

HON'BLE SRI JUSTICE R.KANTHA RAO

W.P.No.29107 OF 2015

ORDER

Heard learned counsel appearing for the petitioner and learned Standing Counsel appearing for the respondent-Corporation.

This writ petition is filed seeking to declare the impugned proceedings dated 24.06.2015 issued by the 2nd respondent, as arbitrary and illegal.

The petitioner was appointed as Driver in the respondent-Corporation in 1992. On 4.8.2012, when he was discharging duties on Jangaon to Jagathgiri gutta route, a lady passenger alighted the bus in a hurried manner, fell down on the road, received severe injuries and subsequently, died while undergoing treatment. Hence, he was placed under suspension vide order dated 5.9.2012. Aggrieved by the same, he preferred W.P.No.29589 of 2012 before this Court. This Court vide order 24.09.2012 in W.P.M.P.No.29589 of 2012, suspended the impugned order dated 5.9.2012. Pursuant to the same, he joined the duty and has been discharging duties as Driver. While so, *vide* order dated 20.03.2015, this Court disposed of W.P.No.29589 of 2012 directing the respondents to conduct enquiry and pass final order in pursuance of disciplinary enquiry initiated against the petitioner. Accordingly, the respondent-Corporation conducted a domestic enquiry and the enquiry officer submitted enquiry report. Pursuant to the order passed by this Court in the said writ petition, the 2nd respondent sought objections on the enquiry report, for which the petitioner submitted his objections. Thereafter, the 2nd respondent vide proceedings dated 4.6.2015 issued show cause notice for deferment of annual increment for a period of two years with

cumulative effect. On receipt of the show cause notice, the petitioner submitted his explanation denying the allegations. But, without considering the contentions raised by the petitioner, the respondent-Corporation placed him under suspension. Hence, the present writ petition.

Counter-affidavit has been filed on behalf of the respondent-Corporation *inter alia* contending that the writ petition itself is not maintainable since the petitioner did not avail the remedy of appeal against the impugned order.

In the disciplinary enquiry, it was found that both the driver and the conductor are responsible for causing the fatal accident. Earlier, the petitioner approached this Court by filing W.P.No.29589 of 2012 and this Court disposed of the same by directing the respondents to pass final order in pursuance of disciplinary enquiry initiated against the petitioner. Accordingly, the Assistant Manager (Enquiry), RM's Office, Warangal, has conducted a detailed enquiry and submitted his report on 29.05.2013, wherein the Enquiry Officer opined that the petitioner had driven the bus on route JN-J.Gutta on 4.8.2012 in a rash and negligent manner without taking precautionary measures, which resulted in fatal accident near Uppal bus stop at 13.30 hours.

While disposing of W.P.No.29589 of 2012, learned Single Judge of this Court observed as under:

“As the suspension orders dated 5.9.2012 impugned in the two writ petitions were not given effect till date by virtue of the interim orders and as the disciplinary enquiries initiated against the petitioners are stated to have concluded, there is no necessity to now give effect to the impugned suspension orders at this stage and the same are accordingly set aside. It shall be open to the APSRTC to pass final orders in the pending disciplinary proceedings initiated against both the petitioners in accordance with law. The writ petitioners shall be at liberty to avail suitable remedies in accordance with law if they are aggrieved by such final orders pending miscellaneous petitions, if any shall stand closed.”

As per the aforesaid order passed by this Court, the petitioner has to avail suitable remedies available to him under law, if he is aggrieved by the final order passed by the authority.

Learned counsel appearing for the petitioner submits that perusal of the order impugned clearly indicates that it is the result of non-application of mind and therefore, it is liable to be set aside in the present case.

The order passed by the Depot Manager, Jangaon, is as follows:

“However, on perusing available records and the circumstances of the case, I have come to the provisional conclusion that the charge framed against you is proved and which is grave in nature and constitutes mis-conduct under conduct Regulations, for which the punishment of deferment of annual increment for a period of two years with cumulative effect duly treating the suspension period as not on duty is proposed just and proper to be imposed on you.

Therefore, you are hereby called upon to show cause as to why the above proposed punishment of deferment of your annual increment for a period of two years with cumulative effect shall not be imposed on you, within seven days (7) from the date of receipt of this notice, failing which, it will be assumed that you have no explanation to offer and final orders will be passed basing on the evidences available on records.”

On the other hand, learned Standing Counsel appearing for the respondent-Corporation submits that as per the orders passed in W.P.No.29589 of 2012, the petitioner has been afforded an opportunity to submit his objections and thereafter, show cause notice was issued to him and final order was passed on 24.06.2015 duly considering the explanation submitted by him.

Admittedly, the petitioner was reinstated into service pursuant to the order passed by this Court revoking the ‘suspension order. He was afforded an opportunity to participate in the enquiry. The order impugned is not one of removal or dismissal from service. In the light of the aforesaid order passed by this Court in

W.P.No.29589 of 2012, the petitioner ought to have availed the statutory remedies available to him.

Therefore, without going into the merits of the case, the Writ Petition is disposed of directing the petitioner to file an appeal within a period of fifteen days from the date of receipt of a copy of this order. On filing such an appeal, the appellate authority is directed to entertain the same notwithstanding the delay in presenting the appeal and dispose of the same within a period of four weeks, in accordance with law. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

JUSTICE R.KANTHA RAO

05th October, 2015

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