

THE HON'BLE SRI JUSTICE DILIP B.BHOSALE

AND

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT APPEAL No. 43 of 2015

JUDGMENT: (per the Hon'ble Sri Justice Dilip B.Bhosale)

This writ appeal is directed against the order, dated 27.11.2013, partly allowing the writ petition, filed by the respondent challenging his removal from service by virtue of the order, dated 23.04.2001, passed by the Depot Manager and the orders passed by the appellate authority and the revisional authority, dated 08.08.2001 and 01.06.2004 respectively, modifying the order of removal and ultimately, awarding punishment of reduction of pay by two stages permanently.

The writ petition was partly allowed and the order of Revisional Authority of reduction of pay by two stages permanently was modified to the stoppage of two annual increments without cumulative effect and while doing so, the following observations were made:

“A perusal of the record reveals that the respondent authorities have consistently held that there was no negligence on the part of the petitioner while driving the bus. Unfortunate as it has been, the accident has resulted in the death of a person. Still, unless there is cogent material brought on record to establish the negligence or the guilt of the petitioner, it could not be held that the loss of life alone would be the deciding factor in holding that the petitioner has been negligent.

In my considered view, the Revisional Authority has correctly assessed that if at all there was any shortcoming on the part of the petitioner while driving the bus, it was nothing but lack of anticipation. Under those circumstances, awarding punishment of reduction of pay by two stages permanently would amount to a major punishment, when admittedly the alleged lack of anticipation would be a minor misconduct. Thus, the Revisional Authority, in exercise of his revisional powers, ought to have ensured that no shockingly disproportionate punishment was inflicted on the petitioner.

Taking into account the totality of circumstances, holding that the punishment inflicted on the petitioner even in the modified form by the Revisional Authority is shockingly disproportionate, I deem it appropriate to further modify the award of the Revisional Authority to the following effect:

The punishment of reduction of pay of the petitioner by two stages permanently as imposed by the Revisional Authority is hereby set aside. Instead, there shall be stoppage of two annual increments without cumulative effect. The entire intervening period be treated as on leave without pay. The petitioner, however, shall be entitled to all other benefits, which he is otherwise entitled to.”

From the above observations, it is clear that since all the authorities below concurrently held that there was no negligence on the part of the respondent, though there was error of judgment, which resulted in the death of a person, cannot be the deciding factor in imposing such a severe punishment. In other words, it was held that the punishment inflicted is shockingly disproportionate and taking this view, the learned Single Judge has reduced the punishment to the stoppage of two annual increments

without cumulative effect. We do not find any justifiable reason to interfere with the impugned order. Moreover, we are informed that the respondent/employee has already retired and received retiral benefits.

Hence, appeal is dismissed. No costs.

Consequently, miscellaneous petitions, if any, also stand disposed of.

B.BHOSALE,J

DILIP

A.RAMALINGESWARA RAO,J

Dt:29.01.2015

kdl