

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.12567 OF 2011

Dated:30.09.2016

Between:

J. James, S/o. Pattabhiramaiah,
Aged 42 years, E.No.600366,
R/o. Rajahmundry, East Godavari
District and other .. Petitioners

AND

The Chairman-cum-Presiding Officer,
The Industrial Tribunal-cum-Labour Court,
Visakhapatnam and another .. Respondents



The Court made the following:

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ORDER:

The petitioner was appointed as Casual Driver on 05.06.1997 in Rajahmundry Depot of the respondent – Corporation. On 24.02.2002, he was assigned vehicle No.AP 10Z 558 on the route Rajahmundry to Seethanagaram and while the bus was stopped at Mugulla request stage, after the passengers alighted from the bus, the petitioner moved it forward. A person suddenly came from behind of a stationed vehicle and as there was hardly any time for the petitioner to react, the person fell under the bus and died. Disciplinary action was initiated against the petitioner on the allegation that he failed to take proper precautionary measures and due to lack of anticipation, while driving the vehicle, he hit the person, resulting in grievous injuries, who later succumbed to injuries. The domestic enquiry report held the charge as proved. Based on the findings of the domestic enquiry, by order, dated 22.01.2001, the disciplinary authority imposed punishment of decasualisation for a period of two years. The said punishment came into effect from 01.01.2002. The appeal and revision filed by petitioner were rejected. The petitioner raised conciliation proceedings. On a reference, the Labour Court registered the dispute as I.D.No.75 of 2007. The Labour Court passed award rejecting the claim of the petitioner, which is impugned in this Writ Petition.

2. Learned counsel for the petitioner submits that the disciplinary action was initiated against the petitioner under the Classification, Control and Appeal Regulations, 1967 (for short,

‘the CCA Regulations, 1967’) and Regulation No.8 thereof prescribes penalties that can be imposed. Decasualisation is not one of the prescribed penalties. Thus, the order of disciplinary authority imposing penalty which is not stipulated is illegal. In support of his contention, learned counsel has placed reliance on a judgment of this Court in W.P.No.11050 of 2004, dated 18.07.2005.

3. Sri S.V. Ramana, learned Standing Counsel for the respondent – Corporation, submits that the punishment imposed against the petitioner is similar to the punishment of reduction to a lower rank in the seniority list and therefore it cannot be said that punishment is not prescribed. He would further submit that on account of rash and negligent driving of the petitioner, accident had occurred. The allegation levelled against the petitioner was proved. Before the Labour Court, the petitioner has not objected to the conducting of domestic enquiry. The Labour Court has upheld the validity of the domestic enquiry. Thus, once the charge is proved, it cannot be said that the punishment imposed against the petitioner is not valid.

4. It is not in dispute that disciplinary action was initiated in accordance with the CCA Regulations, 1967. As seen from Regulation No.8 of the Regulations, there is no prescription of punishment of postponement of date of decasualisation. Therefore, it cannot be said that such punishment can be equated to that of reduction to a lower rank or stage. Admittedly, the petitioner was a Causal Driver. The effect of de-casualisation is putting him off duty for the period mentioned, which results in

break in service, non-payment of allowances for the said period and he would be losing his seniority when it comes to granting regularisation. Therefore, a junior to him may have been regularised prior to regularisation granted to the petitioner. It is also not in dispute that the petitioner was subsequently regularised. As consistently held by this Court and it is settled principle of law that when disciplinary action is initiated, the disciplinary authority can impose punishment which is prescribed in the Regulations. Thus, when punishment of postponement of date of decasualisation is not one of the prescribed penalties in the Regulations, no such punishment could have been imposed. Even though this issue was raised before the Labour Court, the Labour Court failed to appreciate the same and erroneously upheld the punishment imposed.

5. Hence, the Writ Petition is allowed and the award of the Labour Court is set aside. Consequently, the punishment imposed vide proceedings dated 11.01.2001 is also set aside. The 1st respondent is directed to grant all consequential benefits flowing out of setting aside the order, dated 11.01.2001. However, the petitioner is not entitled to wages for the period he was put off duty. It is also made clear that it is open to the respondents to take disciplinary action in accordance with law, if so warranted. There shall be no order as to costs.

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

P. NAVEEN RAO, J

Date:30.09.2016
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