

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

WRIT PETITION No.1402 OF 2010

ORDER:

This Writ Petition, filed under Article 226 of the Constitution of India, challenges the award dated 28.11.2008 passed by the Additional Industrial Tribunal –cum- Additional Labour Court, Hyderabad, in I.D.No.35 of 2007, as published vide G.O.Rt.No.262, Labour Employment Training and Factories (LAB.I) Department, dated 07.03.2009.

2. The facts and circumstances leading to the filing of the present writ petition are as infra:

The 1st respondent herein was engaged initially as a casual conductor in the petitioner – Road Transport Corporation on 23.11.1985 and his services were regularised with effect from 01.04.1997. Followed by an enquiry conducted, 1st respondent was removed from service on 26.10.2004. After unsuccessfully availing the remedies of Appeal and Review, the 1st respondent raised Industrial Dispute No.35 of 2007 before the Tribunal and the Labour Court passed an award dated 28.11.2008, directing reinstatement of the 1st respondent into service with attendant benefits but without back wages.

3. The said award, to the extent of ordering reinstatement with attendant benefits is under challenge in the present writ petition. This Court, while ordering '*Rule Nisi*', on 29.01.2010 in W.P.M.P.No.1867 of 2010 granted stay except to the extent of reinstatement as the 1st respondent was already reinstated on 04.06.2009 pursuant to the impugned award.

4. Heard Sri N.Vasudeva Reddy, learned standing counsel,

appearing for the petitioner – Road Transport Corporation and none appears for the 1st respondent/workman, despite service of notice.

5. It is contended by the learned standing counsel for the petitioner that the questioned award is highly erroneous, contrary to law and opposed to the very spirit and object of the provisions of the Industrial Disputes Act; that the Labour Court went wrong in arriving at the conclusion that the MTD 141 was not supplied to the 1st respondent in the depot itself and it is the responsibility of the 1st respondent/workman to keep available MTD 141 with him and produce it at the time of check; that the Tribunal failed to consider the fact that as per the statement of the passengers they boarded the bus at Keesaragutta Kaman and paid fare amount, as such, the Tribunal ought to have held that the

1st respondent/workman had collected the fare at the boarding point itself; that having held that the domestic enquiry was valid, the Tribunal grossly erred in coming to the conclusion that the charges were not proved. It is also the categorical and specific contention of the learned counsel for the petitioner that the Tribunal failed to take into consideration the earlier conduct of the

1st respondent/workman and had the same been considered, the impugned award would have not emanated. In support of his submissions and contentions, learned standing counsel places reliance on the judgment of the Hon'ble Apex Court in ***Devendra Swamy Vs. Karnataka Road Transport Corporation***^[1].

6. In the above backdrop, now the issue that boils down for consideration of this Court is:

Whether the award passed by the Tribunal is sustainable and tenable?

7. As against the order of removal passed by the Disciplinary

Authority on 26.10.2004, as confirmed in Appeal and Review, the 1st respondent herein raised I.D.No.35 of 2007 under the provisions of Section 2-(A)(2) of the Industrial Disputes Act, 1947. Basing on the respective contentions and the material available, the learned Presiding Officer of the Industrial Tribunal framed the following points for consideration:

1. *Whether the respondent is justified in passing the impugned removal order against the petitioner?*
2. *Whether the punishment of removal is disproportionate to the gravity of misconduct?*

8. It is required to be noted, in this context, that resisting the application filed by the 1st respondent/workman, the petitioner- Road Transport Corporation filed a counter before the Tribunal, categorically stating at Paragraph No.3 of the said counter that the 1st respondent/workman was placed under suspension w.e.f. 24.11.1998 for having committed serious cash and ticket irregularities and subsequently removed from service on 19.03.1999 and as per the award in I.D.No.199 of 2001, he was reinstated into service on 02.12.2003. The petitioner Corporation also stated categorically that the annual increments of the workman were deferred four times for his act of misconduct on various occasions.

9. A perusal of the questioned award clearly shows that the Tribunal failed to take into consideration the said previous conduct of the workman, while adjudicating the issue and while considering the quantum of punishment. In this connection, it may be appropriate to refer to the judgment of the Hon'ble Apex Court cited by the learned standing counsel.

10. In ***Devendra Swamy Vs. Karnataka Road Transport Corporation (1 supra)***, the Hon'ble Apex Court, at Paragraph Nos. 6 and 7, held as follows:

"6. So far as the merits of the case are concerned, there

also we find the order of the Division Bench to be unexceptionable. It was pointed out that the appellant had committed similar defalcations/misconduct on 41 occasions prior to the initiation of this departmental enquiry and was found guilty and punished, which was a weighty factor, kept in view of the Disciplinary Authority and was also brought to the notice of the Labour Court but the Labour Court did not suitably advert to the material so brought to its notice. In the counter filed in this Court, the respondent-Corporation has stated on the affidavit of Assistant Law Officer of the Corporation that subsequent to the appellant having been reinstated in the year 1993 pursuant to the interim order passed by the High Court, between 1994 and

8th November, 2000, he was found to have been involved in 36 instances of misconduct. This fact is not disputed by the appellant in rejoinder filed to the counter-affidavit of the respondent. Thus the appellant has not learnt any lesson and is incorrigible.

7. The Division Bench of the High Court relied on the decisions of this Court in State of Haryana v. Rattan Singh ((1997) 2 SCC 491) ; U.P. State Road Transport Corporation v. Basudeo Chaudhary (1997 (11) SCC 370) and U.P. State Road Transport Corporation v. Subhash Chandra Sharma and Ors. ((2002) 3 SCC 324) for forming opinion that unless punishment is shockingly disproportionate to the charge which has been proved the punishment awarded by the Disciplinary Authority should not be interfered in exercise of power of judicial review. In our opinion, the Division Bench was right in taking the view which it has taken. The opinion formed by the Labour Court that punishment of dismissal imposed by the management on the workman was too harsh and undeserved, was a perverse finding and arrived at by ignoring the material as to previous acts of misconduct and punishments awarded to the appellant brought to the notice of Disciplinary Authority and the Labour Court. We are also of the opinion that the gravity of the charge of misconduct for which the disciplinary proceedings were initiated and which charge was found to be substantiated by the Labour Court seen in the light of previous service record of the appellant fully justified

the punishment awarded by Disciplinary Authority.”

11. Since the Tribunal exercised its power under Section 11(A) of the Industrial Disputes Act, this Court is not inclined to meddle with the impugned award to the extent of ordering reinstatement. Since the Tribunal did not record any finding with regard to the past conduct of the employee, though it was specifically raised by the petitioner in its counter, this Court is of the considered opinion that the validity of the impugned award to the extent of awarding of attendant benefits is required to be considered afresh. In respect of other aspects, the impugned award shall remain intact.

11. For the aforesaid reasons, Writ Petition is partly allowed, setting aside the award dated 28.11.2008 passed by the Additional Industrial Tribunal – cum- Additional Labour Court, Hyderabad, in I.D.No.35 of 2007, to the extent of granting attendant benefits to the 1st respondent/workman only and to the said extent, the matter is remanded to the Additional Industrial Tribunal –cum- Additional Labour Court, Hyderabad, for fresh consideration in the light of the observations made in the judgment of the Hon’ble Apex Court referred supra.

12. 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

22.06.2016
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[\[1\]](#) (2002) 9 SCC 644