

HONOURABLE SMT. JUSTICE V.SUJATHA

WRIT PETITION No.6818 of 2015

ORDER:

The present Writ Petition came to be filed under Article 226 of the Constitution of India seeking the following relief:-

“...to issue an order or direction more particularly one in the nature of writ of Certiorari by calling for the records relating to and in connection with the award of the Industrial Tribunal cum Labor Court Anathapur passed in I. D. No. 216 / 2007 dated 08.12.2010 which was published in the Gazette vide G.O.Rt. No. 137 Dated 02.01.2011 and the award is liable to be set aside insofar it went against to the petitioner in denying wages and the consequential benefits as unjust, illegal, contrary to well established principles of law by consequently directing the Respondents herein to extend all the benefits including regularization on par with the colleagues of the petitioner forthwith”

2. The case of the petitioners in brief is that, the petitioner was appointed as conductor in the year 2000 by due process of selection in APSRTC. While working at Rayachoty Depot, on the allegation of cash and ticket irregularities, her name was deleted from the selection panel and disengaged from service vide proceedings dated 19.09.2001. Challenging which, the petitioner has raised an Industrial Dispute vide ID No.216/2007, wherein the Labour Court having come to a conclusion that the petitioner

is not guilty of the charges, has set aside the office order dated 19.09.2001 directing the respondent to reinstate the petitioner with continuity of service and attendant benefits, but without back wages on the principle of “no work no pay”.

3. Learned counsel for the petitioner vehemently argued that having come to a conclusion that the petitioner is not found guilty of the charges, the Labour Court ought to have granted the back wages to the petitioner and all the benefits from the said employment. But instead of that, the petitioner was denied with the back wages on the principle of ‘no work no pay’.

4. Learned Standing Counsel Mr.K.Viswanadham, appearing for the respondents have submitted that thereafter the petitioner was reinstated into service in the year 2014. The petitioner was initially selected on contract basis on daily wage basis, and thereafter, vide office order dated 11.09.2019 based on recommendations of the Departmental Selection Committee, the petitioner was promoted to the post of ADC/Controllers under Reg.30 of APSRTC Employees (Recruitment) Regulations, 1966 in the time scale fixed thereunder, which was strongly objected by Mr.S.M.Subhan, learned counsel for the petitioner stating that the petitioner was engaged as a Conductor Grade-II initially after

undergoing a selection process and was appointed by the selection committee in the year 2000 as conductor. The general procedure is that initially the Conductor would be appointed on daily wage basis due to lack of vacancies and thereafter when the vacancies arose to the post of conductor, the incumbent shall be absorbed in the said vacancy. So, the said post should be treated as regular post but it cannot be called as daily wage post, as the petitioner has undergone due selection process. But, however, in view of the orders passed by the Labour Court, the petitioner is entitled for all the other benefits as the charges framed against the petitioner are found to be not proved.

5. Learned counsel for the petitioner has further argued that one Mr. V. Babu at Sl.No.33 over and above the petitioner in the selection list, whose services were regularized way back in the year 2002 itself.

6. Learned counsel for the petitioner has also relied upon the judgment reported in Deepali Gundu Surwase Vs. Kranti Junior Adhapak Mahavidyala and others reported in 2013 (10) SCC 324 wherein the court has held as follows:-

“38.3 Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a

statement before the adjudicating authority or the court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person, who makes a positive averment about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

38.4 The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and /or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.”

7. Learned counsel for the petitioner has argued that as the petitioner was found not guilty of misconduct, the Labour Court should have awarded full back wages to the petitioner.

8. This Court have perused the award of the Labour Court vide ID.No. 216 of 2007 dated 08.12.2010 wherein the finding of the Labour Court is read as follows:-

“15..... Even the record filed by the checking officials do not contain the Check Memo, Charge Memo, statement of witnesses and the spot statement of the petitioner. Even though the petitioner is a casual employee a responsibility has been given on her to conduct the bus for a daily wage, it is the duty of the respondent to conduct a preliminary enquiry and then order for a domestic enquiry. The record of the respondent shows that the respondent failed to follow the procedure and simply deleted the name from the list of approve list without mentioning the irregularity committed by her. The over all circumstances gives an impression that the Petitioner failed to issue ticket to the unaccompanied luggage as no one claimed the responsibility of luggage and the Petitioner has not collected the fare for the luggage. The petitioner is not guilty of the charges.

.....

In the result, the deletion of the name of the petitioner from the approved list vide office order No. 02/95(172)/2001-RCTY dated 19-09-2001 issued by

the respondent is set aside and the respondent is directed to reinstate the petitioner into service with continuity of service, attendant benefits but without back-wages on principle of 'no work no pay' ”.

9. In view of the same, this Court feels it appropriate to dispose of this writ petition by modifying the Award to consider the case of the petitioner for regularization from 07.10.2007 on par with the candidate Mr. V. Babuy, who stands at sl. No. 33 over and above the petitioner and pay the salaries accordingly, by treating the petitioner as regular employee from 05.10.2007.

10. Accordingly, this Writ Petition is disposed of. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this Writ Petition shall stand closed.

JUSTICE V.SUJATHA

Date : 25.04.2023
KGR/PSR

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