

THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION NO.1210 OF 2005

DATED 11TH FEBRUARY, 2010

BETWEEN

APSRTC rep. by its Regional Manager,
Nizamabad Region, Nizamabad, and another.

... Petitioners

and

M.S.Prakash and another.

... Respondents

**THE HON'BLE SRI JUSTICE
SANJAY KUMAR**

WRIT PETITION NO.1210 OF 2005

ORDER

-
-
The Andhra Pradesh State Road Transport Corporation (APSRTC) challenges the Award dated 27.04.2004 passed by the Labour Court-II, Hyderabad, in I.D.No.182 of 2001. By the said Award, the Labour Court directed the APSRTC to reinstate in service the first respondent herein with full back wages, continuity of service and all other attendant benefits.

The first respondent was engaged as a Conductor in the APSRTC on contract basis on 05.06.1983 and his services were thereafter regularized. He was subjected to disciplinary proceedings under charge sheet dated 29.03.1996 for his alleged unauthorized absence from 06.02.1996 to 08.02.1996 and again from 09.02.1996 till the date of issuance of the charge sheet. The Enquiry Officer, by his report dated 22.06.1997, took into account the alleged unauthorized absence of the first respondent from duty from 17.03.1997 to 17.06.1997 and held that he was a 'habituated absentee' from duty. Pursuant to the said enquiry report, the first respondent was removed from service under order of the Depot Manager, APSRTC, Nizamabad Depot, dated 03.08.2000. The first respondent's Appeal and thereafter his Review met with failure and accordingly, he invoked Section 2-A(2) of the Industrial Disputes Act, 1947, in I.D.No.182 of 2001.

The Labour Court, after considering the material on record,

observed that the enquiry directed against the first respondent was with regard to his alleged unauthorized absence during February and March, 1996, while the report of the Enquiry Officer transgressed beyond the charge and recorded a finding on the alleged unauthorized absence of the first respondent from March, 1997 to June, 1997. As no separate charges were framed with regard to the said alleged absence and no separate enquiry was conducted in that regard, the Labour Court rightly came to the conclusion that the enquiry report dated 22.06.1997, which recorded a finding on the subsequent alleged unauthorized absence, could not be acted upon to hold that the charge levelled against the first respondent under the charge sheet dated 29.03.1996 stood proved. Accordingly, the Labour Court set aside the order dated 03.08.2000 removing the first respondent from service and granted the reliefs of reinstatement in service with continuity of service and attendant benefits. To this extent, the Award under challenge warrants no interference.

In so far as grant of full back wages is concerned, it is relevant to note that there is no discussion what-so-ever in the Award under challenge as to why the Labour Court granted the first respondent full back wages for the period that he remained out of service.

In the light of the law laid down by the Supreme Court, grant of back wages is no longer a mechanical exercise on the part of the Labour Court and it necessarily has to examine the entitlement of the workman to payment of back wages on the basis of various factors, such as, gainful employment of the workman during the said period, the reasons for reinstatement, the nature and length of the service rendered by the workman, etc. No such exercise is evident in the Award under challenge. It is however to be noticed that by order dated 11.02.2005 this Court, while making absolute the interim suspension of the operation of the Award under challenge, directed the APSRTC to deposit 50% of the back wages awarded by the Labour Court duly

permitting the first respondent to withdraw the same without furnishing security.

As the removal of the first respondent from service was invalid in law being based on the subsequent alleged unauthorized absence and as the first respondent has already withdrawn 50% of the back wages awarded by the Labour Court, I deem it fit and proper to limit his entitlement to 50% of the back wages instead of full back wages as awarded by the Labour Court. The Award under challenge shall stand modified to that extent and is confirmed in all other respects.

The writ petition is accordingly allowed in part. No costs.

SANJAY KUMAR, J.

11TH FEBRUARY, 2010.
PGS