

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P.No. 30453 of 2013

Between:

K.Shanker

... Petitioner

And

TSRTC and others

... Respondents

JUDGMENT PRONOUNCED ON: 25.04.2023

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be : yes
marked to Law Reporters/Journals?
3. Whether Their Lordships wish to : yes
see the fair copy of the Judgment?

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

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< Gist:

> Head Note:

! Senior Counsel for the Petitioner: Sri S.Satyanarayana Rao

^ Counsel for Respondents : G.P for Services II

? Cases Referred:

1. 1996(1) ALD 764
2. 2010(15) SCC 399

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P.No. 30453 of 2013****ORDER:**

Heard learned counsel for the petitioner and learned standing counsel for the respondents-RTC.

2. The petitioner filed this writ petition to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus, declaring that the action of respondent No.4 in imposing the punishment of reduction of petitioner's pay by two incremental stages with cumulative effect and treating the period of suspension as not on duty for all purposes as arbitrary, illegal and unreasonable by setting aside the Final order No.02/114(27) 2005 HYT, dated 23.12.2005 of the 4th respondent and consequential proceeding No. PA/20(229)/2007-HCR, dated 22.11.2007 of the 2nd respondent and direct the respondents to restore the reduced increments of the petitioner with proper fixation and treat the period of suspension of the petitioner as on duty for all purposes.

3. The case of the petitioner, in brief, is as follows:

a) The petitioner was appointed as Conductor in the year 1996 and his services were regularized on 01.08.1997.

b) When the petitioner was performing duty on 26.07.2005 on the bus bearing No.AP9Z4839 of Hayathnagar Bus Depot, when the bus reached the bus depot, one of the officers asked him whether he consumed any liquor while he was on duty. The petitioner said that he has not taken any liquor while he was performing on duty. Then, they conducted a breath analyzer test, but there was no response from the machine initially, thereafter, the respondent staff themselves stated that there was a signal of intoxication, but he has not seen the same.

c) Subsequently, the petitioner was issued with a charge sheet and suspension order dated 03.08.2005 alleging that he was in inebriated condition while performing duty on 26.07.2005.

d) Thereafter, the petitioner submitted explanation denying the charge, but without satisfying the same, a formal enquiry was conducted and punishment of reduction of pay by two incremental stages with cumulative effect was imposed

against the petitioner treating the suspension period as not on duty for all purposes vide proceedings No.02/114(27) 2005 HYT, dated 23.12.2005 by the 4th respondent.

e) Against the said final proceedings No.02/114(27) 2005 HYT, dated 23.12.2005 by the 4th respondent, the petitioner preferred appeal to the Divisional Manager, Hyderabad Division, but it was rejected on 06.11.2006.

f) Thereafter, the petitioner preferred review petition to the 2nd respondent and the same was also rejected on 22.11.2007.

g) Hence, this writ petition.

4. The respondents filed counter affidavit denying all the averments made in the writ petition except those that are specifically admitted herein and the relevant paras are extracted as under:

a) During the service of the petitioner, while working at Barkatpura Depot, he was also involved in a Cash and Ticket irregularity case on 15.05.1997 on route 835, for which he was charge sheeted and penalized by reducing 50 stages in the regional seniority list of Conductors of Hyderabad City Region vide order dated 20.09.1997.

b) On a complaint, on incoming to depot, the petitioner was checked with a breath analyzer and indicated that he was in an intoxicated condition. The Assistant Manager (material) of Hayathnagar Depot, has conducted preliminary enquiry and reported that the petitioner has performed duty in a drunken condition, which is a serious misconduct in terms of APSRTC Conduct Regulation and he has tarnished the image of the Corporation before the public.

c) Since the offence was of serious in nature, the petitioner was placed under Suspension w.e.f. 03.08.2005 in terms of Regulation 18(1)(a) of APSRTC Employees CC&A Regulations, 1967 in the public interest pending enquiry into the charges duly issuing a charge sheet with the following charge:

“For having performed duty with Service No.154/2 on 26.07.2005 in an inebriated condition which constitutes misconduct in terms of Reg.28(xv) and (xxxii) of APSRTC Employees (Conduct) Regulations, 1963.”

d) As the explanation of the petitioner was not convincing, a detailed enquiry was ordered to be conducted by the Chief Inspector, Hyderabad Division and accordingly, he conducted

enquiry duly giving all reasonable opportunities and submitted report.

e) The 4th respondent after going through the enquiry report, imposed the said punishment and that the petitioner preferred appeal, the same was rejected and that the petitioner filed revision petition and the same was also rejected, which is proportionate to the offence committed by the petitioner.

f) Therefore, the writ petition is liable to be dismissed.

PERUSED THE RECORD

5. The Final Order dated 23.12.2005 vide No.02/114(27)2005HYT of the 4th respondent/Depot Manager, Hayatnagar Depot, reads as under:

"The conductor stated in his explanation to charge sheet that while he was taking treatment in NIMs to come out from alcoholic withdrawal symptoms, he consumed medicines due to which he looks drowsy and to that extent he produced records. Keeping in view of the above, I have taken a lenient view to lift his suspension by imposing the punishment of reduction of pay by two incremental stages which shall have the effect of postponing of future increments besides treating

the period of suspension as NOT ON DUTY for all purposes is fit and proper to be imposed on him.

His suspension was lifted and he was directed to Divisional Manager (HD) for further posting vide reference 10th cited and a show cause notice of reduction of pay by two incremental stages was issued vide reference 11th cited.

I have gone through the explanation to the show cause notice submitted by him vide reference 12th cited. I do not any fresh and valid reasons worth for consideration to modify the proposed punishment.

I, therefore hereby order that the pay of Sri.K.Shanker, E.207795, Conductor be reduced by two incremental stages which shall have the effect of postponing of future increments and his suspension period be treated as "Not on Duty" for all purposes."

6. The consequential proceedings dated 22.11.2007 of the 2nd respondent in the revision petition preferred by the petitioner aggrieved against the orders of punishment of deduction of pay by two incremental stages having effect on future increments imposed by the Depot Manager, Hayathnagar Depot on 23.12.2005 the last paragraph of the said consequential proceedings dated 22.11.2007 in No.PA/20(229)/2007-

HCR is extracted hereunder and in particular last para reads as under:

“Perused the Revision Petition along with the evidence available on record. The Enquiry Officer in his report has stated that petitioner was in an inebriated condition while on duty with the bus No.4839 on the day in question is quite correct as per the Breath Test subjected on him which was revealed by the Security Guard on duty and AM (T) of HYT Depot who was directed observed at the time of check on him and the Alaram indication of the Breath Analyzer is direct evidence as reported by the Asst. Manager (T) **and his associate Security Guard who has subjected the Breath Analyzer Machine to the Petitioner which gives ample evidence. Therefore, it is clearly evident that the petitioner was in intoxicated condition while he was on-duty and established the charge of inebriated condition of the petitioner while on duty.** The contentions put forth by the petitioner by the petitioner in his revision petition are not convincing. The Depot Manager, Hayathnagar has already considered his case basing on the records produced by him in regard to taking treatment in NIMS to come out from alcoholic withdrawal symptoms and consuming medicines and imposed the punishment or reduction of pay by two incremental stages which shall have the effect on postponing of future increments vide reference 1st cited and rejection of appeal by the

Divisional Manager, Hyderabad Division are in order and commensurate with the gravity of offence committed by the petitioner.

I see no merits in the case to intervene. Hence, the revision petition is hereby rejected."

7. The counter affidavit filed by the respondent, in particular, para 9 reads as under:

It is submitted that on 26.07.2005, the Assistant Manager(T)/Hayathnagar has received a phone call from a passenger stating that the petitioner was in drunken condition and was not able to perform duty. Hence, on his arrival from duty, the petitioner was made to undergo breath analyzer test which has given positive result. In the preliminary enquiry, the Enquiry Officer held the petitioner guilty of the allegations and submitted his report. Based on the report the petitioner was placed under suspension and after following the due procedure, the Depot Manager has imposed the punishment of reduction of pay by two incremental stages having effect on future increments vide Final Order dated 23.12.2005 which is proportionate to the offence committed by the petitioner.

8. The charge framed against the petitioner as per the charge sheet is as follows :

"For having performed duty with Service No.154/2 on 26.07.05 in an inebriated condition which constitutes misconduct in terms of Reg.28(xv) and (xxxii) of APSRTC Employees' (Conduct) Regulations, 1963".

DISCUSSION & CONCLUSION :

9. A bare perusal of the Final Order dated 23.12.2005 vide No.02/114(27)2005HYT of the 4th respondent/Depot Manager, Hayatnagar Depot (extracted above) clearly indicates that a lenient view had been taken to lift the suspension by imposing the punishment of reduction of two incremental stages, which shall have the effect of postponing of future increments besides treating the period of suspension as 'NOT ON DUTY' for all purposes and a bare perusal of the material document Ex.P3' in support of the affidavit filed by the petitioner which pertains to the enquiry conducted against the petitioner clearly indicates that nobody came to the depot and gave a complaint against the petitioner that the petitioner was in drunken condition while on duty and that the complaint against the petitioner was given on telephone.

10. A bare perusal of the cross-examination sheet pertaining to the enquiry conducted against the petitioner also indicates a clear admission that the drunken condition test was conducted with Breath Analyzer in the presence of the service driver and duty security guard.

11. Admittedly, as borne on record there is no medical test conducted and admittedly as borne on record, there is no medical evidence to prove the fact that the petitioner was in an intoxicated condition while on duty. The petitioner in the revision petition took a specific plea that he had multiple health problems and since he was diagnosed as he was chronic alcoholic, he was directed to NIMS by APSRTC Dispensary. The petitioner had himself stopped consuming alcohol as advised by the doctors and in order to overcome the habit, the petitioner was diagnosed drugs to dispense with consuming alcohol. Further, the allegation that the petitioner attended duty on 26.07.2005 in an inebriated condition is not established in the present

case since admittedly as borne on record even as per the examination of the cross-examination sheet, it is very clear that there was no copy of the complaint and it was a complaint on phone and further the breath analyzer test was conducted by the security guard as per the instructions of Assistant Manager (AM (T)).

12. The Judgment relied upon by the learned counsel for the respondent dated 03.03.2015 in W.P.No.3100 of 2015 and the Circular No.1/2015-LD, dated 06.04.2015 on the point that the Field Officers are advised to initiate severe disciplinary action, if the employees especially drivers are found to have consumed Alcohol, while on duty have been perused by this Court, true, this Court opines and agrees that the circular guidelines necessarily need to be followed in all cases and severe disciplinary action should be initiated against the employees especially the drivers who are found to have consumed alcohol while on duty. But, in the present case, admittedly, as borne on record neither there is any written complaint against the petitioner or any witnesses, who had deposed against the petitioner or

there is any medical evidence establishing the fact that the petitioner was on duty in an inebriated condition on 26.07.2005 on record. Under these circumstances, this Court opines that the Inquiry Officer who is bound to prove the charge on the basis of material on record has failed to take into consideration the relevant facts in the present case while imposing the impugned punishment.

13. The Apex Court in the judgment reported in 2010 (15) SCC page 399 in Munnalal v Union of India and others vide judgment dated 29.09.2009, reads as under:

"3. The appellant contended that on that day, he was ill and was taking medicines and this must have caused the smell of alcohol. An inquiry was conducted and the Inquiry Officer relied on the incomplete report of the doctor who examined the appellant and held that the appellant's case was a confirmed case of intoxication and reliance was also placed on the three witnesses, who were examined in the inquiry. Learned counsel for the appellant contended that there was no medical evidence to prove that the appellant was drunken on that day and he was alcoholic and he was also not taken to Safdarjang Hospital as suggested by the duty doctor on panel at the Airport. The appellant also contended that reliance could not

have been placed on the oral evidence given by the witnesses.

5. In the absence of positive evidence, we are of the view that the charge levelled against the appellant was not proved satisfactorily. In the absence of sufficient proof, the disciplinary authority should not have imposed such penalty. Therefore, the punishment imposed was illegal and the appellant is entitled to be reinstated in service and he is entitled to get 50% of the back-wages for the period he was out of service. The respondents are directed to reinstate the appellant in service forthwith. The appellant's service during this period would be treated for other service benefits such as seniority, increment and pension.

14. In the Judgment reported in 1996(1) ALD 764 in J.Durgappa v Industrial Tribunal-cum-Labour Court, Ananthapur and another, it has been held that in the absence of any medical evidence, the oral testimony of leading hand cannot be relied on.

15. A bare perusal of the consequential proceedings dated 22.11.2007 vide No.PA/20(229)/2007-HCR of the Regional Manager, Hyderabad, City Region also clearly indicates that the petitioner was subjected to breath test by the security Guard on duty and admittedly there was no medical evidence to establish the charge of inebriated condition of the petitioner

while on duty but however, the 2nd respondent mechanically without applying his mind independently observed that rejection of the appeal by the Divisional Manager, Hyderabad is in order and warrants no interference. This Court opines that the consequential proceedings of the Regional Manager, Hyderabad City Region dated 22.11.2007 vide proceedings No.PA/229)/2007-HCR also needs to be set aside since the same is passed mechanically, without application of mind independently by the Revisional authority in the revision petition preferred on 27.11.2007 by the petitioner against the orders dated 23.12.2005 of punishment of reduction of pay by two incremental stages having effect on future increments imposed by the Depot Manager, Hayathnagar Depot vide reference dated 23.12.2005.

16. Taking into consideration the fact that admittedly, as borne on record there was no medical test conducted evidencing the fact that the petitioner is in an inebriated condition while on duty on 26.07.2005 this Court opines that there is no medical evidence nor any positive evidence at all on record to sustain the said charge levelled against the petitioner that the

petitioner performed duty on 26.07.2005 in an inebriated condition and further the fact that there was no written complaint made against the petitioner and the said complaint was only oral and on phone, this Court is constrained to hold that the charge leveled against the petitioner is not proved and consequently the final order No.02/114(27)2005, HYT, dated 23.12.2005 of the 4th respondent is liable to be set aside.

17. Taking into consideration the above referred facts and circumstances and the law laid down by the Apex Court in the judgment reported ;in 2010(15) SCC 399 in Munnalal v Union of India and others vide judgment dated 29.09.2009 and also the view taken by the High Court of A.P. in the judgment reported in 1996(1) ALD 764 in J.Durgappa v Industrial Tribunal-cum-Labour Court, Ananthapur and another, the writ petition is allowed by setting aside the Final order No.02/114(27) 2005 HYT, dated 23.12.2005 of the 4th respondent herein and also the consequential proceedings No. PA/20(229)/2007-HCR, dated 22.11.2007 of the 2nd

respondent and the respondents are directed to restore the reduced increments of the petitioner with proper fixation and treat the period of suspension of the petitioner as on duty for all purposes and pass appropriate orders accordingly, within a period of three weeks from the date of receipt of the copy of the order. However, there shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

SUREPALLI NANDA, J

Date: 25.04.2023

Note: L.R.Copy to be marked.

**b/o
Yvkr**