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(2013) 10 AP CK 0064

Andhra Pradesh High Court

Case No: W.A. No''s. 1513 of 2012 and 607 of 2013

Depot Manager, APSRTC and Others		APPELLANT
	Vs	
S.S. Rao		RESPONDENT

Date of Decision: Oct. 3, 2013

Citation: (2013) 5 ALT 777 : (2014) 1 LLJ 21 : (2014) 2 LLN 81

Hon'ble Judges: Dama Seshadri Naidu, J; Ashutosh Mohunta, J

Bench: Division Bench

Advocate: M.C. Sunilkumar Reddy, S.C. for APSRTC, for the Appellant; Narasimha Goud, Counsel, for the Respondent

Judgement

Dama Seshadri Naidu, J.

WA No. 1513 of 2012:

1. This is an appeal preferred by the Andhra Pradesh State Road Transport Corporation (APSRTC), which was aggrieved by the order dated 06.02.2012 passed in W.P. No. 7023 of 2009 by the learned single Judge. Basically, the said writ petition was filed by the Corporation, seeking judicial review, by way of writ of certiorari, of the order dated 01.12.2008 in I.D. No. 1 of 2006 passed by the Labour Court-I, Andhra Pradesh, Hyderabad.

WA No. 607 of 2013:

This is a cross appeal preferred by the writ petitioner seeking to set aside the impugned order dated 06.02.2012 passed in W.P. No. 7023 of 2009, to an extent of not granting remaining 50% of back wages and consequentially to direct the respondent Corporation to pay remaining 50% of back wages as well.

2. As both the writ appeals have arisen out of the same order, dt. 06-02-2012 in WP No. 7023 of 2009, it is appropriate to dispose of both them under a common order. The parties however shall be referred to in this order as they have been arrayed in

WA No. 1513 of 2012. Basically, the said writ petition was filed by the Corporation, assailing the order dated 01.12.2008 in I.D. No. 1 of 2006 passed by the Labour Court-I, Andhra Pradesh, Hyderabad.

3. The facts in brief are that the sole-respondent in the present writ appeal joined the services of the respondent Corporation as conductor on 09.05.1990, got his services regularized with effect from 01.05.1991 and continued to work in the respondent Corporation, until he was removed from service on 20.08.2004 on the ground that while he was conducting bus service on 15.03.2004 between Gummadidala and Yadagirigutta stages, he was found derelict in discharging his duties.

4. To expatiate, the record reveals that on 15.03.2004, while he was conducting the bus between the stations mentioned above, a check was effected and a memo was issued to the respondent levelling two charges against him. The charges are:

(1) For having failed to observe the rule ''Issue and Start'' while you were conducting bus No. 4462 on the route Yadagirigutta on 15-3-2004, which constitutes misconduct under Reg. 28(xxxii) of APSRTC Employees (Conduct) Reg. 1963.

(2) For having collected the requisite fare of Rs. 28/- from a batch of 7 passengers who boarded your bus at Gummadidala and bound for Kanukunta exstages 1 to 2/3 but you have issued only 5 tickets Nos. 565/709669 to 673 on seeing the TTIs, which constitutes misconduct under Reg. 28(xxxii) of APSRTC Employees (Conduct) Reg. 1963.

5. On the submission of the explanation by the respondent, having not been satisfied by it, the Corporation charge-sheeted him and conducted a departmental enquiry. Eventually, the enquiry officer has concluded that the charges levelled against respondent herein have been proved. Consequently, the appellant Corporation imposed the penalty of removal from service against the respondent. The departmental appeal and departmental review preferred by the respondent have ended in futility.

6. Aggrieved by the removal, the respondent raised an industrial dispute before the Labour Court-I, AP, Hyderabad, u/s 2-A(2) of the Industrial Disputes Act. The said industrial dispute has not yielded any positive result to the respondent, since the Tribunal upheld the action of the Corporation in removing the respondent from service. Under those circumstances, the respondent herein filed W.P. No. 7023 of 2009 on the file of this Court, contending that there was no corroboration as to the charges levelled against him, that when a finding was given that the charge of fare collection as levelled against him was not proved, the Tribunal ought to have granted the consequential relief of reinstatement into service along with all benefits, and that the Tribunal has not redressed any finding in respect of Section 11-A of the Industrial Disputes Act, which is mandatory.

7. The learned single Judge, in course of time, allowed the writ petition holding that where the allegation of misappropriation is proved, normally the Courts will not interfere with the punishment imposed, but where the allegation of misappropriation is not proved, then the other relevant circumstances have to be taken into consideration. It has been further held that when it is a case of not collecting fare and not issuing tickets and where the check has taken place within one place, normally a lenient view has to be taken. Since the Labour Court has not considered these attenuating circumstances before passing the award, the respondent is directed to be reinstated into service with continuity of service and with all attendant benefits. Insofar as back wages are concerned, the learned single Judge has held that the respondent shall be denied 50% of the back wages during the period from the date of removal till the date of his reinstatement. The record reveals that the respondent was reinstated.

8. Aggrieved by the order dated 06.02.2012 in W.P. No. 7023 of 2009 passed by the learned single Judge, the appellant Corporation has preferred WA No. 1513 of 2012; and the respondent on his part filed WA No. 607 of 2013, contending that the writ petition ought to have been allowed in toto.

9. Heard learned counsel for appellant corporation and the learned counsel for the respondent at length and the documents were perused.

10. The learned Standing Counsel for the appellant Corporation has assailed the entire order, but eventually, laid much stress on the issue of direction concerning the payment of back wages to the extent of 50%. It has been contended by the learned counsel for the Corporation that even the learned single Judge has affirmed the finding of the Tribunal that the respondent did not collect fare and issue tickets to two passengers, which resulted in pecuniary loss to the Corporation, minuscule as the quantum of the loss may appear to be. It has been further contended that when the conductor has been entrusted with the task of the collecting fare and issuing the tickets, it requires utmost probity on the part of the conductor. In this case, it was proved beyond doubt that he was not measuring up to the mark expected of the employee of Corporation. As such, taking a lenient view and directing payment of back wages to the tune of 50% is not only deleterious to the interest of the Corporation, but it also sends a wrong message to the erring employees that they could get away with their misdeeds. In sum and substance, the learned counsel for the Corporation has contended that showing lenience to the erring employee amounts to showing misplaced sympathy, which is count (sic. counter) productive. On the part of the learned counsel for the respondent, he has strenuously defended the impugned order and has submitted that it is most equitable and just. He has further submitted that the learned single Judge ought not to have stopped midway and ought to have allowed the writ petition in its entirety by directing the corporation to pay full back wages instead of 50%.

11. On appreciation of rival contentions, we find that there is some merit in the submission of the learned counsel for the Corporation. Indisputably the respondent conductor acts in a fiduciary capacity and holds a post of trust. Taking too lenient view is also counterproductive and is not conducive to enforcing discipline among the employees of the corporation. On the other hand, taking too rigid a stand, without being mindful of the attendant circumstances, amounts to imposing a harsh, disproportionate and unjustified punishment. Thus the punishment imposed ought always to be commensurate with the offence the employee has been charged with, without leading to inflicting untold hardship on the employee. As such, it calls for taking a balanced view. Further, no material is placed to show that the respondent was gainfully employed during the course of his suspension.

12. By appreciating the need to uphold the interest of the Corporation, as well as the mitigating circumstances on the part of the respondent, we deem it appropriate that the order dated 06.02.2009 of the learned single Judge passed in W.P. No. 7023 of 2009 calls for a minor modification, thus restoring the parity as to the competing interests of both the parties. Accordingly, we direct that instead of 50% back wages, the respondent shall be paid 25% of the back wages for the period from the date of removal till the date of reinstatement. If the respondent has already been paid the back wages as was directed by the learned single Judge, 50% of the same may be recovered from the salary of the respondent in 12 equated monthly instalments, thus not causing hardship to the respondent.

13. Now having dealt with W.A. No. 1513 of 2012 filed by the respondent Corporation, for the reasons mentioned above, we deem it appropriate to dismiss the Writ Appeal No. 607 of 2013. Insofar as W.A. No. 1513 of 2012 is concerned, we partly allow the same in the manner stated above. With the above modification of the order, dt. 06.02.2012 in W.P. No. 7023 of 2009, we partly allow WA No. 1513 of 2012 and dismiss WA No. 607 of 2013. No order as to costs. As a sequel to it, miscellaneous petitions, if any pending in this writ appeal, shall stand closed.