

(2013) 09 AP CK 0050

In the Andhra Pradesh High Court

Case No : Writ Petition No. 4632 of 2007

Chirtana Gandla Venkateswara Rao

APPELLANT

Vs

Depot Manager, APSRTC and Another

RESPONDENT

Date of Decision : 02-09-2013

Acts Referred:

Citation : (2013) 6 ALT 167

Hon'ble Judges : K.G. Shankar, J

Bench : Single Bench

Advocate : S.M. Subhan, for the Appellant; K. Sarala Reddy, SC for APSRTC for Respondent No. 1 and G.P. for Labour, for the Respondent

Final Decision : Allowed

Judgement

K.G. Shankar, J.—The removal of the petitioner from service as a Driver by the first respondent through orders dated 27.04.2004 was challenged by the petitioner before the Industrial Tribunal-cum-Labour Court, Visakhapatnam through I.D. No. 96 of 2004. ID. No. 96 of 2004 was dismissed on 30.11.2006. Questioning the same, this writ of certiorari is laid by the petitioner. The petitioner was the subject of a very grave charge of driving a passenger bus in an alcoholic condition. The petitioner denies the same. The management asserts the same, found him guilty and removed him from service.

2. The petitioner was appointed as a Driver by the A.P.S.R.T.C on 01.08.1985. On 03.01.2004, he was driver of bus bearing registration No. A.P. 11Z 401 travelling from Visakhapatnam to Malkangiri taking over the bus at Seeleru. Contending that the petitioner was in a drunken state, action was initiated against the petitioner. Departmental enquiry was held for the single charge of committing misconduct of driving the bus in an intoxicated condition. The charge was considered to have been proved resulting in the removal of the petitioner from service.

3. The learned counsel for the petitioner contended that the charge had not been

proved against the petitioner. The Conductor and the other driver of the bus deposed that the petitioner, who was one of the drivers of the bus, would appear to be in a drunken state at the relevant time. The case of the conductor and the other driver of the bus is that the bus reached Seeleru much later than normal time as the bus started from Visakhapatnam with about three hours delay. The petitioner was found to be sleeping in the depot at Seeleru. The bus was handed over to the petitioner. The petitioner drove the bus to a distance of 28 K.M. after he took over the bus. Considering that the petitioner was in a drunken state and was not able to drive the bus, the bus was stopped at Chitrakonda for about three hours, the petitioner contended that he was suffering from fever and cold at the time of his taking over the bus and that there was heavy fog with very little visibility leading to the petitioner stopping the bus as the bus was to be manoeuvred in route. He contended that the bus was stopped at Chitrakonda for safety purposes and not because he was in a drunken state. The Conductor endorsed in the statistical return (SR) that the petitioner was suffering from fever at that time.

4. It is the contention of the learned counsel for the petitioner that as the petitioner was suffering from fever and as the visibility was very low on account of fog, the petitioner had stopped the bus; and that the stopping of the bus was not because the petitioner was in a drunken state. Indeed, two witnesses being the Conductor and the other driver of the bus stated that the petitioner was smelling alcohol. Neither of them saw the petitioner consuming alcohol. Neither of them even claimed that the petitioner was in an intoxicated condition albeit it was stated that the petitioner was smelling alcohol. In any event, there was no medical examination of the petitioner as soon as possible after the petitioner was found to be in an alcoholic condition.

5. In similar situation, a learned single Judge of this Court observed in *J. Durgappa Vs. Industrial Tribunal-cum-Labour Court and Another*, that in the absence of any medical evidence, the oral testimony of witnesses cannot be relied on more particularly in the wake of a statement of the immediate superior officer. In the present case, the other driver and the Conductor indeed more or less stated that the petitioner was in a drunken state. However, the petitioner was not subjected to any medical examination or even breath analysis. Added to it, the petitioner has offered reasonable explanation regarding his ill-health and the reason for his stopping the bus at Chitrakonda viz., that there was fog and the petitioner considered it appropriate to stop the bus as a safety measure as it was night time and it was ghat section. Consequently, the explanation offered by the petitioner deserves to be given proper weight.

6. The learned counsel for the first respondent on the other hand contended that while disposing of the appeal filed by the petitioner on the orders of the competent authority, the Divisional Manager referred to a complaint by one of the passengers. In the appeal, the Divisional Manager stated that a Hindi speaking passenger telephonically informed from Jagadapur that the petitioner

was in a drunken condition. Even the name of the passenger was not mentioned in the appeal. Consequently there are no grounds to consider that other than the driver and the conductor, some one else also found the petitioner in a drunken state while he was driving the bus. Added to it, if the driver was in a drunken condition, it would have been impossible for him to drive the vehicle for a distance of 28 K.M. while there was fog and it was night time and the route was a ghat section. Cumulatively, I consider that the second respondent has failed to appreciate the fact that the charge levelled against the petitioner has not been proved and incorrectly found the petitioner guilty of the charge. The appreciation of evidence by the second respondent-Industrial Tribunal is definitely perverse and deserves to be set aside.

7. Where the evidence before the enquiry is not sufficient to find the petitioner guilty, the order of removal in LD. No. 96 of 2004 is set aside. The petitioner is directed to be reinstated into service together with all back wages and attendant benefits and continuity of service. Accordingly, the Writ Petition is allowed. No costs. Miscellaneous petitions pending, if any, in this writ petition shall stand closed.