

THE HON'BLE SRI JUSTICE TARLADA RAJASEKHAR RAO

WRIT PETITION No.1442 OF 2021

ORDER:

This Writ Petition is filed under Article 226 of the Constitution of India for the following relief:-

"To issue a writ, order or direction more particularly one in the nature of Writ of Mandamus, declaring the Circular No.1/2019-MVD 2019 dated 09.01.2019, issued by the 1st respondent, insofar as it relates to the duties of Trimmers is concerned, as arbitrary, and violative of Articles 14 and 21 of the Constitution of India, provisions of I.D.Act, 1947 and Motor Transport Workers Act and consequently set-aside the same and direct the respondents not to extract the additional work of Magazine pouches, Bottle Holders, Salon Fabric, Vinyl Mat and fitting the same to seat belts, etc. and confine the Trimmers to the earlier work prior to the issuance of circular and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case."

2. The grievance of the petitioners herein, in nutshell/brief, is that they are working as Trimmers Grade-II in

different Depots of the Andhra Pradesh State Road Transport Corporation (hereinafter called, 'the respondent-Corporation) and the petitioners are under the administrative control of respondents 2 to 4.

3. It is the case of the petitioners herein that the duty norms of the Motor Transport workers, more particularly, Trimmers are codified in the Motor Transport Workers Act, 1961, apart from other laws. Their duties are enumerated in MTD 194/R which is a schedule maintained in the respective Depots of the respondent-Corporation. As per the said enumeration, the work of the Trimmers have to attend the work of stitching bottom cushion, back cushion of seats, stitching of back rests of seats, stitching of driver seats, head rest covers and other regular allied duties shown by the Supervisors. Now the 1st respondent issued a Circular No.1/2019-MVD2019 dated 09.01.2019 increasing the work load of the Trimmers in Annexure-VIII to the said circular. The 1st respondent added the works of magazine pouches, bottle holders, salon fabric and vinyl mat. These are the additional works, which are added apart

from the regular work and the works were added to the duties of the petitioners for the first time in the history of the respondent-Corporation and these newly added duties were hitherto done by coach builders and adding of these duties amounts to a serious change in the service conditions of the petitioners under Section 9A of the Industrial Disputes Act. Therefore, the respondents are statutorily mandated to give 21 days prior notice before effecting such change and due to the above load, the work load gets enhanced and working hours would go up. As a last but it was not least, the petitioners were neither trained nor have they skilled to do the said work. Despite issuing of legal notice to the above said issue, there is no such response from the respondent-Corporation authorities. Hence, the petitioners are constrained to file the present Writ Petition seeking a direction to the respondents not to extract the additional work, viz., fixing of magazine pouches, bottle holders, salon fabric, vinyl mat and fitting the same to seat belts and confine the Trimmers only to the earlier work prior to the issuance of circular.

4. *Per contra*, the respondent-Corporation filed counter and contended that the Trimmers are employed in the Depot garage to take up maintenance/repairs related to the buses in the depot garages and the workmen employed therein are governed by the Factories Act, 1948, not by the Motor Transport Workers Act and also denied the duties of Trimmers are enumerated in MTD 194/R, which is a schedule maintained in respective depots is also incorrect and it is also stated that the Trimmers are generally deployed in the major docking and further, the works to be done by every workmen are enumerated clearly in detail, at micro level in Cir.No.1/2019-MED to avoid ambiguity during execution, which otherwise were not there earlier and as the technology improvement is a regular feature and more particularly during the last two decades, the respondent-Corporation kept on introducing high end buses with latest technology and facilities like ergonomically designed seats, using seat fabric instead of rexine and with seat accessories like providing elastic bands to hold water bottles and a knitted pouch to keep magazines, etc., for the comfort of the travelling passengers. It is further stated that the maintenance of these

items is not additional as contended by the petitioners, since these seats are only replacement to the old type and hence, the contention of the petitioners that the work load has gone up high by leaps and bounds is not tenable and more so their duty hours are governed by Sections 51 to 56 of the Factories Act, 1948, for the periodicity of maintenance is increased (kilometer range) leading to less number of scheduled maintenance attentions in lifetime of the bus resulting less work to be done to the vehicle in its lifetime. Further the respondents stated that it is incorrect to say that heavy work load is introduced resulting in serious change in their service conditions and 21 days prior notice is not given as mandated under Section 9A of the Industrial Disputes Act, and Schedule-IV of the Industrial Disputes Act sets out the conditions of service for change of which notice is required to be given under Section 9A of the said Act and therefore giving notice of 21 days prior does not arise, as there is no change in the work entrusted to the petitioners herein. The respondents have specifically referred in paragraph No.3 of the writ affidavit and stated that the petitioners have to do other allied duties shown by the Supervisors, these duties come under the allied duties

and therefore, the petitioners cannot contend that these works does not come under the nature of change. It is also stated that no other Trimmers have approached the Court and the above said circular memo was issued in the year 2019 and after lapse of 2 years, the present Writ Petition came to be filed and the writ petitioners have to approach the Tribunal/Labour Court under the Industrial Disputes Act, but they cannot approach this Court under Article 226 of the Constitution of India, as there is an alternative remedy provided under the Industrial Disputes Act and hence, prayed to dismiss the Writ Petition.

5. Heard Sri M.Pitchaiah, learned counsel for the petitioners and Sri N.Solomon Raju, learned Standing Counsel for the respondent-Corporation, apart from perusing the material available on record.

6. Following the above contentions, relevant provisions are hereby extracted:

Section 9A requires an employer to give notice in respect of any change in the conditions of service as provided therein. It reads thus:

"9A. Notice of Change. - No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,

(a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or

(b) within twenty-one days of giving such notice:

(a) where the change is effected in pursuance of any settlement or award; or Provided that no notice shall be required for effecting any such change

(b) where the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply.

The withdrawal of a customary concession is a change in the condition of service of the workmen which is clearly an industrial dispute within the meaning of Section 2(k) of the Industrial Disputes Act, 1947.

THE FOURTH SCHEDULE
(See section 9A)
CONDITIONS OF SERVICE FOR CHANGE OF WHICH
NOTICE IS TO BE GIVEN

1. Wages, including the period and mode of payment;
2. Contribution paid, or payable, by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force;
3. Compensatory and other allowances; 4. Hours of work and rest intervals;
5. Leave with wages and holidays;
6. Starting, alteration or discontinuance of shift working otherwise than in accordance with standing orders;
7. Classification by grades;
8. Withdrawal of any customary concession or privilege or change in usage;
9. Introduction of new rules of discipline, or alteration of existing rules, except in so far as they are provided in standing orders;

10. Rationalisation, standardisation or improvement of plant or technique which is likely to lead to retrenchment of workmen;

11. Any increases or reduction (other than casual) in the number of persons employed or to be employed in any occupation or process or department or shift, 1[not occasioned by circumstances over which the employer has no control]

7. It appears that duty hours have not yet been changed. Therefore, if the corporation wanted to change the service condition of their employees affecting them adversely, they should have given notice, the petitioners would contend. Change in condition of service within the meaning of Section 9A of the Industrial Disputes Act, 1947. While dealing with this issue, it can be ruled that notice of change under Section 9A of the Industrial Disputes Act, 1947 was required only if the employer wanted to change the service condition of its workmen with regard to the matters enumerated in the 4th Schedule of the Act. Learned counsel for respondents further submitted that a circular was brought additionally adding some more items of works made by the State Road Transport Corporation, it does not

change the working conditions of the workmen, is still applicable and in terms thereof. A different policy was followed and a new Circular was issued relating to work of the employees. Hence, it cannot be contended that does it constitute a change in service condition. Section 9A of the Industrial Disputes Act relates to change in the service condition. The Fourth Schedule under Section 9A specifies the matters relating to change in service condition for which only Section 9A will be applicable.

8. The *sine qua non* for the applicability of Section 9A read with the IV Schedule is that there should be change in the service condition in respect of matters specified in the Schedule. Whether the work using seat fabric instead of rexine and with seat accessories like providing elastic bands to hold water bottles and a knitted pouch to keep magazines, etc., for the comfort of the travelling passengers and it is neither amounts to change in service condition, is a disputed fact, or in allied duty which has become an accepted condition of service. It is permissible for the workman to directly invoke the jurisdiction of the labour Court/Industrial Tribunal and without availing the conciliation

procedure in order to obliterate the amendment of circular in order to invalidate the circular.

9. In view of the submissions made by the learned counsels appearing for the parties concerned and on a perusal of the records available and on considering the facts, this Court is of the considered view that there are certain factual and legal issues, which had arisen for consideration of this Court, in the present Writ Petitions. However, such issues could be gone into by the Tribunal concerned, by way of the adjudication proceedings. The question as to whether the respondent corporation had altered the service condition of the employees concerned, without issuing a prior notice, under Section 9A of the Industrial Disputes Act, 1947, is to be gone into by the Tribunal, as it is a factual issue, that would depend on the existence of the necessary evidence and therefore the tribunal is directed to decide the issue without influence of any of the observations, if any, in this order after taking into the consideration evidence adduced by both the parties in accordance with law if the petitioners intended to invoke the

jurisdiction of the industrial tribunal. The Writ Petition is disposed of giving liberty to the petitioners to approach the labour court for the relief for the reasons stated above.

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

As a sequel, interlocutory applications pending, if any, in this Writ Petition shall stand closed.

JUSTICE TARLADA RAJASEKHAR RAO

Date: 10.05.2023

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