

N. Chinnaiah Vs. the Depot Manager, Apsrtc and anr.

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Court : Andhra Pradesh

Decided On : Apr-19-1996

Reported in : (1997)IILLJ512AP

Judge : G. Bikshapathi, J.

Acts : [Industrial Disputes Act, 1947](#) - Sections 2A(2) and 11A

Appeal No. : W.P. No. 16641/1995

Appellant : N. Chinnaiah

Respondent : The Depot Manager, Apsrtc and anr.

Advocate for Def. : A. Vyjayanthi, Adv.

Advocate for Pet/Ap. : K.M.M. Reddy, Adv.

Judgement :

ORDER

1. The Award of the Labour Court-II, Hyderabad in I.D. No.77/93 dated March 4, 1995 is assailed before this Court by the workmen.
2. The petitioner was a Conductor in the A.P.S.R.T.C. having been appointed in the year 1973. He was conducting the bus on June 14, 1992 on the route from Nandipet-Nizamabad. While so, a check was made by the T.T.Is. at stage No. 8 and it was found that four passengers were found without tickets even though the

petitioner had collected a fare of Rs. 1.50 ps. each from them. It was the case of the petitioner that there was a dispute with regard to the minimum fare. While the passengers were inclined to tender Re. 1/-, the requisite fare as per the chart was Rs. 1.50 ps and while the arguments were going on, the cheek took place and thus the passengers were found without tickets. The petitioner thereafter was placed under suspension, a charge sheet was issued alleging that he had collected fare from four passengers totalling to Rs. 6/- and did not issue the tickets. Thereupon an enquiry was conducted and finally the petitioner was removed from service on January 30, 1993. Having been unsuccessful before the appellate authority, the petitioner approached the 2nd respondent under Section 2A(2) of the Industrial Disputes Act. The said dispute was numbered 30 as I. D. No. 77/1993. The learned Tribunal after considering the matter found that the charges as framed against the petitioner were proved and accordingly passed an Award holding that the petitioner is not entitled for any relief.]be said award is assailed before this Court.

3. The learned counsel for the petitioner submits that the petitioner had no intention of misappropriating the amounts and on the other hand, he was disputing the quantum of fare, which was tendered by the passengers and therefore it cannot be treated as a serious misconduct warranting removal from service.

4. On the other hand, the learned counsel for the Corporation submits that the petitioner had maintained very bad records of service and he was punished number of times, he was removed from service in the year 1982 for cash, ticket irregularities and on an Award passed by the Labour Court, he was reinstated into service. Thus, it is the case of the Corporation that inspite of getting relief on earlier occasions, the petitioner has continued to indulge in the same irregularities and hence he does not deserve any sympathy from this Court.

5. It is to be noted that the issue before the Labour Court was whether the charges as framed against the petitioner were made out and, if so, punishment of removal was justified. The past conduct of the petitioner was not an issue for determination either before the disciplinary authority or before the Labour Court. It was only sought to be ressed into service as an ancillary issue, to enable the Tribunal to

weigh the probabilities of the case while evaluating the quantum of punishment under Section 11-A of Industrial Disputes Act. But, in the instant case, the Tribunal was solely influenced by the past record of the petitioner and refused to grant any relief to the petitioner. Thus, I find the Tribunal failed to exercise the jurisdiction vested in it under Section 11-A of the Act. It is now well settled that it is open for the Court to exercise power under Section 11-A if the Labour Court failed to properly exercise the same and grant appropriate relief under the facts and circumstances of the case.

6. Therefore, now the issue that arises as for consideration is whether, on the basis of the proved charges, punishment of removal from service is justified. The learned counsel for the petitioner submits that, in similar identical case, where the fine was by the conductor amount to Rs. 40/- the Division Bench of this court granted reinstatement without backwages *Y R. Sheni v. Dfllm Manager, A. P. S. R. T. C. & Another* 1996 (1) AID 516 DB. 'The relevant extract of the order of the Division Bench is as follows :

'Learned Single Judge has agreed with the Tribunal that the first charge has been established and has also found no reason to interfere with the imposition of the punishment. We have apparently no reason, particularly when we are informed about the past conduct of the appellant, to find fault with either the judgment of the Labour Court or that of the learned Single Judge. Our attention however, has been drawn to a Bench decision of this court in *V G. Reddy v. The Chairman Industrial Tribunal-cum-Labour Court at Warangal* W.A. 213/92, dated March 23, 1992 and the judgment of a learned single Judge in *P. Balachandra Reddy v. A.P.S.R.T.C. : (1994) ILLJ481AP* , and it is brought to our notice that on a charge similar to the one as levelled against the appellant and found proved, it was held that the punishment of removal from service was disproportionate to the proved misconduct. Any stand to the contrary by this Bench will lead to a divergence of opinion with the opinion of the Bench of the Court in *W.A. 213/92* dated March 23, 1992 although the ratio applied in *V. G. Reddy's* case as well as by the learned Single Judge in *P. Balachandra Reddy's* case is that the Court has power to interfere with the punishment and order for adequate punishment which is in consonance with the proved charge, there can be some feeling of discrimination

by the Court if we do not follow the law laid down in the above judgments'.

He also relied on the judgment of this Court, in M. R. Naidu v. ne Presiding Officer, Labour Court, Ananthapur 1994 (1) ALT 37 NRC wherein the learned Single Judge of this Court granted reinstatement without back wages holding that the punishment of removal grossly disproportionate and that the petitioner was nearing years at the time when the matter was considered.

7. Keeping in view the decisions of this Court, considering the nature of the charge proved and age of the petitioner which is 55 it would be harsh to remove the petitioner at the fag end of his life. Moreover the amount involved in this case is Rs. 6/- and that too plausible explanation was forthcoming.

8. Accordingly, the Award of the Labour Court in I.D. No. 77/93 is modified and it is hereby ordered :

i) that the petitioner shall be reinstated into service without back wages.

ii) the period of service from the date of punishment till reinstatement shall be treated as continuous for the purpose of tenninal benefits and notional fixation of pay.

iii) on retirement from service, he shall be entitled for tenninal benefits calculated on the basis of the last pay drawn in the status, which he shall have at the time of retirement

iv) it is open for the Corporation to take suitable action against the petitioner if he is found to have indulged in any misconduct under the Regulations.

9. The Writ Petition is allowed to the extent indicated above. There shall be no order as to costs.