

(2000) 04 AP CK 0072

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 10375 of 1998 and 16048 of 1999

Depot Manager, APSRTC, Kamareddy, Nizamabad Dist.

APPELLANT

Vs

E. Kista Goud and others

RESPONDENT

Date of Decision : 24-04-2000

Acts Referred:

Industrial Disputes Act, 1947 — Section 11

Citation : (2000) 4 ALD 365 : (2000) 4 ALT 421 : (2000) 86 FLR 686

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : Mrs. Nanda R. Rao, SC for APSRTC, Mr. V. Narsimha Goud and Government Pleader for Labour, for the Appellant;

Judgement

1. WP No.10375 of 1998 is filed by the Andhra Pradesh State Road Transport Corporation (in short "APSRTC") to quash the Award dated 2nd4-1997 passed by the Labour Court, Hyderabad II in ID No.56/1992 (old ID No.220 of 1987), published on 24-1-1998. WP No.16048 of 1999 is filed by the son of the deceased-conductor to implement the directions given in the very same award.

2. The brief facts of the case are, father of the petitioner in WP No.16048 of 1999, who was employed in the APSRTC as conductor on 11-5-1983, (hereinafter called the deceased) was charged-sheeted on 20-12-1984 for eight charges of misconduct committed by him on 8-12-1984, while conducting the bus bearing No.AAZ 576 on route from Domakonda to Bibipet and a departmental enquiry was conducted, wherein he was found guilty of all the charges framed against him. The disciplinary authority, accepting the enquiry officer's report, by the order dated 6-6-1985, imposed punishment of termination from service with immediate effect. Appeal filed by the deceased to the Divisional Manager was rejected by the order dated 9-12-1985. Thereafter, the deceased raised an industrial dispute, which was numbered as ID No.220 of 1987 on the file of the Additional Labour, Court, Hyderabad. In the said ID the procedural aspect of the departmental enquiry was held valid by the order dated 11-8-1988. Thereafter,

the case was transferred to the Labour Court-H, Hyderabad and was renumbered as ID No.56 of 1992. During the pendency of the ID, the deceased died on 28-10-1990, and so his legal representatives, i.e., respondents in WP No. 10376 of 1998, were brought on record. No oral or documentary evidence was adduced on behalf of the deceased in the ID no oral evidence was adduced, but Exs.MI to M20 were marked on behalf of the APSRTC, in the ID. The Labour Court, confining its decision to the proportionality of the punishment imposed on the deceased, by the award dated 2-4-1997, held that the punishment of removal is harsh and disproportionate and, therefore, set aside the same and directed the APSRTC to treat the deceased as in service as on the date of his death i.e., on 28-10-1990 and directed the APSRTC to pay two years last drawn pay of the deceased as compensation to the legal representatives of the deceased, besides providing employment to one of the eligible legal representatives of the deceased. As stated earlier APSRTC filed WP No.10375 of 1998 questioning the award and the son of the deceased filed WP No.16048 of 1999 seeking employment as per the directions of the Labour Court. Since these two matters arise out of the same proceedings, they are being disposed of by a common order.

3. The contention of Smt. Nanda R. Rao learned Standing Counsel for the APSRTC that in the gravity of the charges framed and proved against the deceased, were not kept in view by the Labour Court while setting aside the punishment imposed against the deceased without assigning any reasons. She, placing strong reliance on P. Maheswar Rao Vs. Presiding Officer, Labour Court, Krimnagar and Another, , G.R. Reddy Vs. Presiding Officer, Labour Court, Godavarikhani and Another, , and an unreported judgment in APSRTC v Adabaia Rama Rao, WA No.2009 of 1999, dated 8-12-1999, contended that the order of the Labour Court setting aside the punishment imposed against the deceased for his grave misconduct is liable to be set aside. It is her contention that the Labour Court ordering the APSRTC to provide employment to one of the eligible legal representatives is also not proper and illegal.

4. The contention of Sri V. Narasimha Goud, the learned Counsel for the petitioner in WP No. 16048 of 1999 and the respondents in WP No. 10375 of 1998 is that the decision in G.R. Reddy's case (supra) has no applicant, on to the facts of this case, as the same is explained and distinguished in Divisional Manager, APSRTC and another Vs. E. Raja Reddy and another, , where it is held that u/s 11A of the Industrial Disputes Act the Labour Court has power to go into the validity of the order passed by the disciplinary authority, and award lesser punishment in appropriate cases, as its power is a kin to that of an appellate Court, and that fact escaped the attention of the Full Bench in G.R. Reddy's case (supra). Relying on MPF Andhra Pradesh Dairy Development Corporation Limited v. N. Durga Rao 1988 LAD 1C 833 T. Muthuswamy v. P.O., labour Court, Coimbatore 1991 LLR 837 Scooters India Limited Vs. Labour Court and Others, , The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others, unreported decision of this Court in B. Ramdas (died Per LRs.) v. APSRTC, WP No.2708 of 1999 dated 10-8-1999, he contended that

since the Labour Court, in exercise of the powers conferred on it, had come to a conclusion that the punishment imposed against the deceased was unfair, and disproportionate to the charges framed, set aside the punishment imposed by the order impugned in the writ petition filed by the APSRTC, in the circumstances of the case, is just and proper and so there are no grounds to interfere with the award of the Labour Court and contended that since the APSRTC did not comply with the direction of the Labour Court, son of the deceased had filed WP No.16048 of 1999 seeking a direction to the APSRTC to provide employment to him.

5. The charges framed against the deceased were (1) Violation of the rule issue and start, (2) Failing to issue tickets to 12 passengers after collecting fare at the rate of Rs.2-90 Ps. each, (3) Failing to collect fare and issue tickets to 21 passengers, (4) Failing to collect fare and issue tickets to 31 passengers, (5) Failing to close the tray numbers of all the denominations, (6) Instigating passengers not to give statements at the time of check, (7) Threatening the driver not to attest the statements of the ticketless passengers, (8) Collecting excess amount of each .40 Ps. from passengers in respect of charge No.2. As stated above all the above eight charges were held proved during departmental enquiry, and the Industrial Tribunal, by its order dated 11-8-1988, upheld the departmental enquiry. Therefore, the Labour Court is contended its decision to the question as to whether the punishment imposed on the deceased was proportionate to the charges, held proved.

6. In the order impugned, the Labour Court held as follows "having due regard to the nature of charges and amounts involved, it is made abundantly clearly that the removal punishment is very harsh, and disproportionate". So it is clear that the Labour Court was of the opinion that for the charges held proved. Punishment of removal from service was warranted. Obviously, the Labour Court failed to keep in view charge Nos. 2 and 8, which relate to the deceased collecting fare of Rs.2.90 Ps. from 12 passengers, when the fare is only Rs.2,50 Ps. and failing to issue tickets to those passengers after collecting more than the legally chargeable fare from them and not issuing tickets to passengers. The said fact amounts to misappropriation of the amounts belonging to the APSRTC and playing fraud on passengers, which are charges of grave nature. An employer cannot be expected to retain a dishonest employee who collects more fare than the actual fare, and did not issue tickets and thereby enriched himself at the expense of the employer. In establishments like APSRTC the "management cannot keep a constant watch on all its conductors and all the conductors are supposed to act honestly and not cheat their employer and the travelling public. Fares being what they are, especially in offical route, misappropriation is possible for only small amounts. Not issuing tickets to 12 passengers is not a minor lapse, because ultimately all such small misappropriations when put together result in huge loss to the APSRTC, the employer of the deceased.

7. In FT&R Company's case (supra), relied on by the learned Counsel for the

deceased, it is held that the Section 11A of the Industrial Disputes Act empowers the Labour Court or the Tribunal to reappreciate the evidence and correctness of the domestic enquiry, and also empowers it to interfere with the punishment imposed and alter the same. In *Scooter India's case* (supra), relied on by the learned Counsel for the employee, it is held that even when departmental enquiry was found to be fair and lawful, and its findings are not vitiated by any error, the Tribunal has power to interfere with the quantum of punishment. Similar views were taken by the Supreme Court in *MPFAP Dairy Development Corporation Limited case* (supra) and the Madras High Court in *T. Muthuswamy case* (supra), the above principles are well settled and they would be kept in view while deciding this case.

8. In *B. Ramdass (died per LRs) v. APSRTC* (supra), relied on by the learned Counsel for the deceased the question for decision was whether application for compassionate appointment was made within three years, as required by the rules. In the facts and circumstances of that case, the writ petition was disposed of with a direction to the petitioners therein to make a fresh application within a period of four weeks from the date of that order, and APSRTC was directed to dispose of that application within a period of four weeks thereafter. The said decision has no application to the facts of this case.

9. The facts in this case are identical to the facts in *P. Maheswar Rao's case* (supra) and *Adabla Rama Rao's case* (supra), where the conductors collected fare from passengers and did not issue tickets. Both the Division Benches held that such conduct per se is misconduct. *Adabala Rama Rao's case* (supra) is a case where the conductor, after collecting fare, did not issue tickets to 20 passengers out of 28 passengers. Punishment of dismissal against the conductor was upheld by Division Bench of this Court. As already stated, the deceased did not issue tickets to 12 passengers, after having collected Rs.2.90 Ps. from each of them when the fare was only Rs.2.50 Ps. The order of the Labour Court impugned in the writ petition filed by the APSRTC shows that it was carried away by the statement of two witnesses examined by the deceased before, the enquiry officer during the course of domestic enquiry, who are said to have been present at the time of check, the learned labour Court did not even consider whether there is possibility or probability for their being present at the time of check but went on to observe they had the grace to say that they witnessed that the vehicle with passengers 5 or 6 only and held "having due regard to the nature of the charge and the amount involved that it is made abundantly clear that removal punishment is very much harsh". No reasons whatsoever are given for the said conclusion. From the above observation, it is clear that the Labour Court also was of the opinion that the deceased failed to issue tickets after having received fare. That is the reason why it observed "nature of charge and amount involved" for coming to the conclusion. It would have been a different situation had the Labour Court found that in the circumstances of the case the charge cannot be said to have been proved. This is a case where the deceased failed to issue tickets to 12 passengers, after collecting Rs.2-90 Ps, which is more than

the legally chargeable fare from the passengers. In the circumstances of the case and in view of the nature of the charge held proved, the order of the Labour Court interfering with the punishment imposed by the disciplinary authority is not warranted and is not proper.

10. In the circumstances, the Order of the Labour Court directing the APSRTC to treat the deceased as in service as on the date of his death is set aside. Since the deceased died and since the Labour Court ordered payment of two years last drawn salary (o the legal representatives of the deceased, punishment imposed can be modified as removal from service by payment of two years of the last drawn pay, as a special case, in the circumstances of the case. Since the deceased cannot be said to be in service by the date of his death, that part of the Order of the Labour Court given a direction to the APSRTC to provide opportunity to one of the legal representatives of the deceased is not sustainable. But it is open to the APSRTC to consider the case of petitioner in WP No. 16048 of 1999 for appointment on compassionate grounds as per its regulations and the scheme relating to appointment on compassionate grounds which are in force.

11. With the above directions, both the writ petitions are disposed of. No costs.