver who issued the tickets to passengers or for the luggage.

13. Though the Management relied on Ex.M.4 (Statement of a service driver), the Tribunal held that the said document was not proved to be in the handwriting of workman or in the handwriting of the 2nd driver (Anjaiah); that no explanation was forthcoming from the Management as to why it did not issue any charge-memo to the other driver, and it had only issued charge-memo to the workman; that the charge-memo made no reference to the other driver, viz., Anjaiah; and there was no evidence to show that the workman issued the tickets or operated the TIMS Machine as he had taken up driving of the bus only from Gooty. It concluded that the other driver Anjaiah was the best person to give proper explanation why tickets were not issued for the luggage of the three passengers who boarded at Hyderabad; having let off the said Anjaiah, when there is no evidence against the workman, the workman cannot be punished; the evidence on record was not sufficient to prove that the three bundles of the three passengers who were found to be carrying them, was within the permissible weight or not, since there was no weighment done of the said luggage, and nobody knew the contents of the said luggage which

was carried in gunny bags; and that it is difficult to prove that workman would have collected a sum of Rs.250/- as alleged by the workman when it was the other driver, viz., Anjaiah, who operated the bus and issued the tickets.

14. It therefore held that there was no material to fix any responsibility on the workman, that he did commit any irregularity, and the reasons given by the enquiry officer or the Divisional Manager for removing the workman from service cannot be sustained. It directed reinstatement of the workman but denied him backwages on the pretext that he, being co-driver, ought to have taken some precautions with regard to the luggage, but he did not do so.

15. The Management has filed WP.No.1278 of 2008 challenging the Award of the Tribunal directing reinstatement with continuity of service and other benefits.

16. The workman filed WP.No.28031 of 2007, challenging the Award to the extent the Tribunal had denied backwages.

17. Heard Sri N. Vasudev Reddy, counsel for Management, and Sri A.K. Jayaprakash Rao, counsel for workman in both the Writ Petitions.

18. The counsel for the Management sought to contend that the Tribunal could not have set aside the punishment of removal imposed on the workman when there is material on record to show that the workman had also driven the vehicle on the trip from Hyderabad to

Bangalore, and the check took place when the workman was driving the vehicle at Gooty.

19. However, after considering the material on record, I am satisfied that it was a two-driver bus service without a conductor with TIMS Machine for issuance of tickets; that it started at Hyderabad at 06:30 p.m. and it was the other driver Anjiah who was driving the bus from 06:30 p.m. at Hyderabad till the bus reached Gooty when the workman took over as a driver. Therefore, the workman cannot be blamed for not issuing tickets to passengers or to the luggage when no other passenger had boarded the bus subsequent to the departure at Hyderabad.

20. Ex.M.4, on which reliance is placed by the Management, was not found to be in the handwriting of the workman or in the handwriting of the second driver. The second driver, viz., Anjaiah, was not questioned by the Management and no charge-memo was also issued to him for not issuing the luggage tickets to the three passengers.

21. There is no material to prove that it was the petitioner who was responsible for issuance of tickets when the bus started at Hyderabad at 06:30 p.m., as admittedly it was the other driver, viz., Anjaiah, who was to issue the tickets at that time and it appears that he failed to issue luggage tickets to the three passengers.

22. Also, there is no material to show that the luggage in question was beyond the permissible weight since there was no weighment of the luggage at any point of time.

23. Therefore, I do not find any merit in the contention of the counsel for the Management that the Tribunal committed error in setting aside the order of removal passed against the workman by the Corporation.

24. Accordingly, I find no merit in WP.No.1278 of 2008, and it is accordingly dismissed. No order as to costs.

WP.No.28031 of 2007:

25. Coming to WP.No.28031 of 2007, the counsel for workman contended that the Tribunal ought to have directed payment of backwages also to the workman while directing his reinstatement with continuity of service and other benefits and committed grave error of law in denying backwages. He contended that the petitioner in his application under Section 2-A(2) of the Act stated that after the punishment of removal was imposed on him, he had remained unemployed and did not secure any alternate employment, and that this factor ought to have been taken into account by the Tribunal in awarding backwages to him. He contended that even in the affidavit filed in support of this Writ Petition, the workman had categorically asserted that he remained unemployed from the date of the order of

removal, i.e., 24.04.2004 till his reinstatement, and he ought to have been granted backwages also by the Tribunal.

26. The counsel for workman placed reliance on the judgment of the Supreme Court in **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.ED.) and others**¹.

27. In the above decision, the Supreme Court considered the circumstances in which backwages can be granted in the event of a wrongful termination of service. It held that in cases of a wrongful termination of service, reinstatement with continuity of service and backwages is the normal rule; and that this rule is subject to the rider that while deciding the issue of backwages, the Tribunal should consider the length of service of the workman, the nature of misconduct, if any, found proved against him, the financial condition of the employer and other factors. It held that a workman, whose services were terminated, and who is desirous of getting backwages, is required to plead before the adjudicating authority of first instance that he was not gainfully employed and if the employer wants to avoid payment of full backwages, then it has to plead and also lead evidence to prove that the workman was gainfully employed and was getting wages equal to wages he was drawing prior to termination of service. It held that once the employee shows that he was not employed, and this is not rebutted by the Management, the employer, who is the

¹ (2013) 10 SCC 324

wrong-doer cannot deny to the workman, being the sufferer, full backwages.

28. The counsel for Management could not place any decision taking a different view.

29. Therefore, the legal proposition laid down in **Deepali Gundu Surwase** (1 supra) has to be applied to the present case of the workman.

30. Admittedly, the petitioner had been in the service of the Corporation from 1993. The termination of service of the workman by the Management is wrongful, as held by the Tribunal. The workman specifically pleaded before the Tribunal that he was not gainfully employed after the punishment of removal from service was imposed on him. This is reiterated in the affidavit filed in support of the Writ Petition No.28031 of 2007 also. No rebuttal evidence has been adduced by the Management to prove that the petitioner was gainfully employed between the date of removal and the date of reinstatement.

31. In these circumstances, I am of the opinion that the Tribunal erred in declining full backwages to the workman. I declare that the workman is entitled to full backwages in view of his long service and the fact that he remained unemployed after the order of removal was passed against him by the Corporation.

32. Accordingly, WP.No.28031 of 2007 is allowed and it is declared that the workman / petitioner in this Writ Petition is entitled

to full backwages from the date of his removal till his reinstatement into service with interest at the rate of 9 per cent per annum from date of removal till date of payment. No order as to costs.

33. As a sequel, miscellaneous applications, pending if any in these Writ Petitions, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 09.03.2018

Ndr/*

