

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

WRIT PETITION No.3700 of 2012

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ORDER:
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The challenge in the present writ petition is to the Award dated 23.11.2011, passed by the Industrial Tribunal-Cum-Labour Court, Ananthapur in I.D.No.157 of 2010, published vide G.O.Rt.No.13, dated 04.01.2012.

2. Heard Sri S.M.Subhan, learned counsel for the petitioner and Sri A. Rama Rao, learned Standing Counsel for the respondent Corporation apart from perusing the material available before the Court.

3. Petitioner herein entered into the service of the respondent Corporation as a Driver in the year 2007 and the respondent Corporation removed the petitioner from service with effect from 30.01.2010 on the following charge:

“For having driven the vehicle No.AP11Z in rash and negligent manner with lack of anticipation with high speed while you were performing the service on route Adoni-Halvi on 7.9.2009 resulted in, met with an accident with a motor cycle No.AP27Q 2661 near Bata Maremma temple wherein the Motor Cyclist died and another one pillion rider sustained grievous injuries as detailed in the allegation which constitutes misconduct in terms of Circular No.PD-5/09, dated.23-12-2009 VC & MD.”

4. Aggrieved by the order of removal, after unsuccessfully availing the remedies of appeal and review, petitioner herein raised I.D.No.157 of 2010, on the file of the Industrial Tribunal-Cum-Labour Court, Ananthapur under Section 2-A (2) of the Industrial Disputes Act, 1947. The Tribunal, by way of award dated 23.11.2011, dismissed the said I.D.No.157 of 2010.

5. Calling in question, the validity and the legal sustainability of the said award confirming the order of removal passed by the respondent authorities, present writ petition came to be filed.

6. According to the learned counsel for the petitioner, the questioned award is erroneous, contrary to law and opposed to the very spirit and object of the provisions of the Section 11-A of the Industrial Disputes Act and the Tribunal failed to examine the issue as per the said provisions of law. It is also the submission of the learned counsel that the criminal prosecution launched against the petitioner ended in acquittal. It is further contended that the order of punishment is also contrary to the instructions issued by the Corporation and there is no independent consideration by the Tribunal on the element of misconduct and the proportionality of the punishment inflicted.

7. On the contrary, totally supporting the removal of the petitioner from service and the impugned order, it is vehemently contended by the learned Standing Counsel for the respondent Corporation that there is no illegality nor there is any procedural infirmity, and in the absence of the same, the present writ petition is not maintainable and the petitioner is not entitled for any indulgence under Article 226 of the Constitution of India. It is the further submission of the learned Standing Counsel that since the respondents imposed the punishment of removal on the proven misconduct of the petitioner, the impugned award is not amenable for any judicial review under Article 226 of the Constitution of India.

8. In the above backdrop, now the issue that boils down for consideration of this Court is "Whether the petitioner is entitled for any relief from this Court under Article 226 of the Constitution of India and whether the impugned award is sustainable and tenable?"

9. Dispensing with the services of the employees is a matter of serious concern and the authorities are required to take great amount of care and caution before resorting to such extreme action and unless charges are proved with valid, cogent, convincing and unimpeachable evidence, such extreme punishment cannot be inflicted in a mechanical, routine and iniquitous manner. Followed by framing of the charge, alleging rashness and negligence and lack of anticipation while driving the vehicle and

pursuant to an enquiry, the disciplinary authority, Depot Manager, terminated the services of the petitioner. In response to the charge sheet and the charge contained therein, the petitioner herein offered explanation, stating that the accident occurred due to the negligence of the motor cyclist, who was coming in opposite direction in high speed and that there were so many vehicles at the temple which prompted the petitioner to turn the vehicle to right side.

10. On the other hand, the case of the Corporation is that because of rash and negligent driving of the petitioner and lack of anticipation, the accident took place, resulting in the death of a motor cyclist. The learned Standing Counsel totally supports the impugned order while contending that the punishment inflicted on the petitioner is in proportion to the misconduct.

11. Learned counsel for the petitioner has placed on record the judgment rendered by the Criminal Court in CC.No.294 of 2009 and Criminal Appeal No.135 of 2013. In the said Criminal Case petitioner was charge-sheeted for the offences under Sections 338 and 304-A I.P.C and the learned Judicial Magistrate of First-Class, Adoni, by virtue judgment in C.C.No.294 of 2009, found the petitioner guilty of the charges and convicted him. As against the said conviction order, petitioner herein preferred Criminal Appeal No.135 of 2013, on the file of the Court of the Second Additional Sessions Judge, Kurnool at Adoni. The learned Additional Sessions Judge, by way of judgment dated 29.01.2014, allowed the said Criminal Appeal, setting aside the conviction. While referring to the same, it is the submission of the learned counsel for the petitioner herein that the contributory negligence of the victim motor cyclist was not taken into consideration either by the authorities or by the Industrial Tribunal-Cum-Labour Court.

12. A perusal of the impugned award makes it very much clear that the Tribunal did not assess the issue and did not undertake any exercise as per the provisions of Section 11-A of the Industrial Disputes Act nor the Tribunal went into the aspect of proportionality of the punishment in the

facts and circumstances of the case nor it considered the contributory negligence, if any of the victim to assess the same. Therefore, having regard to the facts and circumstances of the case and for the reasons recorded above, this Court is of the considered opinion that the ends of justice would be served if the matter is remanded to the Industrial Tribunal for fresh consideration.

13. For the aforesaid reasons, writ petition is allowed, setting aside the Award dated 23.11.2011 passed by the Industrial Tribunal-Cum-Labour Court, Ananthapur in I.D.No.157 of 2010, published vide G.O.Rt.No.13, dated 04.01.2012 and the matter is remanded to the Tribunal for fresh consideration, in accordance with law and in the light of the observations made *supra*. The said exercise shall be completed within a period of four months from the date of receipt of this order. It is also open for the petitioner herein to place on record the order of acquittal passed by the learned Second Additional Sessions Judge, Kurnool at Adoni in Criminal Appeal No.135 of 2013 dated 29.01.2014 for consideration of the Tribunal. As a sequel, the miscellaneous petitions, if any, shall stand disposed of. There shall be no order as to costs.

A.V.SESHA SAI, J

Date:07.04.2016

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

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Dated 07th April, 2016

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