

(2012) 03 AP CK 0011

Andhra Pradesh High Court

Case No: Writ Petition No. 27795 of 2008

K. Brahmachary

APPELLANT

Vs

Andhra Pradesh State Road
Transport Corporation and
Others

RESPONDENT

Date of Decision: March 21, 2012

Citation: (2013) 4 ALT 262

Hon'ble Judges: Vilas V. Afzulpurkar, J

Bench: Single Bench

Advocate: S.M. Subhan, for the Appellant; A.H. Ramakrishna for APSRTC for Respondents 1 to 3 and G.P. for Labour, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Vilas V. Afzulpurkar, J.

Heard both sides. Petitioner was working as a Conductor in APSRTC since 1985. He suffered an order of removal dated 12.04.2005 on the ground that he had contracted bigamous marriage in violation of Regulation 28 of APSRTC Employees (Conduct) Regulations, 1963.

2. Learned counsel for the petitioner submits that the order of removal, which was questioned before the Industrial Tribunal in I.D. No. 258 of 2006 and the same was decided against the petitioner by award dated 29.08.2008 without taking into consideration the circumstance that no enquiry was conducted by the respondents while passing the order of removal. Learned counsel also submits that petitioner has worked for 20 long years before order of removal was passed and thereby the petitioner is deprived of all his service benefits also for the said 20 years for which he worked. Learned counsel, therefore, questions the award of the tribunal by placing reliance on a decision of this Court in V.V. Guravaiah v. Asst. Works Manager,

APSRTC (1) 1989 (2) ALT 189 on the ground that in similar case relating to bigamous marriage, the order of removal was set aside and reinstatement of the employee was ordered. Learned counsel also placed reliance upon a decision of this Court in [Syed Azad Vs. Divisional Security Commissioner, Railway Protection Force, SCR and Another,](#) wherein in similar circumstances, an order of compulsory retirement was passed, but this Court interfered with the said punishment by ordering punishment of stoppage of two increments. A decision in review passed by the Regional manager, Kurnool in a case relating to one R. Deva Varam, E.404154 of Kurnool-1 Depot is also relied upon by the learned counsel to contend that, in a similar charge, the order of removal was modified to deferment of increments for two years with cumulative effect.

3. Learned standing counsel for the respondents contended that the order of removal was clearly justified on the facts and circumstances, as the petitioner had admitted to the said bigamous marriage and the petitioner himself had given nomination to one Smt. K. Vijayalakshmi, as his wife, which was replaced by giving a fresh nomination in favour of one Smt. K. Savitramma and both of them are described as wife by the petitioner. The order of removal, therefore, passed by the primary authority, as confirmed in appeal and review, was not found liable for interference by the tribunal and as such, the learned counsel submits that the award of the tribunal does not warrant any interference.

4. Having considered the contentions, as above and the circumstances, evident from the award of the tribunal itself, show that the nomination filed by the petitioner in favour of his first wife Smt. K. Vijayalakshmi dated 12.01.1990 was later followed by a similar declaration and a Guarantee P.F. form signed by the petitioner dated 24.05.1990 wherein he nominated one Smt. K. Savitramma by describing her as wife. The said misconduct of the petitioner came to the notice of the respondents when a press note was published, when K. Savitramma alleged cruelty against the petitioner. Thereafter, the respondent-corporation started an enquiry and Ex. M9-explanation of the petitioner to the charge sheet as well as Ex. M12-statement of the petitioner during enquiry was taken into consideration and charge was held proved.

5. Learned standing counsel has placed before this Court a copy of the explanation of the petitioner dated 02.07.2004 wherein he states that the said Smt. K. Vijayalakshmi left his house since 1990 and thereafter, the petitioner married Smt. K. Savitramma. He also states that Smt. K. Vijayalakshmi is mentally unsound and that he married Smt. K. Savitramma with her consent and hence, therefore, there is a change in the nomination. He also states that since Smt. K. Vijayalakshmi is the affected party, she alone can initiate the proceedings and it is not for the employer, APSRTC, to initiate the proceedings.

6. From the above, it is evident that the petitioner admits of the second marriage but gives his own justifications and in the domestic enquiry when the petitioner

admitted the charge, it cannot be said that the employer was in error in holding the charge proved and consequently, the order of removal was justified. The tribunal has gone into all these aspects and having considered the same on the basis of the entire material of enquiry produced before it, that the findings on the charges are not-vitiated in any manner, the tribunal declined to interfere with the said punishment imposed.

7. Reliance placed by the learned counsel for the petitioner on V.V. Guravaiah's case (1 supra) is clearly misplaced, as on the facts of that case, neither the first nor the second marriage was proved in accordance with law and therefore, this Court concluded that there was no evidence to establish bigamy, alleged against the petitioner. Syed Azad's case (2 supra) also is a case where neither the Talaqnama nor the Nikahnama concerning the allegations were proved in accordance with law and in that view, this Court interfered with the punishment. The last of the cases is a case in review by APSRTC and on the facts of that particular case, it cannot, therefore, be said that there is a parity between the cases relied upon by the petitioner and the case on hand. In view of the facts and circumstances and the material available on record, I am of the view that the award of the tribunal does not warrant any interference so far as the findings on charge against the petitioner is concerned and on the facts and circumstances of the case, the punishment also has to be held to be not disproportionate. However, the tribunal has not taken into consideration that before suffering the order of removal, the petitioner has worked for 20 long years from 1985 onwards to 2005. For the said 20 years, the petitioner would have got service benefits in the normal circumstances, if the order of removal was not passed. While the petitioner having committed the misconduct, he is not entitled to any relief as to reinstatement or any other lenient punishment, but in fairness it would not be appropriate to deprive the petitioner of terminal benefits accruable to him for the period of 20 years of service, which he had rendered before the order of removal passed by the disciplinary authority. In that view of the matter, the order of removal shall stand modified to that of compulsory retirement, which would enable the petitioner to get the terminal benefits proportionate to the period of his service from 1985 to 2005.

Subject to the above modification, the writ petition is accordingly dismissed. As a sequel, the miscellaneous applications, if any, shall stand dismissed. There shall be no order as to costs.