

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.24032 of 2002

ORDER:

The Depot Manager, Andhra Pradesh State Road Transport Corporation (APSRTC), Khammam Depot, filed this writ petition, challenging the Award in I.D.No.17 of 2000, dated 18.02.2002, on the file of the Labour Court, Warangal, whereby, the Labour Court directed the petitioner to reinstate the 2nd respondent as Conductor with continuity of service, with full back wages and attendant benefits.

Brief facts of the case are that the 2nd respondent-workman was appointed as a Conductor in the year 1999. When he was conducting the Bus bearing No.4952 on 24.01.1999 on the route Khammam to Baiyyaram, a check was exercised by the TTIs of the Corporation at Stage No.8/9 and found certain cash and ticket irregularities committed by the 2nd respondent-workman. A charge sheet dated 01.02.1989 was issued to the 2nd respondent-workman framing the following charges and he was kept under suspension pending enquiry.

1. "For having failed to observe the rule "issue and start" while conducting the vehicle No.4952 on the route, Khammam-Baiyyaram on 24.1.1999, which amounts to misconduct on your part, in terms of Reg.No.28(vi)(a) of APSRTC Employees (Conduct) Regulations, 1963.
2. For having failed to issue tickets to a batch of (3) three passengers boarded the bus at Ponnekal and bound for Dornakal ex.stages 8 to 9 though collected Rs.7.50 ps towards the fare at the boarding point itself, which amounts misconduct on your part in terms of Regulations No.28(vi)(a) & (x) of APSRTC Employees (Conduct) Reg.1963.

The 2nd respondent submitted his explanation to the above charges on 08.02.1999. Having not satisfied with the explanation given by the 2nd

respondent, the petitioner got conducted enquiry into the charges against the petitioner. Enquiry was conducted as per the procedure contemplated under APSRTC Employees (CC&A) Regulations and adhering to the principles of natural justice. The Enquiry Officer submitted a report on 31.03.1999 holding that the charges leveled against the 2nd respondent were proved in full. The disciplinary authority, based on the Enquiry Officer's report, on appreciation of the evidence on record and on facts and circumstances of the case, came to a provisional conclusion that the charges are proved against the 2nd respondent-workman and a show cause notice, dated 17.04.1999 was issued to the 2nd respondent asking him as to why he should not be removed from service. The 2nd respondent submitted his explanation to the said show cause notice on 13.05.1999. On considering the explanation of the 2nd respondent, the disciplinary authority, vide proceedings, dated 14.05.1999, removed the 2nd respondent from service. Aggrieved by the same, the 2nd respondent-workman filed appeal and revision, and the same were rejected. The 2nd respondent having been aggrieved by the removal order, raised an industrial dispute under Section 2-A(2) of the Industrial Disputes Act before the Labour Court, Warangal and the same was registered as I.D.No.17 of 2000.

Based on the application filed under Section 2-A(2) of the Industrial Disputes Act, and the counter filed by the petitioner, and based on the record available, the Labour Court framed the following points for consideration:

1. Whether the petitioner (2nd respondent herein) was given fair and reasonable opportunity during the domestic enquiry?
2. Whether the charges framed against the petitioner (2nd respondent herein) are proved according to law and material on record?

3. Whether the punishment imposed against the petitioner (2nd respondent herein) in domestic enquiry is disproportionate to the charges proved against the petitioner in the given facts of the matter?

The Labour Court, on appreciation of the evidence on record, passed an award, dated 18.02.2002 in I.D.No.17/2000, answering the three points in favour of the 2nd respondent and against the petitioner, holding that the 2nd respondent has not committed any irregularities and the charges are not proved against him. While setting aside the removal order, the Labour Court directed the petitioner to reinstate the 2nd respondent-workman into service as a Conductor with continuity of service, with full back wages and attendant benefits. Being aggrieved by the same, the petitioner Management preferred the present writ petition contending that the award of the Labour Court dated 18.02.2002 passed in I.D.No.17/2000 is illegal, arbitrary and contrary to the evidence on record.

Sri B.Mayur Reddy, learned standing counsel, appearing for the petitioner Corporation, would contend that the 2nd respondent-workman had committed serious cash and ticket irregularities, for which, a departmental enquiry was conducted. He would further contend that basing on the enquiry report, the petitioner Management has rightly imposed punishment of removal against the 2nd respondent, as the charges leveled against him are proved. The learned counsel would further contend that the Labour Court committed error in re-appreciating the evidence before the Enquiry Officer and come to a different conclusion, observing that the charges leveled against the 2nd respondent are not proved. The learned counsel would further contend that the Labour Court erroneously without taking into considering the serious

misconduct committed by the 2nd respondent workman, ordered reinstatement into service with continuity of service, full back and attendant benefits. The learned counsel would further contend the Labour Court grossly erred in exercising its jurisdiction under Section 11-A of the Industrial Disputes Act, 1947 and granting the relief, even though the charges leveled against the 2nd respondent are proved in the enquiry, and hence, the award of the Labour Court is liable to be set aside.

Per contra, Sri P.Sridhar Rao, learned counsel, appearing for the 2nd respondent-workman, while reiterating the findings of the Labour Court, he has drawn this Court to the observations of the Labour Court. The learned counsel would further contend that the Labour Court, on appreciation of evidence, and on facts and circumstances of the case, rightly came to a different conclusion that the charges leveled against the 2nd respondent are not proved and accordingly passed award, directing reinstatement of the 2nd respondent into service with continuity of service, with full back wages etc., which does not warrant any interference and the writ petition is liable to be dismissed.

While admitting the writ petition, by order dated 02.12.2002, this court granted interim stay of the award of the Labour Court in so far as granting of back wages is concerned. Pursuant to the award of the Labour Court, the 2nd respondent was reinstated into service.

The Enquiry Officer found that the charges leveled against the 2nd respondent-workman are proved in full. Basing on the enquiry report, the disciplinary authority awarded punishment of removal from service against the 2nd respondent. The 2nd respondent was unsuccessful in appeal and revision. On reference, the Labour Court, on appreciation of evidence on record, passed the award, as stated supra.

Before the Labour Court, the petitioner management got marked M-1 to M-14. As seen from M-7 explanation of the 2nd respondent to the charge memo, the 2nd respondent has taken a specific plea that the checking officials had forcibly taken statements from him and from the passengers. The evidence of two passengers before the Enquiry Officer shows that M4 and M5, i.e., the passengers' statement and conductor statement were obtained by the checking officials by force though three passengers produced tickets. But the Enquiry Officer has not given any credence to the said evidence. The Labour Court on appreciating the evidence on record, observed that as per entries in SR-M2, the 2nd respondent issued tickets to all the six passengers, including the three passengers, as mentioned in charge No.2, and made correct entries in the SR. The Labour Court came to a conclusion that under threat, the checking officials obtained M4 and M5 statements. The Labour Court held that the findings of the enquiry Officer on both the charges are erroneous.

On re-appreciation of evidence on record, I also agree with the findings of the Labour Court that the charges are not proved. However, I do not agree with the finding of the Labour Court that the 2nd respondent is entitled for full back wages for the period he did not work, in view of the guidelines issued by the Apex Court in *Deepali Gundu Surwase v Kranti Junior Adhyapak Mahavidyalaya*¹, wherein the Hon'ble Supreme Court after referring to various authorities on the subject has held as under:

“The propositions which can be culled out from the judgments of the Supreme Court while deciding the issue of back wages are:

¹ (2013) 10 SCC 324

i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

ii) The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

iii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

iv) The cases in which the Labour Court/Industrial Tribunal exercises power Under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and/or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any

misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

v) The cases in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the concerned Court or Tribunal will be fully justified in directing payment of full back wages. In such cases, the superior Courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc., merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The Courts must always be kept in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and sufferer is the employee/workman and there is no justification to give premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

vi) In a number of cases, the superior Courts have interfered with the award of the primary adjudicatory authority on the premise that finalization of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The Courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer, i.e., the employee or workman, who can ill afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course

suggested in Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (supra).

vii) The observation made in J.K. Synthetics Ltd. v. K.P. Agrawal (supra) that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three Judge Benches referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman.

In view of the above, the Labour Court ought to have granted continuity of service without granting back wages while ordering reinstatement of the 2nd respondent into service.

Across the Bench, the learned counsel for the petitioner submits that the 2nd respondent-workman was reinstated into service on 18.02.2002 and subsequently he died in harness in the year 2013. Back wages were not paid to the 2nd respondent in view of the stay order granted by this court.

Considering the guidelines issued by the Hon'ble Apex Court, stated supra, this Court is not inclined to interfere with the award of the Labour Court in reinstating the 2nd respondent into service with continuity of service, but granting of full back wages by the Labour Court is found to be not in accordance with the Hon'ble Apex Court's guidelines issued in catena of decisions. However, keeping in mind the financial constraints of the petitioner-Corporation in paying full back wages to the 2nd respondent, this Court felt that to meet the ends of justice, restricting the back wages to 50% is justified. Accordingly, the award is modified restricting the back wages to 50%. During the pendency of the proceedings before this Court, the 2nd respondent has expired and the respondents 3 to 5 are

brought on record. In view of the bereavement in the family, this Court is directed the petitioner-Corporation to settle all the benefits to the respondents 3 to 5 according to this order, within a period of three (3) months from the date of receipt of a copy of this order.

The Writ Petition is accordingly disposed of. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.GANGA RAO,J

Date: 20.06.2018
Dsr

