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C. Basaiah Vs. Depot Manager, Apsrtc

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Court : Andhra Pradesh

Decided On : Aug-07-2008

Reported in : 2008(6)ALD518; 2009(1)ALT183; [2009(121)FLR357]

Judge : L. Narasimha Reddy, J.

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

Appeal No. : WP No. 17118 of 2008

Appellant : C. Basaiah

Respondent : Depot Manager, Apsrtc

Advocate for Def. : K. Madhava Reddy, SC

Advocate for Pet/Ap. : V. Narasimha Goud, Adv.

Disposition : Petition allowed

Judgement :
ORDER

L. Narasimha Reddy, J.

1. The petitioner was employed as a Conductor, in the Tandur Depot of APSRTC, in the year 1988. When he was conducting a service from Nadaram to Kodangal on 31.3.1992, the bus was checked, between the stages 9 and 8. A charge-sheet

was issued on 9.4.1992, wherein it was alleged that the petitioner did not issue tickets to two passengers, having collected fare of Rs. 2/- each, from them. After causing domestic enquiry, the respondent passed an order dated 12.3.1993, directing the removal of the petitioner from service.

2. The petitioner approached the Labour Court III, Hyderabad, under Section 2-A(2) of the Industrial Disputes Act (for short 'the Act'), and filed I.D. No. 809 of 1993. The Labour Court passed an award dated 20.8.1997, setting aside the order of removal and directing reinstatement of the petitioner, with continuity of service and attendance benefits, but without back wages. Accordingly, the petitioner was reinstated into service.

3. The respondent filed WP No. 19656 of 1998, against the award dated 20.8.1997. The writ petition was allowed on 3.10.2007, on the ground that when the Labour Court had agreed with the findings recorded in the domestic enquiry, there was no basis for setting aside the order of removal and directing reinstatement, with continuity of service and attendant benefits. The matter was remanded to the Labour Court, as regards quantum of punishment. After such remand, the Labour Court passed an award dated 10.3.2008, dismissing the I.D. Hence, this writ petition.

4. Sri V. Narasimha Goud, learned Counsel for the petitioner, submits that the two passengers mentioned in the charge-sheet, tendered Rs. 2/- each, as against the fare of Rs. 2-50 ps, and even while an attempt was being made to collect the balance of the fare, the check took place. He submits that the very fact that the checking officials themselves collected the difference of fare and got issued tickets, discloses that the version put forwarded by the petitioner is trustworthy. He contends that in the first round of litigation, the Labour Court did not delve much into this aspect, in view of the fact that it intended to base the relief granted by it, exclusively on the discretion exercised under Section 11A of the Act.

5. It is urged that in its judgment in W.P. No. 19656 of 1998, this Court expressed its dissatisfaction about the nature of relief, particularly, when the domestic enquiry was found to be valid, and the findings in the enquiry report were accepted by the Labour Court. Finally, it is pointed out that the Corporation itself reinstated the

petitioner, on the basis of the earlier award, and a punishment of lesser magnitude, compared to the removal from service, would have been the proper exercise of discretion under Section 11A of the Act.

6. Learned Standing Counsel for the respondent, on the other hand, submits that the Labour Court had accepted the validity of the domestic enquiry, as well as findings therein, and the inescapable result would be dismissal of the I.D. He submits that the order of remand by this Court to the Labour Court was on a very limited aspect, and the Labour Court accorded cogent reasons, in support of its conclusions.

7. The charges that were framed against the petitioner, on the basis of a check conducted on 31.3.1992, read as under:

(1) For having failed to observe the rule 'Issue and Start'.

(2) For having failed to issue two tickets in spite of collecting an amount of Rs. 2/- only instead of Rs. 3/- from two passengers, who were alighting without tickets at Kudurmalla and boarded at Sangaipally (ex-stages 9/8 to 8)

(3) For having failed to close the following denomination of tickets in the S.R. bearing No. 1-84116 dated 31/1-3/4-92 against the stage No. 8 at the time of check even though closed other denominations.

(i) Rs. 1-00,1-75, 2-00, 2-25 and Rs. 3-00.

The gravamen of the charge is that the petitioner had collected Rs. 2/- each, from two passengers, instead of Rs. 3/- each, and the said passengers were found alighting the bus, without tickets. The petitioner was removed from service. After exhausting the departmental remedies, he approached the Labour Court. In its earlier award, the Labour Court agreed with the findings, recorded by the enquiry officer, but granted the relief of reinstatement, with continuity of service and attendant benefits, and denied back wages.

8. This Court took the view that once the Labour Court had accepted the findings of the enquiry officer, there was no basis for directing reinstatement, with

continuity of service and attendant benefits. Had it been a case, where this Court felt that the order of removal passed by the respondent against the petitioner could not have been interfered with, by the Labour Court, there would not have been any occasion for remand of the matter to the Labour Court. It is no doubt true that the exercise of discretion, under Section 11A of the Act was found to be improper. On remand, the Labour Court dismissed the I.D. as a whole.

9. The limited controversy, as of now, is about the exercise of discretion under Section 11A of the Act, by the Labour Court, and the acceptance by the Labour Court, of the findings in the domestic enquiry, had attained finality. The order of remand is specific viz. about the quantum of punishment, which, in turn, is traceable to Section 11A of the Act. This Court is conscious of the limitation on interference with the discretion.

10. Though it is a matter of record that by the time the check took place, two passengers were found without ticket, the circumstances leading thereto, cannot be ignored. Even this limited consideration is not about the correctness of the finding, but the circumstances that led to it. The petitioner had enclosed a copy of the statement recorded from the passengers, at the time of check. It is to the effect that both of them tendered fare of Rs. 2/- each, to the petitioner, but the latter insisted on payment of 0-50ps. each, more. It was stated that even while they were searching for the change, Kudurumalla Stage had reached and the check took place. They stated that the checking officials have collected the balance of amount and issued tickets. There is nothing on record to show that any penalty was levied on the passengers.

11. The facts mentioned above would have their own impact, upon the charges framed against the petitioner. Though technically, the passengers were found without tickets, the gravity thereof gets diluted to a substantial extent, if the explanation offered by them is taken into account. Here again, the examination is with reference to the quantum of punishment.

12. The duties assigned to the Conductor carry with them, an amount of trust, on behalf of the Corporation. Irrespective of the amount involved, the intention of a person employed as a Conductor, while dealing with the tickets and cash,

assumes importance. The judgment of the Supreme Court relied upon by the Labour Court is clear on this aspect. At the same time, it must not be forgotten that, as part of the duty, the Conductor has to issue tickets to hundreds of persons everyday, and a small lapse, which does not reflect misuse of faith, cannot lead to deprivation of livelihood. An element of human rights also exists, in the matters of this nature.

13. It is not only the livelihood of the employee, but also that of his family members and dependants. While there cannot be any compromise with the requirement as to honesty in discharge of duties, minor lapses should not lead to deprivation of livelihood to an employee and his family. Before the service of an employee, running into few decades, is put an end to, a careful analysis of the matter is needed.

14. It has already been pointed out that no penalty was levied from the passengers, and tickets were issued to them, by collecting the balance fare of 0-50ps. each. The statement of the passengers that they were in the process of tendering the change of 0-50ps. each, was not at all rebutted by the Corporation. The Corporation itself reinstated the petitioner into service, on the basis of the award dated 20.8.1997, passed by the Labour Court. Nothing objectionable was found during this period, against the petitioner. 10 years thereafter, he was removed on the basis of the judgment of this Court in WP No. 19656 of 1998. In the totality of the circumstances, this Court is of the view that punishment of stoppage of two increments, with cumulative effect, and denial of back wages, in the place of order of removal, would meet the ends of justice.

15. Hence, the writ petition is allowed, and the award passed by the Labour Court is set aside.

16. The order of removal dated 12.3.1993, passed against the petitioner, is set aside, and the respondent is directed to reinstate the petitioner into service, with continuity of service, but not attendant benefits, and without back wages. A punishment of stoppage of two increments, with cumulative effect, shall stand imposed against the petitioner. There shall be no order as to costs.

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