

THE HONOURABLE SMT.JUSTICE P.MADHAVI DEVI

W.P.NO.14252 OF 2004

ORDER:

This writ petition is filed by the Corporation against the award of Labour Court-III, dated 16.06.2003 in ID No.57 of 2002, setting aside the order of removal of the respondent employee and directing the respondent to treat the period of removal till the death of the deceased first respondent as 'on duty' for all purposes of service and other benefits such as full back wages, continuity of service and also to direct that the respondents No.2 to 5 being legal heirs of the deceased, are entitled to receive the said benefits.

2. The brief facts of the case are that the first respondent, employee joined the services of the petitioner corporation as a conductor in the year 1980 and was removed from the service vide orders dated 26.02.1999. Against the same, he preferred an appeal, which was rejected on 04.09.1999 and thereafter, review was also rejected vide orders dated 03.11.2000.

3. Aggrieved, the employee raised a dispute before the Labour Court and the Labour Court considered that the charges against the employee were that he collected Rs.2.50 paisa each from two lady passengers, but has not issuing tickets to them and therefore, he has violated the rule of 'Issue and Start' and for these charges, the petitioner was removed from service. The

Tribunal considered the statement of the passengers that they have boarded the bus just before the checking point and were in the process of tendering the fare and that the employee conductor was in the process of issuing tickets to them, when the checking officials boarded the bus and prevented the conductor/employee from issuing the tickets. Thus, by taking these statements into consideration, the Labour Court set aside the removal order and the respondent conductor/employee was directed to be reinstated into service along with all other attendant benefits, including full back wages & continuity of service.

4. The Corporation is challenging the Award on the ground that the Labour Court has modified the punishment of removal without appropriating the evidence before it properly. At the time of hearing, the learned counsel for both the sides have relied upon their contentions in the written affidavit and counter affidavit filed by them and have further placed reliance upon the following decisions:

The learned counsel for the petitioners:

- (i) ***Rajasthan State Road Transport Corporation, Jaipur Vs. Phool Chand (Dead) through Lrs¹.***

¹ AIR 2018 SC 4534

5. The learned counsel for the respondents relied upon in the case of ***APSRTC, Hyderabad and Another Vs. N.V.Subbaiah and Another***² and also in ***Anjilamma and Others Vs. The Labour Court-III at Hyderabad***³.

6. Having regard to the rival contentions and the material on record, it is noticed that the respondents have recorded the statements of passengers as well as TTI's and the passengers have clearly stated that the check was conducted when the conductor was in the process of issuing tickets after the passengers who had boarded the bus had paid the fare amounts. Admittedly the respondents have not checked the cash in hand with the conductor at the time of check. In the judgments relied upon by the learned counsel for the respondent employee, this Court has held that where the employee has not been found guilty of the charges levelled against him and was not gainfully employed else where during the period of his removal, he is entitled not only for reinstatement and continuity of service, but also for full back wages along with other consequential benefits. In the case of respondent employee that the Corporation has not been able to point out or bring any evidence on record to prove that the respondent employee was gainfully employed during the time of

² 2016 (3) ALD 517

³ 1995 (2) ALD 780

after removal of service till that time of his death. The employee had admittedly died and the legal representative have pursued the matter before the Labour Court and also before this Court.

7. In view of the same, this Court does not see any reason to interfere with the decision of the Labour Court and therefore, the writ petition is dismissed and the petitioners are directed to make the payment of all consequential benefits to the respondents 2 to 5 if not paid, within a period of ninety (90) days from the date of receipt of copy of this order with an interest of @ 6% thereon from the date of award till date of payment. There shall be no order as to costs.

8. Miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed.

Dated: 06.06.2022
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