

* IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

* HONOURABLE SRI JUSTICE V. RAMASUBRAMANIAN
AND

* HONOURABLE SRI JUSTICE P. KESHA RAO

+ WRIT APPEAL No.1331 of 2018

% Date: 11-12-2018

BETWEEN:

The Depot Manager,
Telangana State road Transport Corporation,
(prior to bifurcation known as APSRTC)
Cantonment Depot, Secunderabad.

... Appellant

Vs.

1. K.V. Chetty, S/o. K. Narsaiah, E.No.104381, Ex. Conductor, R/o. 8-11-3, MCH Colony, Amberpet, Hyderabad – 500 013.

Respondent/writ petition

2. The Additional Industrial Tribunal–cum–Additional Labour Court, Hyderabad, rep. by its Presiding Officer, 1 Floor, Chandravihar Buildings, M.J. Road, Hyderabad.

... Respondent/respondent

!Counsel for Appellant : Mr. N. Vasudeva Reddy

^ Counsel for Respondent No.1 : Mr. A.K. Jayaprakash Rao

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? Cases referred

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE SRI JUSTICE P. KESHAVA RAO

W RIT APPEAL No.1331 of 2018

JUDGMENT: (Per VRS,J)

Aggrieved by the judgment of the learned Judge ordering payment of 50% of the back wages in lieu of reinstatement with continuity of service, the Transport Corporation has come up with the above writ appeal.

2. Heard Mr. N. Vasudeva Reddy, learned counsel for the appellant-corporation and Mr. A. K. Jayaprakash Rao, learned counsel appearing for the 1st respondent.

3. The 1st respondent was appointed as a conductor in the appellant-corporation in the year 1984. He was caught by the ticket checking officials on 19.09.1996 for the irregularities involving cash and ticket. Therefore, he was issued with a charge memo dated 25.09.1996.

4. The charges framed against the 1st respondent were as follows:

Charge No.1: For having collected Rs.8/- at Sanathnagar, stage No.8, from a batch of two passengers and issued them one ticket bearing ticket No.011/154324 of Rs.5/- denomination on seeking the TTIs at the time of check at Erragadda, stage No.7 and the passengers were found alighting at Erragadda but the said ticket was already accounted in the SR at 12.20 hrs., trip up journey towards Sanathnagar which is a serious misconduct in terms of Regulations No.28 (xxiii), (iii) & (x) of APSRTC Employees (Conduct) Regulations 1963.

Charge No.2: For having collected Rs.8/- at Sanathnagar stage No.8, from a batch of two passengers of them one was lady passenger and issued them one ticket bearing ticket No.028/772896 of Rs.4/- denomination on seeking the TTIs at the time of check at Erragadda, stage No.7, and the passengers were found alighting at Erragadda but the said ticket was already accounted in the S.R. at 12.20 Hrs., trip up journey towards Sanathnagar, which is a misconduct in terms of Regulations No.28 (xxiii), Regulations 1963."

5. A departmental enquiry followed and the charges were held proved. After issuing a show cause notice dated 12.02.1997, along with a copy of the enquiry report, the 1st respondent was removed from service by order dated 15.03.1997.

6. The 1st respondent raised an Industrial Dispute in I.A.No.39 of 1997. On the preliminary issue, the Labour Court held that the enquiry was fair and proper. Thereafter, the Labour Court passed an award on 11.02.1999 holding that the punishment of removal from service was just and proportionate to the gravity of the misconduct held proved against the 1st respondent.

7. Aggrieved by the said award, the 1st respondent workman filed a writ petition. The writ petition was allowed by the learned Judge on the ground that the Labour Court had not considered the evidence on record in the domestic enquiry in proper perspective. Holding that the finding of the Labour Court and appreciation of evidence was perverse, the learned Judge directed 50% of back wages to be paid in lieu of reinstatement. This was because the 1st respondent had already attained superannuation. Therefore, challenging the said order of the learned Judge, the Corporation has come up with the above appeal.

8. As rightly contended by the learned Standing Counsel for the appellant, the scope of interference with an award of the Labour Court, under Article 226, is extremely circumscribed. In fact, the nature of the power exercised by the Labour Court itself varies depending upon its finding on the preliminary issue whether the domestic enquiry conducted by the management was fair and proper or not. The moment the Labour Court finds on the preliminary issue that the domestic enquiry was fair and proper then the role of the Labour Court will be limited to the

examination of the proportionality. Once this stage is also crossed, the writ Court cannot reappraise the evidence.

9. But in the case on hand, the learned Judge has chosen to interfere with the award of the Labour Court on the ground of perversity of finding. In other words, the learned Judge has gone into the question, whether the charges against the 1st respondent could be held proved or not. This approach of the learned Judge is not in tune with the law.

10. Once the charges are held proved in a domestic enquiry conducted, after following the due process of law and principles of natural justice, and once such an enquiry is found by the Labour Court to be fair and proper, it may not be possible for the writ Court under Article 226 to hold the charges as not proved. At the most, this Court under Article 226 may be entitled to examine that portion of the award of the Labour Court dealing with the proportionality of penalty. Since the learned Judge has gone into the merits of the case and has set at naught the findings recorded in the domestic enquiry and confirmed by the Labour Court, the order of the learned Judge deserves to be set aside.

11. Once the order of the learned Judge deserves to be set aside on merits, then the next question to be examined is as to whether the learned Judge examined the correctness of the award of the Labour Court with regard to penalty. The learned Judge has not gone into the question of proportionality of penalty and examined the award of the Labour Court on this aspect. Therefore, in the normal course we would have to set aside the order of the learned Judge and remand the matter back to the learned Judge. But the same would only prolong the agony of both parties. The order of removal from service was passed 21 years ago, in March 1997. Therefore, rather than remitting the matter to the learned

Judge for reconsideration on the question of proportionality of penalty, we have ourselves taken up the task.

12. The 1st respondent was appointed as a conductor in 1984 and he had put in 13 years of service at the time when he was imposed with the penalty. During the pendency of the writ petition he had attained superannuation.

13. Keeping the above facts in mind, if we have a look at the charges and the relevant portion of the award of the Labour Court, it is seen that both the charges related to collection of fare from two passengers, but issuing ticket to one of them, the said ticket having already been accounted in the SR. But the Labour Court, took up the question of proportionality of penalty in the last two paragraphs of its award and proceeded primarily on two grounds, viz., (1) reissuing the tickets already sold and accounted, is a serious misconduct; (2) that the circular of the Managing Director warrants extreme penalties in cases of reissue of tickets.

14. But the reissue of tickets is not the charge framed against the petitioner. Moreover, the proportionality of penalty cannot be examined on the basis of the circular issued by the Managing Director of the Corporation. Therefore, we are of the considered view that the Labour Court could have interfered with the quantum of penalty under Section 11A of the Industrial Disputes Act, 1947 and at least converted the penalty into one of compulsory retirement. If this had been done, the 1st respondent would have received some money.

15. At the time when the appeal came up for hearing, we directed the parties to provide details about the last drawn wages etc. On the basis of the information furnished, we are of the considered view that directing

the appellant-corporation to pay a lump sum compensation of Rs.4 lakhs in lieu of any other relief, would meet the ends of justice.

16. Accordingly the writ appeal is partly allowed, the impugned order of the learned Judge is set aside. The findings with regard to the guilt of the 1st respondent recorded in the domestic enquiry and upheld by the Labour Court, are sustained and the contrary finding recorded by the learned Judge is set aside. However on the question of proportionality of penalty alone, the 1st respondent is entitled to succeed. Hence, the appellant-corporation is directed to pay a lump sum compensation of Rs.4 lakhs to the 1st respondent, within a period of four weeks from the date of receipt of a copy of this order. The 1st respondent will not be entitled to any other benefit. There will be no order as to costs.

17. As a sequel, pending miscellaneous petitions, if any, shall stand closed.

V. RAMASUBRAMANIAN, J.

P. KESHA RAO, J.

11th December, 2018
Js.

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
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