

THE HON'BLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION No.2707 OF 2010

ORDER:

This Writ Petition, filed under Article 226 of the Constitution of India, challenges the award dated 03.04.2007, passed by the Industrial Tribunal-cum-Labour Court, Anantapur, in I.D.No.233/2004, to the extent the same went against the petitioner.

2. The petitioner herein is a driver in the 2nd respondent Road Transport Corporation. Basing on a complaint made by one Sri.Hussain Sab, departmental enquiry was initiated against the petitioner and the disciplinary authority issued a charge sheet on 08.12.2003 framing the following charges against the petitioner:

1. *"For having made outrage modesty against the minor girl Kum.Shahida, aged 16 years of Kurumala Village, on 05.12.2003 by going to the residence of his brother at Dharmavaram town with flowers and fruit to speak the marriage alliance which constitutes misconduct under Reg.26(1) and Reg.28(xxxii) of APSRTC Employees (Conduct) Reg.1963.*
2. *For having spreading over the message of marrying a minor girl Kum.Shahida, aged 16 years of Kurumala Village, among the villages of Kurumala as well as among the employees of Dharmavaram though married once which constitutes misconduct under Reg.25(i) and Reg.28(xvii) of APSRTC Employees (conduct) Reg.1963.*
3. *By your un-moral activities against the minor girl in the public as APSRTC Employees, the sanctity of the organisation has ruined which constitutes misconduct under Reg.28(xxxii) of APSRTC Employees (Conduct) Reg.1963."*

3. In response to the said charge sheet and the charges contained therein, petitioner herein submitted an explanation. Thereafter, the respondent Corporation initiated regular enquiry against the petitioner by appointing an Enquiry Officer and the Enquiry Officer, so appointed, submitted his report on

11.03.2004, which was followed by a show-cause notice of removal dated 18.03.2004 and submission of explanation by the petitioner on 28.03.2004. Subsequently, the disciplinary authority passed an order on 31.03.2004, ordering removal of the petitioner from service. Thereafter, unsuccessfully availing the remedies of Appeal and Review before the departmental authorities, petitioner herein raised Industrial Dispute No.233 of 2004 before the Industrial Tribunal-cum-Labour Court, Anantapur, under Section 2-A(2) of the Industrial Disputes Act, 1947. The Tribunal, by way of an award dated 03.04.2007, partly allowed the said industrial dispute raised by the petitioner, setting aside the order of removal passed by the disciplinary authority and directed reinstatement of the petitioner into service, but declined the attendant benefits and the back wages.

5. Challenging the validity and legal sustainability of the said award passed by the Industrial Tribunal-cum-Labour Court, to the extent of declining the reliefs of attendant benefits and back wages, the present writ petition came to be filed. Denying the averments filed in support of the writ petition and in the direction of justifying the impugned award, a counter affidavit is filed on behalf of the 2nd respondent.

6. Heard Sri S.D.Gowd, learned counsel, appearing for the petitioner, learned Government Pleader for Labour, appearing for the 1st respondent and Sri A.Rama Rao, learned standing counsel, appearing for the 2nd respondent.

7. It is contended by the learned counsel for the petitioner that the award passed by the Industrial Tribunal, to the extent of refusing to grant the reliefs of attendant benefits and the back wages, is erroneous, contrary to law and is opposed to the very spirit and object of the provisions of Industrial Disputes Act, 1947. It is the further submission of the learned counsel for the petitioner that having held that the respondent Corporation failed to prove the charges against the petitioner, the Tribunal erred in refusing to grant attendant benefits and back wages.

8. On the contrary, it is vehemently contended by the learned standing counsel for the 2nd respondent Road Transport Corporation that the award passed by the Industrial Tribunal-cum-Labour Court is perfectly justified in the facts and circumstances of the case and having regard to the nature of allegations against the petitioner. It is the further submission of the learned standing counsel that in view of the reasons assigned by the Industrial Tribunal, the findings arrived at by the Tribunal are not amenable for any judicial review of this Court under Article 226 of the Constitution of India in the absence of any perversity in the same.

9. In the above backdrop, now the issues which this Court is called upon to answer in the present writ petition are:

1. *Whether the Industrial Tribunal-cum-Labour Court is justified in declining to grant attendant benefits and back wages to the petitioner in the facts and circumstances of the case?*
2. *Whether the questioned award warrants any interference of this Court under Article 226 of the Constitution of India?*

10. The information available before this Court candidly discloses that basing on the material available, the Industrial Tribunal-cum-Labour Court framed the following point for consideration:

“Whether the petitioner herein is entitled for setting aside the order of removal from service issued by the respondent in his proceedings dated 31.03.2004 as illegal, for reinstatement into service and other consequential benefits as prayed for?”

11. Before Industrial Tribunal, the petitioner herein did not file any documents but on behalf of the respondent Corporation Exhibits M-1 to M-16 were marked. A reading of the impugned award further clearly discloses that the Tribunal found fault with the findings of the Enquiry Officer and the conclusions arrived at by the disciplinary authority while terminating the services of the petitioner. It is also significant to note that the entire episode started with the complaint of one Sri Hussain Sab. Admittedly, the said Hussain Sab was not examined either at the time of departmental enquiry or during the enquiry before the Tribunal. It is also important to note that in

Ex.M-1 report dated 05.12.2003 submitted by Sri Hussain Sab, which was the genesis for the entire episode, he referred to the name of one Sri Shankaraiah, a conductor in the respondent organisation. It is also clear from the impugned award that the above mentioned Sri Shankaraiah also stated nothing against the petitioner nor he supported the contents of Ex.M-1 complaint before the Enquiry Officer. The Tribunal, eventually, came to a categorical conclusion that the Enquiry Officer without any basis held the charges as proved. Having categorically found the enquiry as irregular, the Tribunal allowed the Industrial Dispute in part granting the relief of reinstatement with continuity of service only.

12. A perusal of the impugned award, in clear and unequivocal terms, demonstrates that for denying the attendant benefits and back wages, the Tribunal did not assign any reasons much less valid reasons. Having categorically found that the entire proceedings are illegal and unsustainable and having set aside the order of removal, directing reinstatement and continuity of service, there is absolutely no justification on the part of the Tribunal to deny the attendant benefits and the back wages, in the absence of any fault on the part of the petitioner. The Tribunal in fact ought to have borne in mind the amount of mental agony the petitioner herein would have undergone in view of the allegations made against him, which would undoubtedly touch the reputation of the individuals, which cannot be compensated in terms of money.

13. For the aforesaid reasons, Writ Petition is allowed, setting aside the award dated 03.04.2007, passed by the Industrial Tribunal-cum-Labour Court, Anantapur – 1st respondent herein, only to the extent of declining to grant attendant benefits and back wages and consequently respondents are directed to grant attendant benefits and back wages also to the petitioner and it is also made clear that in respect of the other reliefs already granted by the Tribunal, the award of the Tribunal shall remain intact.

14. Miscellaneous petitions pending consideration, if any, in the Writ Petition shall stand closed in consequence. No order as to costs.

A.V.SESHA SAI, J

13.07.2016
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