
(2015) 01 AP CK 0038

In the Andhra Pradesh High Court

Case No : Writ Petition No. 22323 of 2012

Regional Manager, A.P.S.R.T.C.

APPELLANT

Vs

Regional Secretary, A.P.S.R.T.C. National Mazdoor Union

RESPONDENT

Date of Decision : 23-01-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 3 ALT 35 : (2015) 146 FLR 907

Hon'ble Judges : P.V. Sanjay Kumar, J

Bench : Single Bench

Advocate : A. Rama Reddy, for the Appellant; S.M. Subhan, Advocates for the Respondent

Final Decision : Dismissed

Judgement

P.V. Sanjay Kumar, J.—By way of this writ petition, the Andhra Pradesh State Road Transport Corporation (APSRTC) calls in question the Award dated 07.03.2012 passed by the Industrial Tribunal-cum-Labour Court, Anantapur, in I.D. No. 45 of 2011. Thereby, the Tribunal directed restoration of the past service of the workman, P.M. Gopal, Driver (hereinafter, referred to as "the workman"), on notional basis. He was also held entitled to monetary benefits from the date of the Award. Taking note of the fact that the workman had been reinstated in service, this Court, by interim order dated 24.07.2012, granted suspension of the impugned Award in respect of the reliefs granted by the Tribunal.

2. Though the matter was listed for hearing before this Court on the vacate stay petition filed by the respondent Union espousing the cause of the workman, the writ petition itself is taken up as the issue raised is stated to be covered by earlier decisions of this Court.

3. The admitted facts of the case are that the workman was alleged to have committed certain cash and ticket irregularities while conducting the bus service from Vellore to Kurnool on 14.10.2007. Upon due enquiry, the APSRTC removed

the workman from service. Aggrieved thereby, he filed an appeal before the Divisional Manager, APSRTC, Kurnool, but the same was rejected. His Review Petition before the Regional Manager, APSRTC, Kurnool, was however allowed and he was directed to be reinstated as a fresh casual Driver under proceedings dated 08.12.2008. The respondent Union however raised a dispute with regard to the fresh appointment of the workman and the same was referred to the Industrial Tribunal-cum-Labour Court, Anantapur. The reference was as to whether the respondent union was justified in demanding revocation of the punishment of appointment as a fresh casual Driver. By the impugned Award, the Industrial Tribunal opined that such fresh appointment was unjustified and accordingly set it aside. The APSRTC was directed to restore the workman's past service on notional basis without any punishment and he was entitled to monetary benefits from the date of the Award.

4. Regulation 8(1) of the APSRTC Employees (Classification, Control and Appeal) Regulations, 1967 (for brevity, "the Regulations"), sets out the penalties that may be imposed on employees. Notably, no punishment of appointment afresh is prescribed thereunder. Regulation 8(1)(vii) provides for the punishment of reduction to a lower rank in the seniority list or to a lower post or time-scale or to a lower stage in a timescale. However, this provision cannot be interpreted to include within its ambit the punishment of appointment afresh. In any event, the issue is no longer *res Integra*. As long back as in the year 1988, this Court in *S.B. Saheb v. APSRTC* (1) 1988 (2) ALT 66 (NRC) held that in exercise of power under Regulation 8(1)(vii) of the Regulations, the Disciplinary Authority cannot impose the punishment of a new appointment.

5. Again, in *P. Habeeb Saheb Vs. A.P. State Road Transport Corporation and Others*, (1995) 1 ALT 553 : (1995) 2 LLJ 290 , a Division Bench of this Court dealt with an order passed by the APSRTC's Reviewing Authority confirming the punishment of removal from service but directing appointment afresh on compassionate ground's. The Division Bench held that the order of removal passed by the Depot Manager which was confirmed by the Appellate Authority was not modified by the Reviewing Authority, but while confirming the same, the said Authority had taken a lenient view in its discretion and directed appointment afresh. The Bench therefore opined that the Reviewing Authority's order consisted of two parts, the first relating to confirmation of the order of removal and the second relating to appointment afresh on compassionate considerations. The Bench therefore concluded that so long as the order of removal stood, it could not be said that the Reviewing Authority had either modified the order of punishment or in any way interfered with it.

6. In *Sambasiva Rao G. Vs. A.P.S.R.T.C. and Others*, (1997) 1 ALT 219 a learned Judge of this Court took a different view. The learned Judge was of the opinion that when the Disciplinary Authority applied its mind and came to the conclusion that a particular penalty, not enumerated in Regulation 8 of the Regulations, was an adequate and reasonable penalty, the discretionary power vested in such

authority would be violated if it was not permitted to impose the same. The learned Judge therefore held that it would be open to the Disciplinary Authority to impose not only a penalty specified in Regulation 8(1) of the Regulations but also any other penalty which it thinks adequate, proper and reasonable, provided that such penalty fell within the limits of the minimum and maximum penalties enumerated under the said Regulation.

7. The above decision fell for consideration before another learned Judge of this Court in *K.C. Narayana Vs. Managing Director, APSRTC and Others*, (2007) 5 ALD 416 . This was also a case where a conductor in the APSRTC had been removed from service but the Reviewing Authority directed his appointment as a conductor afresh. The learned Judge disagreed with the principle that the Disciplinary Authority could impose even a non-specified penalty, provided it fell within the minimum and maximum penalties specified in the Regulation, and observed that the statutory authority must necessarily exercise its power in accordance with the statute and the rules made thereunder. The learned Judge also distinguished the case before him on the ground that in *Sambasiva Rao G. Vs. A.P.S.R.T.C. and Others*, (1997) 1 ALT 219 the learned Judge had found that the punishment imposed fell within the enumerated punishments under Regulation 8, being mere reduction in the scale of pay, whereas the punishment of appointment afresh could not be categorized as falling within the ambit of the enumerated penalties, The learned Judge accordingly held that the ratio in *Sambasiva Rao G. Vs. A.P.S.R.T.C. and Others*, (1997) 1 ALT 219 had no application to a case where the punishment imposed was that of appointment afresh.

8. The learned Judge also referred to the decision of the Supreme Court in *State Bank of India and others Vs. T.J. Paul*, AIR 1999 SC 1994 : (1999) 82 FLR 497 : (1999) 3 JT 385 : (1999) 2 LLJ 514 : (1999) 3 SCALE 96 : (1999) 4 SCC 759 : (1999) SCC(L&S) 922 : (1999) 2 SCR 1060 : (1999) 2 UJ 1101 : (1999) AIRSCW 1687 : (1999) 5 Supreme 1 , which held to the effect that the Disciplinary Authority is not empowered to impose a punishment which is not enumerated in the penalties prescribed by the statutory rules, and observed that in the light of the aforesaid principle, the earlier judgments of this Court taking a contrary view were no longer good law. The learned Judge therefore held that the order of the Reviewing Authority directing appointment afresh as a conductor necessarily had to be set aside.

9. The proceedings dated 08.12.2008 of the Regional Manager, APSR TC, Kurnool Region, the Reviewing Authority, have to be examined in the light of the aforesaid legal position. A copy of the said proceedings is placed on record by the learned Standing Counsel for the APSRTC and perusal thereof reflects that the Authority was of the opinion that the workman deserved a little consideration in the mode of punishment because of his left-over service. In effect, the Reviewing Authority modified the order of punishment. This is therefore not a case where the order of removal was confirmed and a fresh appointment was

permitted on compassionate considerations as in P. Habib Saheb Vs. A.P. State Road Transport Corporation and Others, (1995) 1 ALT 553 : (1995) 2 LLJ 290 . The proceedings dated 08.12.2008 therefore did not consist of two parts and palpably amounted to a modification of the punishment imposed by the Disciplinary Authority. This is amply demonstrated by the following observations of the Reviewing Authority in his conclusion:

"...I am inclined to give an opportunity to the Casual Driver to serve the Corporation with dedication and commitment and the orders are modified as follows..."

10. In that view of the matter, the ratio laid down by this Court in K.C. Narayana Vs. Managing Director, APSRTC and Others, (2007) 5 ALD 416 would squarely apply on all fours to the case on hand. The proceedings dated 08.12.2008 passed by the Reviewing Authority directing reinstatement of the workman as a fresh Casual Driver, i.e. an appointment afresh, falls foul of the statutory Regulations and more particularly Regulation 8(1) thereof and the law laid down by this Court. The impugned Award holding to that effect therefore does not warrant interference by this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution. The writ petition is devoid of merit and is accordingly dismissed. The interim order dated 24.07.2012 shall stand vacated. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.