

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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WRIT PETITION No.16303 of 1995

Dated: 30.11.2006

Between

G.Munivelu

..... PETITIONER

And

The Presiding Officer, Industrial
Tribunal-cum-Labour Court,
Anantapur and another.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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WRIT PETITION No.16303 of 1995

ORDER:

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Aggrieved by the award of the Industrial Tribunal-cum-Labour Court, Anantapur, in I.D.No.213 of 1988 dated 14.02.1990, the workman has approached this Court by way of the present writ petition filed in July 1995.

The petitioner herein is a Conductor with the second respondent-Corporation. While the bus was running from Puttur to Chittoor on 20.10.1982 a vigilance check took place. Based on the said check the petitioner was issued charge memo dated 23.10.1982, wherein five charges were levelled against him. An enquiry was held and thereafter, by order dated 9-5-1983, the petitioner was removed from service. The appeal preferred by the petitioner was dismissed on 24.09.1983 and the Review Petition filed thereagainst was also dismissed on 09.06.1984. The petitioner approached the Labour Court by way of the present I.D. Since the contentions now

raised before this Court revolve around the findings of the Industrial Tribunal, it is necessary to extract the relevant paragraphs of the Award.

“15. I have gone through the contentions of the learned advocate for the workman as well as the learned standing counsel for the management with reference to the connected record. It is explicitly stated in the conductor-workman statement under Ex.M-4 that the passengers referred to in charge No.2 did not pay the luggage fare but he paid only his fare. But as such from the passengers statement under Ex.M-5 it is found that he loaded 3 bags of groundnut crush weighing 75 kgs., in the bus conducted by the workman on the date of check and that he paid Rs.15/- but the conductor workman did not issue luggage tickets to him. It is found that the workman issued passenger ticket to him. But underneath the statement Ex.M-5 an endorsement is made by the passenger that an amount of Rs.11.15 ps., was refunded to him it was attested by the workman. If the statement of the passenger that he paid Rs.15/- to the workman and that he issued only passenger ticket but not the luggage tickets were to be accepted as true there is no necessity for the workman to get an endorsement on Ex.M-5 that an amount of Rs.11.15 ps., was refunded to the passenger stated under Ex.M-5. It has been the contention of the workman that the fare for each luggage bag containing 75 kgs., of material is Rs.3.75 ps., the 3 bags of groundnut crush at that rates comes to Rs.11.25 ps., but whereas even according to the version of the passenger he paid only Rs.15/- towards the luggage fare that is the reason why the workman had to refund the luggage amount of Rs.11.25 which was insufficiently paid by the passenger. Therefore the passengers statement recorded under Ex.M-5 cannot come to the rescue of the checking officials to conclude that the passenger paid the luggage fare and that he was not

issued luggage ticket. Therefore charge no.2 fails in the face of the explanation offered by the workman and the circumstances stated by him in the explanation submitted by him from time to time. With regard to rule issue and start it is not shown by the Checking Officials at what place and stage the said rule was violated by the workman. That apart it is showed by the workman that he had issued tickets to all the passengers at the boarding point itself and allowed the bus to move. Under these circumstances charge no.1 framed against the workman is also illegal. Since charges 2 to 5 are interlinked with charges 1 and 2 they become redundant. I therefore hold that charges 3 to 5 framed against the workman are illegal, even if they are taken as correct and the workman committed the irregularity pointed out under charges 3 to 5.

16. The next point that falls for consideration is whether on account of the irregularities mentioned under charges 1 to 5 could the petitioner be removed from service. I have already held in view of the explanation submitted by the workman under Ex.M-4 and also with reference to the passenger statement under Ex.M-5 the charges framed against the workman are illegal and they do not warrant the action taken by the respondent for removing he workman from service even if the charges framed against the workman are taken as correct and held to have been proved they are minor in nature for which a minor punishment would be sufficient. But the respondent without giving a minor punishment resorted to the maximum punishment of awarding economic death sentence on the workman as such the impugned orders passed by the respondent against the workman are illegal and hence they are set aside. But taking into consideration the overall picture of the case a minor infliction of punishment would be sufficient, on the workman.

17. In the result, an award is passed directing the Respondent to reinstate the workman with continuity of service but without back wages. The petitioner is

not entitled to one increment with cumulative effect in his service. The workman is entitled to wages from the date on which he expresses his willingness to resume duty by registered post or in person in writing under acknowledgement after publication of the award.

Sir V.Viswanatham, learned counsel for the petitioner, would submit that since the charges levelled against the petitioner-workman were held as not established, the Labour Court had grossly erred in denying the petitioner back wages. Learned counsel would rely on the Division Bench judgment of this Court in ***Divisional Engineer Telecom V. Mamidi Venkata Ramana***^[1] in support of his submission that back wages could only be denied if reasons were assigned therefor and in the absence of any reasons being given by the Labour Court for denying the petitioner back wages, this Court ought to direct payment of the back wages, which the Labour Court had denied to the workman.

Sri P.Vinayaka Swamy, learned standing counsel appearing on behalf of the second respondent, would submit that the writ petition filed is liable to be dismissed on the ground of laches. Learned counsel would point out that while the award of the Labour Court is dated 14.02.1990, the present writ petition was filed more than five years thereafter in July 1995. Learned counsel would seek to distinguish the judgment, in Divisional Engineer

Telecom's

case (1 supra), to submit that, in the case on hand, back wages were denied as a measure of punishment and not for violation of Section-25-F of the Industrial Disputes Act, 1947 (for short 'the Act').

The findings of the Labour Court are inconsistent. While in paragraph 15 of the award, the Labour Court has held that none of the charges levelled against the petitioner-workman are established, in paragraph 16 it holds that even if the charges levelled against the workman are taken to be correct and held to be proved, they are minor in nature for which a minor punishment could be imposed. It is the function of the Labour Court, while exercising its jurisdiction under Section-11-A of the Act, to re-appreciate the evidence on record and record its findings as to whether the charges levelled against the workman are established or not. These inconsistent findings would have necessitate the matter being remanded to the Labour Court, but Sri V.Viswanatham, learned counsel for the petitioner, would submit that, in view of the long lapse of time, the petitioner should not be put through the ordeal of an adjudication by the Labour Court on this aspect and that the only relief which the petitioner seeks from this Court is to modify the punishment and direct the second respondent to pay the petitioner back wages.

While it would have been in the fitness of things to remand the matter for reconsideration of the Labour Court, in view of the aforesaid submission we must proceed on the presumption that the Labour Court had held that the charges levelled against the petitioner-workman are proved, but are minor in nature.

In Divisional Engineer Telecom's case (1 supra), the Division Bench of this Court observed-

“.....Regarding continuity of service and back wages, it is settled law that back wages cannot be denied without recording any reasons and whenever the termination is found to be illegal the consequential order of grant of back wages must follow, when there are no reasons justifying departure from normal order. In regard we place reliance on the judgments of the Supreme Court reported in *Manorama verma v. State of Bihar*, 1995 SCC (L&S) 193, *PGI of Medical Education and Research v. Raj Kumar*, (2001) 2 SCC 54, and *Singareni Collieries Company Limited v. S.K.Anwar Basha*, 1996 (2) LLN 137 (AP) (DB). Since the retrenchment of the workman was found illegal, it is deemed that he continues to be in service. The Labour Court did not assign any reasons as to why back wages and continuity of service were denied to the workman. The learned single Judge was therefore right in holding that under the circumstances of the case the 1st respondent is entitled for continuity of service and back wages. We do not find any error of law in the judgment of the learned Single Judge. We accordingly agree with the finding of the learned Single Judge.....”

Subsequently, the Apex Court in “**Allahabad Jal Samsthan vs. Daya Shankar Rai**^[2]” observed that a law in absolute terms cannot be laid down as to in which cases, and under what circumstances, full back wages can be granted or denied, that Labour Courts/Industrial Tribunals, before which the industrial dispute has been raised, would be entitled to grant the relief having regard to the facts and circumstances of each case and for that purpose several factors were required to be taken into consideration.

Even otherwise in Divisional Engineer Telecom’s case (1 supra), back wages were denied as the Labour Court had held that the termination of the services of the workman therein was in violation of Section-25-F of the Act. In the present case denial of back wages is not for violation of Section-25-F of the Act but as a measure of punishment. Not only was the petitioner denied back wages as a measure of punishment, in addition he was imposed the punishment of stoppage of one increment with cumulative effect.

It is required to be noted that the second respondent has not chosen to challenge the award and it is only the workman who has approached this Court. For the charges held established against the workman, it cannot be said that the punishment imposed by the Labour Court, of denial of back wages and stoppage of one increment

with cumulative effect, is so grossly disproportionate or is such which shocks the conscience of this Court necessitating its interference under Article-226 of the Constitution of India. It is not for this Court to sit in appeal over orders of the Labour Court with regards the punishment imposed nor for this Court, normally, to substitute the punishment imposed by the Labour Court by another. Since I am not inclined to interfere with award of the Labour Court, the contention of Sri P.Vinayaka Swamy, learned standing counsel for the second respondent, that the writ petition is liable to be dismissed on the ground of laches does not require examination.

The writ petition fails and is accordingly dismissed.
However, in the circumstances, without costs.

30.11.2006

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[\[1\]](#) 2003 (3) ALD 290 (DB)

[\[2\]](#) 2005(5) SCC 124