
(2010) 12 AP CK 0128
In the Andhra Pradesh High Court
Case No : Writ Petition No. 2790 of 2002

Mohammed Shareef

APPELLANT

Vs

The Depot Manager, A.P.S.R.T.C. and Another

RESPONDENT

Date of Decision : 20-12-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A, 2(A)(2)

Citation : (2010) 12 AP CK 0128

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : G. Ravi Mohan, for the Appellant; Pottigari Sreedhar Reddy, SC for Corporation, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—The Petitioner was employed as a driver in Adilabad Depot of A.P.S.R.T.C. On 17.03.1999, he was assigned with duty of driving night halt service from Adilabad to Karanji. The bus was to leave the depot at 20.30 hours. The passengers of the bus complained that the Petitioner was in a drunken condition and their safety is at stake. The Security Guard of the depot informed this to the on duty Controller and the Chief Traffic Inspector. They came to the spot and on finding that the Petitioner was in a drunken condition, arranged a substitute driver by name Chander. Thereafter, the Depot Manager, the first Respondent herein, issued a charge sheet, dated 25.03.1999, framing four charges. The first charge related to the state of affairs that was found at the depot on 17.03.1999. The other charges made reference to the previous conduct of the Petitioner at various points of time and the punishments imposed therein. The Petitioner submitted his explanation on 31.03.1999 denying the charges. The domestic enquiry was conducted and taking into account the report submitted by the Enquiry Officer, the Depot Manager passed an order dated 02.07.1999, directing removal of the Petitioner from service.

2. After exhausting departmental remedies, the Petitioner filed I.D. No. 34 of

2000 before the Labour Court u/s 2A(2) of the Industrial Disputes Act, 1947 {"the Act" for brevity}. The Labour Court passed award on 21.08.2001 dismissing the I.D. Hence, this Writ Petition.

3. Sri G. Ravi Mohan, learned Counsel for the Petitioner, submits that the award is bereft of any reasons and hardly any discussion was undertaken as to the proof of the charges against the Petitioner. He further contends that even where the charges are held to be proved, the Labour Court has to exercise its discretion u/s 11A of the Act and since such an exercise was not undertaken, in the present case, the award is liable to be set aside and the order of removal, be quashed.

4. Sri Pottigari Sreedhar Reddy, learned Standing Counsel for the Corporation, submits that the charges against the Petitioner are serious in nature posing threat, not only to the inmates of the bus, but also to the users of the road. He contends that the Chief Traffic Inspector, the Controller, the substitute driver etc., were examined at the domestic enquiry and nothing was elicited from them to be contrary. He submits that the Petitioner was found to be in intoxicated condition when attempts were made to subject him to medical examination, he escaped. He places reliance upon the judgment in P.F. Khan E. 406046 Vs. Depot Manager, A.P.S.R.T.C. and Another,

5. The charges framed against the Petitioner are as under.

For having under influence of Alcoholic drink while on duty on 17.03.1999 while performing 16.00 hours Karanji N/o. service, as a result you have been withdrawn from the service, and another driver by name Sri A.J. Chander, E.303225 was arranged, thus you have tarnished the image of the Corporation, besides inconvenience to the travelling public, which constitute mis-conduct in terms of Reg. No. 28 (ix) (a) of APSRTC, Employees "Cond" Reg.1963".

For having involved repeatedly under influence of Alcoholic drink cases while on duty and thereby you have been placed under suspension for 5 times out of which on one occasion involved in fatal accident case i.e., while driving the vehicle under influence of liquor. Thus you have kept up bad record and committed the same irregularities, which constitute mis-conduct in terms of Reg. No. 28 (xix) of APSRTC "Cond" Regulations, 1963".

For having involved in several cases like accident on Four occasions, damages to buses on 3 occasions, insubordinations to superiors on 3 occasions, absent to duties on 3 occasions and also you have been imposed penalty for cancellations of services/K Ms on two occasions since 1978 to till 1998, thus having kept up bad record, which constitute mis-conduct in terms of Reg. No. 28 (xix) of APSRTC Employees "Cond" Regulations, 1963".

For having not changed your attitude even after giving chances on several occasions and even after under taking given by you on 02.06.1997 stating that you will not take Alcohol. Thus you have not kept your own promise and consumed alcohol while on duty on 17.07.1999, which constitute mis-conduct in

terms of Reg. No. 28 (xxxii) of APSRTC Employees "Cond" Regulations, 1963.

6. A perusal of the charges reveals a very disturbing state of affairs as to the manner in which the Petitioner was conducting himself. The Petitioner submitted his explanation denying the charges. Not satisfied with the explanation, the Respondent appointed Enquiry Officer. In the domestic enquiry, all the charges were held proved. Taking the report into account, the Respondent imposed punishment of removal from service. The order of removal in turn was challenged before the Labour Court.

7. The Labour Court did not find any serious defect in the domestic enquiry. Hence, there was no need for the parties to adduce independent oral evidence before it. For all practical purposes, the evidence that formed part in the enquiry proceedings became the evidence, for scrutiny by the Labour Court. It is in this context, that the statement recorded during the course of domestic enquiry and the report thereon, were filed into the Court.

8. The important evidence that had a bearing upon the disciplinary proceedings is that of the Chief Inspector of Traffic, Adilabad, who was examined as M.W.2. He is the person, who was directly on the spot and completely in command of the situation. It is he, who found the Petitioner in a drunken condition and made alternative arrangements. He stated that when efforts were being made to send the Petitioner to medical examination, he just escaped from the spot. The relevant portion of his evidence reads as under.

Some of the passengers of the service had reported to the Security branch that the bus driver of Karanji service is not in a position to operate the service due to intoxicated condition by consuming alcoholic drinks. Sri Bheem Rao, S.G. rushed to the bus station and intimated the information to the on duty controller as well as to me and we stopped the bus and found Sri Md. Shareef, E.73800 is not in a position to operate the service and we are getting odour smell of alcohol, taking the safety of the passengers into consideration we arranged to another driver Sri A.J. Chander, E.303225 and operated the service. For the medical check-up we prepared to go the driver escaped from the spot.

9. It is important to note that this witness was not subjected to any cross examination. The other witnesses, namely the Controller and the substitute driver have also spoken about the entire incident, in broad terms. As long as the statement of M.W.2 was not contradicted, the inescapable conclusion is that the first charge against the Petitioner was proved. The other charges are matters of record. The Petitioner did not even deny that he was imposed punishment on earlier occasions for his acts of misconduct.

10. This Court in P.F. Khan E. 406046 Vs. Depot Manager, A.P.S.R.T.C. and Another, held that the Labour Court is under obligation to examine the evidence that formed part of the enquiry record, particularly when no independent evidence is adduced before it. It is no doubt true that in the instant case, the discussion on the evidence is not that elaborate, as one expects. The fact,

however, remains that the important documents and statements of witnesses were referred to, and a finding was recorded to the effect that the plea taken by the Petitioner is self-contradictory. Though it would have been better for the Labour Court to undertake elaborate discussion in the facts of the case, with reference to evidence, it cannot be said that serious infirmity has crept into the proceedings.

11. The first charge itself is grave may be, if proved. The statement of M.W.2 has clinchingly proved the charge, since nothing was elicited from him, to the contrary. The drunkenness of a driver of the bus poses threat, not only to the safety of the passengers and the vehicle, but also to every possible user of the road on which the bus is to ply. Further, it is not an occasional misconduct on the part of the Petitioner. A perusal of charges 2, 3 and 4 discloses that he has caused fatal accident on one occasion and was responsible for damage to the bus on several occasions. All these were under influence of intoxicants. Such a person can not at all be permitted to remain in service of an organization that is expected to cater the needs of travelling public. This Court does not find any serious infirmity in the impugned award.

12. The Writ Petition is dismissed. There shall be no order as to costs.