

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.26096 OF 2003

ORDER:

This writ petition is filed to call for the records relating to I.D.No.38 of 2001 on the file of the Labour Court, Ananthapur and quash the Award, dated 06.08.2003, by issuing an appropriate writ, order or direction more particularly, in the nature of writ of Certiorari, and consequently, to direct respondent No.1 to reinstate petitioner No.1 into service with full back wages and all attendant benefits.

2. Case of petitioner No.1 is that he was appointed as Cleaner in the year 1975 in the respondent Corporation and subsequently, he was promoted as Tyre Mechanic Grade-II and Grade-I respectively. While he was working at Rayadurg Depot of the respondent Corporation as Tyre Mechanic – I, he was issued a charge sheet, dated 10.01.2000, with the following charge:

“For carrying stealthily 12 tyre tube necks by you from the Rayadurg Depot garage on 30.12.99 at 3.40 Hrs, after the spell of duty which was detected by Sri G.Vasudeva Reddy on duty Security Guard of Rayadurg Depot which constitutes misconduct in terms of Reg.28(x) of A.P.S.R.T.C. Employees (Conduct) Reg, 1963.”

Petitioner No.1 submitted his explanation to the above charge stating that he has not committed any offence. Having not satisfied with the explanation of petitioner No.1, an enquiry was conducted. Petitioner No.1 participated in the enquiry and without considering his evidence, he was removed from service vide file No.M1/802(3)/99-RDG, dated 05.05.2000. Aggrieved by the order of removal, petitioner No.1 preferred an appeal before the Deputy Chief Traffic Manager and the same was rejected on 25.11.2000. Aggrieved thereby, the petitioner raised an Industrial Dispute in I.D.No.38 of 2001 before the Labour Court, Ananthapur, but no relief was granted vide Award, dated 06.08.2003. Hence, he filed the present writ petition.

3. Counter-affidavit was filed by respondent No.1 stating that an enquiry officer was appointed to conduct enquiry; that in the preliminary enquiry as well as in the

detailed enquiry, the charge levelled against the petitioner was clearly proved at all stages and the petitioner has also signed on the enquiry statement without any protest confirming his acceptance of the charge. It is further stated that the enquiry report was submitted on 29.3.2000; that the show cause notice of removal was issued on 7.4.2000 and then, the respondent ordered for removal of the claimant from service on 5.5.2000. It is further stated that petitioner No.1 preferred an appeal to the appellate authority and the same was rejected on 25.11.2000; that petitioner No.1 raised an Industrial Dispute in the Labour Court vide I.D.No.38 of 2001, but the Labour Court granted no relief, as the charge is proved beyond doubt.

4. Learned counsel for the petitioners submits that petitioner No.1 has rendered unblemished service and when the writ petition is pending, petitioner No.1 passed away and his legal representatives came on record. He further submits that petitioner No.1 is not responsible for any theft and the so called material discovered from petitioner No.1's bag by the Security Guard basing on which the charge sheet was issued does not have any value; that petitioner No.1 is not responsible for the same and somebody planted the said material in the bag of petitioner No.1 and as such, the extreme step of removal from service is not warranted.

5. On the other hand, learned Standing Counsel appearing for the respondent Corporation states that while conducting enquiry, the principles of natural justice are not violated and basing on the same, action was initiated and order of removal was passed and hence, the same cannot be interfered with by this Court by exercising the powers under Article 226 of the Constitution of India on the ground of insufficiency of evidence or a second view is possible.

6. In this case, it is to be seen that petitioner No.1, in his reply to the charge sheet, stated that the Security Guard – C.Vasudeva Reddy falsely implicated him in this case by placing 12 tube necks on the table. But during enquiry, he changed his version and stated that 12 tube necks were found in his bag by the Security Guard, but he does not know how they came into his bag and that somebody who was inimical to him must have kept the same in his bag. It is also to be seen that petitioner No.1 has not chosen to cross examine the witnesses during enquiry.

When once petitioner No.1 has changed the version, it goes to show that defence set up by him is not genuine. Petitioner No.1 also failed to cross examine the witnesses during enquiry. He should have also examined any witnesses, but he failed to do so. It goes to show that petitioner No.1 has no defence to defend the allegations made against him. The Enquiry Officer as well as disciplinary authority and appellate authority found that the charge against petitioner No.1 was proved and the Labour Court also came to the same conclusion and upheld the order of removal. As such, this Court cannot re-appreciate the evidence by exercising the powers under Article 226 of the Constitution of India and it can go only into the merits of the case and correct all errors.

7. Learned counsel for the petitioners relied upon a judgment reported in **Vomayya Babu Shetty v. Manager, Digvijay Spinning and Weaving Mills** wherein it is held that when the article of charge of theft framed against an employee is of no value, the extreme punishment of removal from service is bad. Even in the counter also, it is not denied that the value of the material found in the bag of petitioner No.1 is not having any value, but, it only states that even though the material does not have any value, still, petitioner No.1 is not supposed to carry the same. In view of the judgment reported supra and as the material in question does not have much value and since petitioner No.1 passed away, I feel that no useful purpose would be served in sending the matter back to the authorities concerned for considering the quantum of punishment. In the facts and circumstances of the case, I feel that the order of removal is harsh and disproportionate to the charge levelled against petitioner No.1 and the same is liable to be set aside.

8. Accordingly, the Writ Petition is allowed setting aside the order of removal of petitioner No.1, dated 05.05.2000, as well as Award, dated 06.08.2003, in I.D.No.38 of 2001 on the file of the Labour Court, Ananthapur. However, as petitioner No.1 passed away, the question of reinstatement does not arise. Since the charge was proved and in the facts and circumstances, I am not inclined to award back wages or attendant benefits. Petitioner Nos.2 to 4, who are the legal representatives of deceased petitioner No.1, are only entitled to other benefits, if any, arising out of the employment of deceased petitioner No.1 on account of his death. There shall be no order as to costs.

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

JUSTICE A.RAJASHEKER REDDY

Date: 30.09.2015

AMD

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THE HON’BLE SRI JUSTICE A.RAJASHEKER REDDY

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