

**(2013) 06 AP CK 0027**

**Andhra Pradesh High Court**

**Case No:** Writ Appeal No. 538 of 2013

N. Srinivasulu

APPELLANT

Vs

Managing Director, AFSRTC and  
Others

RESPONDENT

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**Date of Decision:** June 11, 2013

**Citation:** (2013) 5 ALT 192

**Hon'ble Judges:** Ashutosh Mohunta, J; A. Rajasheker Reddy, J

**Bench:** Division Bench

**Advocate:** S.M. Subhan, for the Appellant; H. Venugopal, SC for APSRTC for Respondent  
Nos. 1 and 2 and G.P. for Labour, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

Ashutosh Mohunta, J.

This Writ Appeal is preferred aggrieved by the order dated 18.02.2011 passed in Writ Petition No. 24496 of 2006 whereby a learned Single Judge of this Court while setting aside the punishment of removal from service awarded by the Labour Court directed the respondents to reinstate the appellant in service with continuity of service, but without back wages and without any attendant benefits. The appellant while working as a conductor with the respondents-APSRTC was charge-sheeted and after conducting enquiry, he was removed from service. Questioning the same, the appellant preferred an appeal and thereafter review, which were ended in dismissal. Thereafter, the appellant raised an industrial dispute u/s 2A(2) of the ID Act before the Labour Court, which also ended in dismissal, confirming the punishment of removal from service imposed against him. Aggrieved thereof, the appellant preferred Writ Petition No. 24496 of 2006, which was disposed of through the order under appeal as stated supra. Being not satisfied with the relief granted in the aforesaid Writ Petition, he preferred the present Writ Appeal.

2. The learned Counsel for the appellant vehemently contended that though the appellant was not responsible for the missing of the tickets, the

respondents-APSRTC having recovered the value of the missing tickets from the officials, harassed his client by imposing punishment of removal from service alleging that the appellant had misappropriated the tickets fare. He submitted that the learned single Judge while granting reinstatement of his client in service ought to have awarded continuance of service and back wages considering that the punishment imposed against his client was harsh and not in consonance with the charges levelled against him. He therefore prayed that this appeal may be allowed.

3. On the other hand, the learned Standing Counsel for the respondents-APSRTC contended that inasmuch as all the authorities of the Corporation as well as the Labour Court found the appellant responsible for the alleged misconduct, however, the learned Single Judge though should not have interfered with such findings, however shown some lenience, which does not require to be extended furthermore. He submitted that there are absolutely no grounds to interfere with the findings of the lower authorities as well as the learned single judge and prayed that the Writ Appeal may be dismissed.

4. Perused the record.

5. The learned Single Judge while disposing of the aforesaid Writ Petition inter alia held as under:

It is a fact that a crime was registered at the instance of the petitioner as to the loss of tickets. It is also a fact that one Assistant Depot Clerk and two Depot Clerks were also charge sheeted and were punished suitably and the amount purported to have been defrauded was recovered. However, it appears, issuance of charge sheets and initiating disciplinary proceedings against Depot Clerks were neither brought to the notice of the Enquiry Officer nor the Labour Court. Therefore, we cannot blame the Labour Court stating that it did not exercise its discretion properly. However, the learned counsel for the respondents admitted that the Depot Clerks who were charge sheeted for misappropriation were suitably punished and money was recovered from them but, however, it cannot be said that the petitioner was innocent and he did not involve in the misconduct. The Labour Court has categorically gave a finding that the charges are proved in full. However, in view of the facts brought to the notice of this Court, which are admitted by the respondents that three other persons who were involved in the misconduct were punished suitably, but with a minor punishment. I am of the opinion that the petitioner also deserves the same treatment.

Under those circumstances, the award passed by the Labour Court is set aside and the respondent/management is directed to reinstate the petitioner with continuity of service but without any back wages and without any attendant benefits.

6. From a bare perusal of the record, it is manifest that as many as fourteen charges were levelled against the appellant and all the charges were held proved by the Enquiry Officer. It was found in the enquiry that the appellant sold the tickets and

failed to account for the money and therefore he was held responsible for the shortfall of the amount to be remitted to the Department. It is stated that the appellant was stated to have given report himself with bad intention as if he lost the tickets having misappropriated the amount. It is well settled that if the charged employee held a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. However, having regard to the fact that the other persons who were involved in the misconduct were punished with minor punishment, the learned Single Judge took a lenient view and directed the respondents to reinstate the appellant with continuity of service but without back-wages and without any attendant benefits.

7. As can be seen from the impugned order, it is clear that the learned single Judge, having regard to the circumstances under which the appellant was found guilty of the charges levelled against him and the other persons who were involved in the misconduct were punished with minor punishment, exercised his discretion under Article 226 of the Constitution and modified the punishment of removal from service to the extent of directing the respondents to reinstate the appellant in service with continuity of service, but without back-wages and attendant benefits. However, inasmuch as the appellant was found guilty of the charges levelled against him, he was not entitled to claim back-wages and the learned single judge in fact accordingly held so. It is axiomatic from the record that the alleged misappropriated amount was recovered from other persons involved in the misconduct. In the peculiar facts and circumstances of the matter, we are of the considered opinion that the appellant is entitled to notional benefits of his pay during the period he was out of service. For the foregoing discussion, this Writ Appeal is allowed to the limited extent indicated above. The miscellaneous petitions, if any, pending consideration shall stand closed. There shall be no order as to costs.