IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

TUESDAY, THE TWENTY FIRST DAY OF FEBRUARY
TWO THOUSAND AND TWELVE
PRESENT

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

WRIT PETITION No.1700 of 1998

BETWEEN

M. Yellaiah.

... PETITIONER

AND

The Managing Director, APSRTC, Musheerabad, Hyderabad and two others.

...RESPONDENTS

Counsel for the Petitioner: MR. V. NARASIMHA GOUD

Counsel for the Respondent: MR. H. VENUGOPAL

The Court made the following:

ORDER:

Heard Mr. V. Narasimha Goud, learned counsel for the petitioner and Mr. H. Venugopal, learned standing counsel for the respondents.

2. The issue arising in this writ petition lies in a very narrow compass. Petitioner was working as driver in the respondent – corporation when he was arrested in Cr.No.92/95-96 on the allegation that on 24.12.1995 when the Excise officials checked the bus, they found bottles of Indian made

Foreign Liquor (IMFL) from the custody of the petitioner and he was accordingly charged under Section 8(b) of the A.P. Prohibition and Excise Act. However, the fact of his arrest and involvement in the aforesaid crime was not disclosed by the petitioner to the respondent – corporation, which gave rise to suspension of the petitioner from service on 30.12.1995. Petitioner was also charged with another offence of remaining absent from duty from 26.12.1995 till 30.12.1995 without any intimation or prior sanction. The enquiry was conducted into both the charges and after consideration of the detailed enquiry, the Depot Manager under his order dated 22.08.1996 imposed punishment of removal from service against the petitioner. Thereafter, petitioner preferred an appeal against the said order before the Deputy Chief Traffic Manager and under the impugned order dated 24.01.1997, the appellate authority has taken note of subsequent event of acquittal of the petitioner in the criminal case and has also taken a lenient view and modified the punishment of removal from service to that of deferment of annual increments for two years with effect of postponing future increments. The said order is questioned in this writ petition.

3. Learned counsel for the petitioner states that the fact that the petitioner was no way involved in the crime is established by his acquittal in the criminal case, which was noticed by the appellate authority and as such, charge No.1, therefore, was wholly unsubstantiated. With regard to charge No.2, learned counsel states that the petitioner was released on bail on 27.12.1995 and his absence up to 30.12.1995 i.e. only for three days, ought not to have been viewed with such serious penalty of stoppage of two increments with effect on future increments. Learned counsel also states that the said punishment amounts to stoppage of increments with cumulative effect and till date the petitioner's increments have not been released.

4. Learned standing counsel for the respondents points out that the acquittal in the criminal case subsequently has no relevance to charge No.1 and even otherwise, the petitioner remained absent for

at least three days without any prior intimation and sanction and as such, charge No.2 was also proved. Learned standing counsel, therefore, justifies the impugned order.

5. Charge No.1 is merely relating to non-reporting the fact of arrest in the criminal case in which the petitioner got involved himself. The said misconduct under Regulation 26 of the APSRTC Employees (Conduct) Regulations, 1963 is, therefore, different from conviction or acquittal of the petitioner in the criminal case. The fact remains undisputed that petitioner did not report his arrest dated 24.12.1995 to the employer and thereby, the charge No.1 remained proved.

So far as charge No.2 is concerned, though petitioner was arrested on 24.12.1995, he was released on bail on 27.12.1995 and he attended the duty but went home without taking any permission or without applying for leave, as is noticed by the appellate authority in its order. In view of that, therefore, though the absence is of only three days, petitioner was conscious that he was leaving duty without intimation.

6. I am not inclined to interfere with the findings of the primary and appellate authority with regard to charges 1 and 2. The appellate authority has already taken a lenient view and has modified the order of punishment of removal by that of deferment of two annual increments. However, the order of the appellate authority, though does not state about the said deferment being cumulative or otherwise, the wording of that part of the order of the appellate authority, perhaps, amounts to postponing the increments with effect on future increments. In other words, as stated by the learned counsel for the petitioner, the said punishment is working out to be a punishment of withholding of increments with cumulative effect.

On the facts and circumstances of the case also, when the appellate authority intended to take a lenient view and imposed punishment of withholding of two annual increments, it did not use the words 'cumulative effect' while imposing the punishment and as such, interpreting the said

order as amounting to permanently affecting two increments with cumulative effect would be highly unjust.

In that view of the matter, the writ petition is disposed of while upholding the impugned order except to the extent of clarifying that the punishment imposed shall be construed as follows:

> "Punishment of removal shall stand set aside and the increments of the petitioner shall stand deferred for a period of two (2) years without cumulative effect".

There shall be no order as to costs.

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VILAS V. AFZULPURKAR, J

February 21, 2012
DSK