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Court : Andhra Pradesh

Decided On : Nov-01-1996

Reported in : 1997(1)ALT296

Judge : Lingaraja Rath and ;C.V.N. Sastri, JJ.

Acts : Service Law

Appeal No. : Writ Appeal No. 1264 of 1996

Appellant : The Depot Manager, Apsrtc

Respondent : The Additional Industrial Tribunal-cum-additional Labour Court, Rep. by Its Presiding Officer and an

Advocate for Def. : A.K. Jayaprakash Rao, Adv. for the 2nd Respondent

Advocate for Pet/Ap. : C.V. Ramulu, SC

Disposition : Appeal allowed

Judgement :

Lingaraja Rath, J.

1. The learned counsel for the respondent No. 2 has appeared. Though the matter has been listed for admission, the matter has been heard in full with consent of parties.

2. The appellant charge-sheeted the respondent No. 2 for departmental enquiry on five heads of charges on allegation that the respondent No. 2, who is a Conductor with the appellant, has failed to punch the tickets issued by him to passengers on five occasions totalling nine tickets. The charges having been found established he was removed from service. An Industrial dispute having been raised and referred to the Addl. Industrial Tribunal-cum-Additional Labour Court, Hyderabad which having found the departmental enquiry to have been not proper, allowed the parties to adduce evidence. It independently came to the conclusion of the charges to have been established but found the removal from service to be disproportionate to the circumstances of the case and hence directed reinstatement into service as a fresh candidate only. In the writ petition preferred by the respondent No. 2, the learned single Judge concurred with the finding of the charges having been established but was of the view that in view of the triviality of the charges the forfeiture of back service and backwages was disproportionate punishment and hence directed the respondent No. 2's reinstatement with continuity in service with 50% backwages.

3. Mr. C.V. Ramulu, learned counsel for the appellant urges that the appellant does not challenge the direction for reinstatement in service with the benefit of back service but submits that the direction for payment of the backwages should not have been passed. In support of his submission it is urged that the misconduct of the respondent No. 2 was not trivial in nature as in all the five instances where the tickets had been issued, they had not been punched which could lead to the only conclusion that adoption of malpractice was intended by recollecting the tickets from the passengers while they were to alight from the bus and to utilise those again and thus cause financial loss to the Corporation. It has been also urged, as was contended before the Tribunal, that the record of the respondent No. 2 has not been clean inasmuch as he had been warned two times, his security deposit had been forfeited, thrice and his annual increments had been deferred five times. Besides it is also stated, which is not relevant to the present case, that

the respondent No. 2 had been suspended twice even earlier.

4. Having heard the learned counsel for the parties and going through the papers we are unable to take a blanket view that wherever tickets are not punched even though have been issued to the passengers, the charge is trivial in nature justifying reinstatement with retrospective effect. Such conduct even though may appear rather simple on its face yet may, as has been contended by the learned counsel for the appellant, be really a prelude for resorting to graver misconduct. Merely because the utilisation of the tickets for the second time did not happen in this case as the time lapse between the issuance of the tickets and the detection was not sufficient, it does not mean that the conduct of the respondent No. 2 was transparent. Direct evidence of intention would be hardly available. There is no reason, when tickets are issued, as to why there should be any time lapse before their punching is made. The passengers are entitled to punched tickets and as soon as the money is handed over, the punched tickets are to be given. One cannot imagine as to why there should be any lapse of punching the tickets at all. For such reasons the department was entitled to take a serious view of the matter.

5. That apart, the very reputation of the respondent No. 2 was also not clean. Even so, we do not want to interfere so far as the reinstatement with continuity of service of the respondent No. 2 is concerned as that part of the order has not been challenged before us. But taking the totality of the circumstances into consideration we modify the order of the learned single judge confining the relief available to the respondent No. 2 to only reinstatement in service as has been directed, but negativing the benefit of the 50 % of the backwages.

6. In the result, the appeal is allowed to the extent indicated.

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