

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

WRIT PETITION No.10357 of 2005

ORDER:

The writ petition is filed seeking writ of certiorari, questioning the award of the Labour Court, Guntur passed in I.D.No.83/1999, dated 23.09.2004.

2. Heard the learned counsel on either side.

3. The petitioner is the Regional Manager of APSRTC. The 1st respondent was working as driver in APSRTC. On 12.01.1990 it appears that some accident took place, with which the 1st respondent-driver was concerned. The departmental enquiry was initiated. The enquiry officer held the allegations proved and directed the removal of the 1st respondent from service, vide orders dated 30.07.1990. Aggrieved by that, an appeal was preferred, and that was also dismissed. Thereafter, the 1st respondent/employee filed a review petition before the Regional Manager, who directed, vide orders dated 07.03.1991 to reinstate the 1st respondent/employee in service, but, however, without back wages and by placing him in the minimum pay scale. Thereafter, the matter was referred to the Industrial Tribunal in I.D.No.83.1999 and the Tribunal, vide Award dated 23.09.2004, directed that the 1st respondent/employee shall be placed in the pay scale existing at the time of his removal, and from that date onwards, the 1st respondent/employee shall be given notional increments and pay revision, if any, and shall be placed in the present pay scale, as if, he was not removed from service, and that the 1st respondent/employee shall be given monetary benefit from the date of the order and that the 1st respondent/employee is not entitled to any monetary benefits from the date of his removal till the date of the award.

4. Challenging the said award, the present writ petition is filed by APSRTC.

5. The main contention of the petitioner is that after having been reinstated into service, vide orders dated 07.03.1991, the 1st respondent/employee has not

taken any steps for about 8 years and thereafter, filed the present Industrial Dispute. It is further contended that the award under challenge do not contain any valid reasons for giving such relief to the 1st respondent/employee which was not given by the Regional Manager while allowing review application of the 1st respondent/employee.

6. The admitted fact is that the respondent/workman was working as a driver and on 12.01.1990 when he was driving the bus, an old woman fell down and sustained injuries. The 1st respondent-driver has shifted the injured woman to a private hospital. Even though, no criminal case is registered against the 1st respondent-driver, ostensibly, for the reason that the accident was not due to his rash and negligent driving, however, the department initiated the departmental proceedings by framing the charges that after the accident, he did not inform the matter to the police authorities or the officials of the Department and shifted her to a private hospital instead of a Government hospital. It is also admitted fact that the enquiry was held and the charges being proved, he was inflicted the punishment of reducing the Pay Scale to the minimum Scale of Pay of a driver permanently and further ordered that he would get annual increments only after completion of one year of service from the date of his reinstatement. Accordingly, the respondent/driver joined the service in March, 1991.

7. It is also fact that the 1st respondent-driver did not take steps immediately for restoring his Pay Scale or other monetary benefits and only after a period of eight years, he filed a case before the Industrial Tribunal, which was registered as I.D.No.83 of 1999.

8. The Labour Court, by Award, dated 23.09.2004, while placing on record the inordinate delay on the part of the respondent/driver, but, however, partly granted the relief by directing restoration of the Pay Scale as it was existing as on the date of his removal and from that date, the respondent/driver should be given the notional increments, pay revisions etc., and the monetary relief was granted from the date of the order. It was further directed that the 1st respondent/driver is not entitled to any monetary benefits from the date of his removal till the date of the Award.

9. The contention of the learned Counsel appearing for the RTC is that having accepted the fact that the 1st respondent/employee has initiated the

proceedings after long gap of eight years, but still went on to grant partial relief.

10. Learned Counsel appearing for the 1st respondent/driver submits that the Industrial Tribunal has considered the aspect in proper perspective and considering the nature of the allegations passed the award in favour of the 1st respondent/employee, as stated above. It is further submitted that the enquiry and the further action itself was vitiated for the reason that immediately after the accident, a joint enquiry was conducted by Sri Ch.Venkateshwar Rao, the Depot Manager at Ongole, and another. Recommendation was made by the said Committee for removal. Subsequently, the said Vekateshwar Rao was promoted and became the Disciplinary Authority who inflicted the punishment. It is evident that the Officer who conducted the preliminary enquiry and found the respondent/employee guilty of misconduct has also considered the said report and passed the final orders in the capacity of the Disciplinary Authority in view of his subsequent promotion to the said post. This is not permissible and vitiates the orders of the disciplinary authority inflicting the punishment.

11. It is further submitted that the 1st respondent/driver is since retired and there cannot be any direction for conducting enquiry afresh or passing any orders thereon. In support of this contention, learned Counsel appearing for the 1st respondent/driver relied upon the decisions of the Supreme Court reported in **Anant R.Kulkarni v. Y.P.Education Society and Documentary Evidence Prakash Tewari v. U.P.Coop. Institutional Service Board.**

12. In the instant case, it is no doubt true that the Award passed by the Industrial Tribunal contains inconsistent statement to the effect that the 1st respondent/employee has kept quiet for eight years and then raised the dispute, but, however, went on to grant the relief in part. There is no dispute with regard to the proposition that there is no period of limitation for an employee/workman to raise the dispute before the appropriate Forum in accordance with law. The punishment that was imposed by the Disciplinary Authority was to the effect that the Basic Pay of the respondent should be reduced to the lowest of the Pay Scale. This was modified to the effect that the respondent/employee is entitled to the Pay Scale that was being drawn by him as on the date of his removal. The Tribunal further granted the relief of notional increments and Pay Fixation in view of the Pay Revision, but, however, refused to grant the monetary benefits, except granting the monetary relief from the

date of the order i.e., 23.09.2004.

13. The ultimate relief that was granted by the Industrial Tribunal cannot be said to be unreasonable or arbitrary. Instead of reducing to the lowest Pay Scale, the employee was held to be entitled to the Pay Scale that he was drawing as on the date of his removal from service. Taking into consideration the above fact that the 1st respondent/employee has since retired, the said findings of the Industrial Tribunal cannot be interfered with.

14. For the reasons stated supra, the writ petition fails and is accordingly dismissed, however, without any order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.S.K.JAISWAL,J

Date: .11.2015

Dsr/Smr