

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

WRIT PETITION No.2498 of 2013

Between:

S.R. Goud

... Petitioner

And

1. The Regional Manager, APSRTC
Mahaboobnagar Region, Mahaboobnagar.
2. The Depot Manager, APSRTC.
Mahaboobnagar Bus Depot,
Mahaboobnagar

... Respondents

JUDGMENT PRONOUNCED ON: 05.07.2022

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : Yes/no
may be allowed to see the Judgment?
2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : Yes/no
3. Whether Their Lordships wish to
see the fair copy of the Judgment? : Yes/no

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

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2. The Depot Manager, APSRTC.
Mahaboobnagar Bus Depot,
Mahaboobnagar

.....Respondents

< Gist:

> Head Note:

! Counsel for the appellant: Mr. P.Venkateshwar Rao

^Counsel for the respondents: Standing counsel for RTC

? Cases Referred:

¹ 2000 (5) ALT 7

² AP HC WP No.23115 of 2008.

HON'BLE MRS JUSTICE SUREPALLI NANDA**WRIT PETITION No.2498 of 2013****ORDER:**

1. Heard the counsel for the petitioner. Heard the counsel for the respondents.

2. The petitioner filed the Writ Petition seeking writ of Mandamus declaring the action of the respondent No.1 in imposing the modified punishment of reduction of petitioner's pay by two incremental stages with cumulative effect is bad, arbitrary, illegal, unjust, unreasonable by setting aside the proceeding No.PA/19(19)/2012-RM:MBNR, dated 08.01.2013 in so far as the remaining punishment only and consequently direct the respondents to allow the increments to the petitioner as usual.

2(i) The case of the petitioner in brief is that he has been appointed as Conductor on 02.06.1977 in the Corporation of the respondents and he has been promoted as Assistant Depot Clerk/Controller on 17.06.1996 and thereafter on 12.07.2011 he has been further promoted to the post of Depot Clerk. Since the date of petitioner's appointment and till his retirement

petitioner discharged his duties in APSRTC, Mahaboobnagar Region and retired from service on 31.08.2013. In the petitioners entire service there is no remark at all in petitioner's record.

2(ii). The petitioner further submits that he was issued with a charge sheet dated 07.01.2012, alleging that 14 ticket blocks of Rs.100/- denomination were misplaced for not taking of precautionary measures and petitioner offered explanation stating that about 10 to 15 employees will work around the almarah and those ticket blocks were not used any where and a police complaint was also lodged. But without looking into the said explanation and without examining any witnesses a formal enquiry was conducted, the respondents authorities issued office order dated 26.03.2012 by reverting the petitioner from Depot Clerk to ADC/ Controller. The petitioner preferred an appeal against the said reversion orders before the Deputy Chief Traffic Manager, Mahaboobnagar Region, but the same was rejected vide proceedings dated 25.08.2012. The petitioner filed a review petition before the 1st respondent and the 1st respondent issued proceedings dated 08.01.2013 by setting aside the office order dated 26.03.2012 and restored petitioner's

previous post of Depot Clerk and further modified the punishment for reduction of petitioner's pay by two incremental stages with cumulative effect. As such the remaining punishment is under challenge in the present writ petition. The petitioner further submits that his retirement date is 31.08.2013 and prayed to allow the writ petition.

3. This Court on 29.04.2013 was pleased to grant interim direction vide WP MP No.3040 of 2013 directing the respondents not to effect the modified/remaining punishment of reduction of petitioner's pay by two incremental stages with cumulative effect by suspending the proceeding No.PA/19(19)/2012-RM:MBNR, dated 08.01.2013 of the 1st respondent herein for the extent of the said punishment.

4. The main contentions put-forth by the counsel for the petitioner are as follows:

(I) The learned counsel for the petitioner placed reliance on the judgment of the Court reported in **Ch.P. Reddy Vs. APSRTC and Another** ¹ dated 24.07.2000 and contended that

¹ 2000 (5) ALT 7

under identical case of a charge of loosing the tickets. This Court held as follows :

“Imposition of penalty of payment of aggregate amount consisting of value of tickets stolen, cost of printing of tickets and cost of tickets tray lost – Not legal – Misuse of tickets lost not charged in the charge – sheet – Employee cannot be punished for charge not mentioned – Penalty be imposed only for actual loss sustained due to loss of tickets i.e., cost of printing and cost of tray and not the value of tickets lost under the C.C.A. Regulations – Impugned order quashed with direction to recover only the amount lost because of negligence of the petitioner”

(II) The counsel for the petitioner placed reliance on the order of this Court between **S. Niranjan Vs. APSRTC and 2 others²**, dated 13.12.2010 to the extent referred to below and urged that the punishment imposed was disproportionate to the misconduct indulged by the writ petitioner.

“Relying upon Clause 40.07 off the Operation Manual, this court in the aforestated decision held that the face value of the tickets lost is not liable to be recovered from the person responsible and only the cost of paper and the printing charges are liable to be recovered, apart from the

² AP HC WP No.23115 of 2008.

other action that may be taken vide Clause 40.06 of the Operation Manual. Clause 40.06 of the Operation Manual provides that disciplinary action can be taken as per the CCA Regulations.

In the present case, no disciplinary action under Clause 40.06 of the Operation Manual was initiated against the petitioner and he was permitted to retire from service. The recovery sought to be effected however is towards the cost of loss sustained by the APSRTC.

Sri Shinde, learned counsel representing Sri C. Sunil Kumar Reddy, learned standing counsel for the APSRTC, fairly conceded that in view of the aforestated Judgment and the relevant Clause in the Operation Manual, the APSRTC was only entitled to recover the cost of the paper and the printing charges”.

(III) The counsel for the petitioner also brings to the notice of this Court that the petitioner retired from service on 29.04.2013 itself and therefore, at this stage no interference is warranted by this Court.

5. The counsel for the respondents on the other hand contends that the Judgments relied upon by the counsel for the petitioner have no relevance to the facts of the present case and further contends that charge leveled against the petitioner was

held proved beyond reasonable doubt in the detailed enquiry and further that the action taken by the Depot Manager, Mahaboobnagar in the present case is proper, justified. However, a lenient view is taken purely on the humanitarian grounds and the reversal order passed by the Mahaboobnagar vide reference 1st cited is set aside and restored the petitioner as DC/TI.III, subject to the following conditions.

“The charge leveled against the petitioner was held proved beyond any reasonable doubt in the detailed enquiry. The action taken by the Depot Manager, Mahabubnagar, in this case is proper and justified. However a lenient view is taken purely on humanitarian grounds and the reversion orders passed by the Depot manager, Mahabubnagar vide reference 1st cited, is set aside and restored the petitioner as DC/TI.III, subject to the following conditions”.

6. Perused the material on record, the counter affidavit and also the additional counter affidavit has been filed by the respondents.

7. The charge leveled against the petitioner is as follows:

“For having failed to take precautionary measures i.e. while keeping the ticket blocks in the Almarah with lock and key, resulting in loss of above (14) tickets blocks of

Rs.100/- denomination worth of Rs.1,40,000/- from the Earnings Section of MBNR depot on 06.12.2011, which constitutes mis-conduct under Reg.28 (v), (ix,a) & (xxxii) of APSRTC Employees (Conduct) Regulation 1963, which reads as under:

28. General Provisions:

28 (v) loss of printed tickets, and loss of other forms:

28 (ix, a) gross negligence resulting in or likely to result in serious loss to the Corporation or inconvenience to the public or both:

28 (XXXII) violating any other specific rule or instructions of the Corporation in force.

8. Even as borne on record, it is not the case of the respondents that the petitioner had misused tickets and defrauded the Corporation. It is the case of the Corporation that the petitioner failed to take precautionary steps by safe custody of the ticket blocks while he was working as Depot Clerk, Mahaboobnagar, due to his gross negligence tickets blocks worth Rs.1,40,000/- of Rs.100/- denomination had been lost at Mahaboobnagar on 06.12.2011. The petitioner in fact in his review appeal has stated that he was working as ADC at NRPT depot from 28.03.2012, and while he was working as DC(E) at MBNR depot the DM, MBNR has alleged that on

06.12.2012 ticket blocks E.14 were stolen from the depot. On this immediately he informed the matter to AM (T) Mahaboobnagar depot and also lodged a complaint at 2 town police station, Mahaboobnagar. But the DM, Mahaboobnagar has placed him under suspension based on the report of AM (T)/ Mahaboobnagar without conducting any enquiry into the matter. It is also stated in the review appeal that the petitioner was appointed in the organization on 02.06.1977 and got promotion as ADC during the year 17.06.2006 and he has rendered 35 years of service in the corporation without any remarks and with entire satisfaction of his superiors and he is having 12 months time for his superannuation as on 06.12.2012 and the present incident took place for which he was not responsible since it was a case of theft.

9. Perused the counter affidavit and also the additional counter affidavit filed by the respondents, this Court opines that in the present case the petitioner did not commit any fraud nor misuse of the tickets is alleged against the petitioner and it is due to a theft which took place the ticket blocks had been lost at Mahaboobnagar depot on 06.12.2011 and therefore there

is no justification by imposing the punishment of reduction of present pay by two incremental stages with future installments permanently and further the petitioner retired from service on 29.04.2013 itself.

10. This Court opines that the disciplinary authority failed to take into account the past record of the petitioner as it has been claimed by the petitioner that he had unblemished and spotless career of service which has not been categorically denied by the respondents in their counter affidavit, more so when there is a categorical statement by the petitioner in the writ petition that he had no remarks at all against him all through the carrier and more so when he specifically stated in his review appeal that he has rendered 35 years of service in the corporation without any remarks and with entire satisfaction of his superiors. Undoubtedly, the above factors are relevant to be taken into account while awarding punishment which has not been taken into account in the present case.

11. It is also not stipulated in the charge leveled against the petitioner that the petitioner mis-used the lost tickets, nor any reference is made in the counter affidavit about the complaint

made by the petitioner to the Two Town Police Station, Mahaboobnagar about the theft of Rs.100/- denomination ticket Block E14 which took place on 06.12.2012, at Narayanapet Depot. The disciplinary authority failed to take into account the explanation of the petitioner stating that about 10 to 15 employees work around the almaraiyah and those ticket blocks were not used anywhere and a police complaint was lodged, and therefore, it cannot be said that the petitioner is responsible for the loss caused to the corporation. There is no categorical statement in the counter affidavit filed by the respondents denying the above. In view of the fact that charge framed against the petitioner does not indicate misuse of tickets by the petitioner, there is no justification by the respondents in awarding the impugned punishment against the petitioner, the said punishment is therefore, unwarranted and hence, the writ petition is liable to be allowed. The misconduct as alleged under Regulation 28(v)(ixa) and (XXXII) of APSRTC Employees Conduct Regulation, 1963, cannot be held to be proved.

12. Accordingly, the Writ Petition is allowed as prayed for. No order as to costs.

13. Miscellaneous petitions, if any, pending in this writ petition, shall stand dismissed.

MRS JUSTICE SUREPALLI NANDA

05th July, 2022

Note: L.R. copy to be marked/not

b/o

skj