

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE THIRTIETH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION NO : 19850 of 2003

Between:

G. Balagopal, S/o. G. Gangamma,
R/o. 21-405-59/1, Kapathi Nagar, Adoni, RTC Colony, Kurnool District.

..... PETITIONER

AND

1 The Government of A.P., rep by its Secretary,

Labour & Employment Training & Factories (LAB-II) Department,
Secretariat Buildings, Hyderabad.

2 The Conciliation Officer-cum-Asst. Labour Commissioner,

Kurnool, Kurnool District.

3 The Depot Manager, APSRTC, Yemmiganur, Kurnool district.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order, direction or writ more particularly one in the nature of writ of mandamus declaring the action of the 1st respondent in not referring the dispute to the concerned Tribunal or Labour Court for adjudication in pursuance of the proceedings of the 2nd respondent dt. 8.4.2002 as required under section 12 (4) of Industrial Disputes Act as illegal, arbitrary, unjust and consequently direct the 1st respondent to refer the dispute to the concerned Tribunal of Labour Court for adjudication in pursuance of the proceedings of the 2nd respondent dt. 8.4.2002

Counsel for the Petitioner: MR.G.RAVI MOHAN

Counsel for the Respondent Nos.1 and 2: GP FOR LABOUR

Counsel for the Respondent No.3: MR.P.VINAYAKA SWAMY

The Court made the following:

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ORDER:

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The writ petitioner was appointed as a Conductor in Andhra Pradesh State Road Transport Corporation [for short 'APSRTC'] in the year 1987 and his services were regularized in the year 1990. On 13.11.1991, the bus, in which the petitioner was discharging his duties as conductor, was checked up by the checking officials of APSRTC and found some irregularities on the part of the petitioner and to that effect a charge memo was issued to him. Basing on the charge memo, charge sheet was also issued to the petitioner on 20.11.1991 framing the following charges:

i) For having violated the rule "Issue and Start" which constitutes misconduct under Reg.28 (vi) (a) of APSRTC Employees (Conduct) Regulations, 1963.

ii) For having failed to collect fare and issue tickets to a batch of six (6) passengers, who boarded your bus at Kosgi and found alighting at Diddi, ex-stages 9-10, which constitutes misconduct under Regulation 28(vi) (a) of APSRTC Employees (conduct) Regulations, 1963.

iii) For having failed to collect fare and issue tickets to a batch of seven (7) passengers, who boarded your bus at Kosgi and bound for Halvi, ex-stages 9-12, which constitutes misconduct under Regulation 28 (vi) (a) of APSRTC Employees (conduct) Regulations, 1963.

iv) For having failed to close the tray numbers of all denominations up to stage No.10 without completing the above ticket issues, which constitutes misconduct under Regulation 28 (xxxii) of APSRTC Employees (conduct) Regulations, 1963.

2. After conducting enquiry, the Enquiry Officer submitted his report on 14.04.1992, and basing on the enquiry report, a show cause notice dated 11.05.1992 was issued to the petitioner, for which the petitioner submitted his explanation. After considering his explanation, the 3rd respondent issued proceedings dated 03.06.1992 terminating the services of the petitioner with immediate effect.

3. Assailing the said proceedings, the petitioner filed appeal before the Divisional Manager on 20.06.1992, but the same was rejected by the Divisional Manager vide his proceedings dated 15.07.1992. Thereafter, the petitioner filed a review petition before the Regional Manager on 30.09.1992. The Regional Manager, on considering the material, issued proceedings dated 29.06.1993, modifying the termination orders, directing

reinstatement of services of petitioner, treating the period from the date of his suspension till he reports duty, as not on duty, and as a measure of punishment, his annual increments, which next fall due, are ordered to be deferred for a period of three years, which shall have the effect of postponing his future increments. It is stated that the said action of the Regional Manager in imposing the punishment is illegal and arbitrary.

4. Aggrieved by the order of the Regional Manager, the petitioner raised a dispute before the 2nd respondent under section 2 (k) of the Industrial Disputes Act [for short "Act"] vide his application dated 04.06.1996. The 2nd respondent has passed an order in Rc.No.A/821/96, dated 8.4.2002 stating that in the conciliation proceedings both the parties have stick up to their actions. Accordingly, he has stated that the conciliation proceedings have been failed. The 2nd respondent considered that there was no amicable settlement between the parties, and submitted a report to the 1st Respondent under section 12 (4) of the Industrial Disputes Act. But the 1st Respondent has not taken any action on the said report as contemplated under section 12 (4) of the Industrial Disputes Act, 1947. The 1st Respondent shall consider the report, referred to, under section 12 (4) of the Act and shall take a decision either to refer the matter to Labour Court or Industrial Tribunal as the case may be, or if the Government feels that it is not a case to make such reference, it shall record and communicate the same to the parties concerned with the reasons thereof, but no such action has been taken by the Government under section 12 (4) of the Act. Therefore, the petitioner is constrained to file this writ petition.

5. Though the 2nd respondent submitted a report to the 1st respondent vide his proceedings in Rc.No.A/821/96, dated 08.04.2002, the Government has not passed any orders.

6. Having regard to the facts and circumstances of the case, the 1st respondent is directed to consider and pass appropriate orders on the report dated 08.04.2002, submitted by the 2nd respondent, within six weeks from the date of receipt of a copy of this order.

7. This writ petition is, accordingly, disposed of. No order as to costs.

dsr.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Secretary, Government of Andhra Pradesh,
Labour & Employment, Training & Factories
(LAB-II) Department, Secretariat, Hyderabad.
2. The Conciliation Officer-cum-Asst.Labour Commissioner,
Nalgonda, Nalgonda District
3. The Depot Manager, APSRTC, Nalgonda Depot, Nalgonda District
4. Two CCs to the Government Pleader for Labour,
High Court Buildings, Hyderabad [OUT]
5. Two CD copies.

