
(2001) 08 AP CK 0011

In the Andhra Pradesh High Court

Case No : Writ Petition No. 1521 of 1993

The Depot Manager, APSRTC

APPELLANT

Vs

The Presiding Officer, Labour Court

RESPONDENT

Date of Decision : 01-08-2001

Acts Referred:

Andhra Pradesh State Road Transport Corporation Employees (Conduct) Regulations, 1963 — Regulation 28
Road Transport Corporations Act, 1950 — Section 45(1)

Citation : (2002) 1 LLJ 512

Hon'ble Judges : S.B. Sinha, C.J;V.V.S. Rao, J

Bench : Division Bench

Advocate : Nanda Rao, for the Appellant; Y. Narasimha Goud, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, C.J.—The question which arises for consideration is as to whether the charges levelled against the 2nd respondent-workman herein were in consonance with the Andhra Pradesh State Road Transport Corporation Employees (Conduct) Regulations, 1963.

2. Respondent No.2 Was appointed as driver Grade III on 30.11.1985 on daily wage basis and his services were regularized w.e.f. 1.7.1986 and he was attached to Musheerabad depot. On the ground that he had produced a false School Transfer Certificate, he was placed under suspension on 14.11.1986 and a disciplinary enquiry was initiated on the following charges

1. For having produced bogus and fake certificate ie School Transfer certificate for securing employment in APSRTC.

2. For having cheated the Corporation for securing employment duly producing Bogus Certificate.

3. The enquiry officer found him guilty of the above charges and a show cause notice of removal was issued to him on 7.3.1987 to submit his explanation. The

explanation of the workman having not been found satisfactory, he was removed from service on 25.5.1987. The workman raised an industrial dispute on 2.1.1988 before the Labour Court-I, Hyderabad and the same was pending adjudication. In the meantime, the appeal preferred by the workman against the order of removal was disposed of on 25.6.1991 modifying the punishment to the effect that he should be appointed afresh as a driver. The workman reported for duty on 15.7.1991 without prejudice to his rights and contentions in I.D. No. 4 of 1988, but no proceedings were issued. On 4.12.1991 the Labour Court passed an award holding that the charges were not proved and that no fake certificate of transfer from the school was produced and the certificate produced by the 2nd respondent was genuine. Accordingly, the Labour Court directed:

In the result the punishment imposed by the respondent is set aside and the petitioner should be deemed to be in continuity of service and the respondent is directed to reinstate him if he was already reinstated, with continuity of service, 75% of the back wages and all other attendant benefits. On 18.2.1993, the workman was reinstated into service subject to the result of the W.P. to be filed against the award

Challenging the award, the Corporation has filed the present writ petition on 12.2.1993.

4. A Division bench of this Court by order dated 7.4.1997 while holding that there was no illegality or perversity in the said award, directed that the workman be reinstated into service without continuity of service and without back wages. Aggrieved by the same, the workman filed Review W.P.M.P. No. 38884 of 1998 whereupon by order dated 4.12.1998 it was clarified that the respondent shall be reinstated with continuity of service along with other attendant benefits, but without backwages holding that a typographical error had crept in. As against the said order, the workman preferred a SLP before the Apex Court and the Apex Court by order dated 20.9.2000 in Civil Appeal Nos.4909-4910 of 2000 while setting aside the order of this Court remanded the matter back to this Court on the ground that no reason has been assigned in denying backwages which were awarded by the Labour Court.

5. From the events, as noticed hereinbefore, it is clear that this Court has upheld the findings of the labour Court to the effect that there was no illegality or perversity in the award. The only question, which fell for consideration before the Apex Court was as to whether this Court having held that there is no illegality or perversity in impugned award could have directed that no backwages be paid.

6. Mrs. Nanda R. Rao, the learned counsel appearing on behalf of the petitioner, however, despite the aforementioned finding of this Court while passing the orders dated 7.4.1997 and 4.12.1998, argued the matter on merits and submitted that as the respondent had obtained employment by committing fraud, the Labour Court ought not to have held that the charges have not been proved. She also submitted that the workman is also guilty of negligence. The

learned counsel would contend that the charges against the workman come within the purview of Regulation 28(xxii) of the aforesaid regulations.

7. The learned counsel, however, to a query from the Bench, fairly submitted that for the purpose of obtaining the job of a driver no educational qualification is necessary.

8. The regulations have been framed by the APSRTC in terms of Section 45(1) of the Road Transport Corporation Act, 1950 (Central Act 64 of 1950). Regulation 28 enumerates the acts or omissions which would be treated as "misconduct. Clause (xxii) thereof reads thus:

Failure on the part of an employee to give full and correct information regard his previous history and record or regarding any matter connected with the Corporation in connection with any offence committed by himself or any other person, within his knowledge, when demanded by a superior officer.

9. As misconduct attracts penal provision, the same should be strictly construed.

10. From the above, it is clear that failure on the part of an employee to give full and correct information regarding his previous history and record, which was within his knowledge when demanded by a superior officer, is misconduct. Likewise, the failure on the part of an employee to give full and correct information regarding any matter connected with the Corporation in connection with any offence committed by himself or any other person, within his knowledge, when demanded by a superior officer also constitute misconduct.

11. In this case, we are not concerned with the latter part of misconduct as the matter was not in connection with any offence committed by the employee or any person, which was within his knowledge. If any misconduct is attracted, it is only the earlier part of the regulation i.e the failure, if any, on the part of the workman to give information regarding his previous history and record. However, it may be noticed herein that the workman, for the purpose of obtaining employment as driver in the Corporation, was not required to file any certificate issued by the School.

12. There cannot, therefore, be any doubt whatsoever that the charges framed against the respondent do not come within the purview of Clause (xxii) of Regulation 28 of the aforementioned regulations.

13. The learned counsel would contend that a misrepresentation had been made with regard to his date of birth. The learned Labour Court has clearly arrived at a finding of fact that the transfer certificate produced by the respondent was a genuine document and not a fake and fabricated one. The Headmaster of the School filed an affidavit whereupon the enquiry officer has placed reliance. Further more, the enquiry officer himself had arrived at a finding of fact that some mistake had been committed in the issuance of the transfer certificate, which, presumably, in relation to his date of birth. The fact that the date of birth given by the workman did not tally with the said certificate would not by itself

constitute a misconduct, inasmuch as, as rightly been held by the Labour Court, the said representation of the workman was to his disadvantage.

14. A misrepresentation may be misconduct provided the employee is to gain some advantage thereby. Where such representation acts contrary to his own interest, the same cannot, in our considered view, be treated as misconduct so as to attract the penal provision. By reason of the wrong mention of his date of birth in his application, as rightly held by the labour Court, the workman himself would suffer as thereby he would have to retire five years before his actual date of superannuation as per school leaving certificate. It is not the case of the Corporation that by reason of production of the said certificate any loss had occurred nor any case has been made that he cheated the corporation.

15. We may now deal with the decisions cited at the bar.

16. In *FRAZER LTD v MAZDOOR CONGRESS*, 1996 SCC 1286 the Apex Court has held that the question, as to whether an employer had acted with undue haste while discharging or dismissing an employee, being a question of fact the determination thereof would depend upon the facts and circumstances of each case and no general principles can be laid down therefor. It was held that each case will have to be judged on its own merits.

17. The High Court in exercise of its power of judicial review can, thus, always interfere when there exists malice in law.

18. In *Life Insurance Corporation of India and Others Vs. Jyotish Chandra Biswas*, the Apex Court did not set aside the Judgment of the High Court on merits. It merely held that the High Court ought not to have interfered in the appeal filed against the order of the learned single Judge having regard to the fact that the writ petition was filed after a lapse of six years without any explanation for the inordinate delay, Despite the same, in that case, the L.I.C. was directed to pay costs quantified at Rs. 25,000/-.

19. In *SK. AHMED v LABOUR COURT, GUNTUR* 2000 L.I.C. 1579, this Court held that the workman cannot be permitted to raise a new plea for first time in the writ petition. It was also held that there was no bar for the disciplinary authority to initiate disciplinary proceedings on same set of facts on which he was acquitted by the Criminal Court.

20. There is no dispute with regard to the aforementioned propositions of law.

21. For the reasons aforesaid, we find that the writ petition is devoid of any merit and it is accordingly dismissed with costs. The order of the Labour Court awarding 75% of the backwages with all other attendant benefits and continuity of service is, therefore, not liable to be interfered with. Advocate's fee assessed at Rs. 2,000/- (Rupees two thousand).