

**In the High Court of Judicature at Hyderabad
for the State of Telangana and the State of Andhra Pradesh**

Writ Petition No.5248 of 2003

Between:

Sri A.Janardhan

... Petitioner

and

**The Depot Manager,
APSRTC, Hanamkonda Depot.**

...Respondent

Date of Judgment Pronounced: 02-11-2016

Submitted for Approval:

The Hon'ble Sri Justice A.V.SESHA SAI

- 
1. Whether Reporters of Local newspapers may be allowed to see the judgments ? No
 2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes
 3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment ? Yes

(A.V.SESHA SAI)

*** The Hon'ble Sri Justice A.V.Sesha Sai**

+ Writ Petition No.5248 of 2003

% Dated 02.11.2016

Between:

A.Janardhan

... Petitioner

and

**The Depot Manager,
APSRTC, Hanamkonda Depot.**

...Respondent

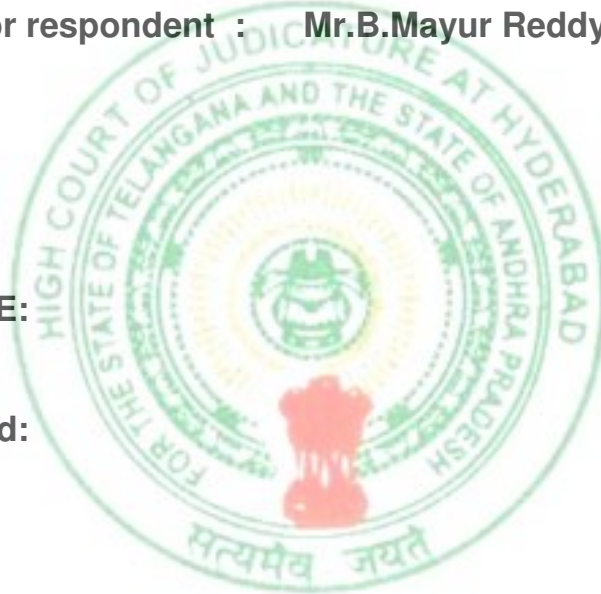
! Counsel for the petitioner: Mr.M.Siva Shekar

^ Counsel for respondent : Mr.B.Mayur Reddy

<GIST:

>HEAD NOTE:

? Cases cited:



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

WRIT PETITION No.5248 of 2003

ORDER:

This writ petition filed under Article 226 of the Constitution of India challenges the award, dated 29.08.2002, passed by the Industrial Tribunal-cum-Labour Court at Warangal (hereinafter called as 'the Industrial Tribunal') in I.D.No.138 of 1999.

Heard Sri M.Siva Shekar, learned counsel for the petitioner and Sri B.Mayur Reddy, learned Standing Counsel for the respondent-Corporation.

Followed by an accident on 24.06.1998, a charge sheet was issued by the disciplinary authority on 14.07.1998 to the petitioner, who is a Driver in the respondent-Corporation, and in response to the same, he submitted his explanation. Subsequently, the Enquiry Officer was appointed. He conducted the enquiry and submitted a report holding that the charge was proved. Basing on the said report, the disciplinary authority issued a show cause notice on 15.11.1998, followed by an order of removal on 04.12.1998. After unsuccessfully availing the remedy of appeal, the petitioner raised industrial dispute, being I.D.No.139 of 1999 before the Industrial Tribunal under Section 2-A(2) of the Industrial Disputes Act, 1947 (hereinafter called as 'the Act').

As many as 18 documents were marked on behalf of the respondent-Corporation.

The Presiding Officer framed the following point for consideration:

- (1) Whether the domestic enquiry against the applicant, followed by his consequential removal from service by way of punishment, was in accordance with the Regulations and proportionate to the gravity of the misconduct or suffers from any irregularity, calling for interference?

The Industrial Tribunal by way of an award, dated 29.08.2002, while setting aside the order of removal, directed the respondent-Corporation to reinstate the petitioner into service with continuity of service, but without back wages, while further ordering to treat the period of absence from the date of suspension to the date of reinstatement as 'on leave' to which the petitioner would be eligible and to adjust the leave salary, if any, towards expenses of Rs.10,251.55 ps. and compensation of Rs.2,97,500/- paid by the Corporation to the accident victims and recover the balance amount from the petitioner's salary in instalments at the rate of Rs.1000/- per month and the remainder, if any, from his retiral benefits.

Assailing the validity and legal sustainability of the said award to the extent the same went against the petitioner-workman, the present writ petition came to be instituted.

This Court, while ordering Rule nisi on 27.03.2003, in WPMP No.6923 of 2003, observed that any recovery from the salary of the petitioner shall be subject to the result of the writ petition.

It is contended by the learned counsel for the petitioner that the award passed by the Industrial Tribunal to the extent of holding against the petitioner is erroneous and contrary to law and opposed to the very spirit and object of the provisions of the Act. It is further contended by the learned counsel that the punishment is shockingly disproportionate and contrary to the provisions of Section 11-A of the Act. It is further contended by the learned counsel that the Industrial Tribunal, without assigning any valid reason, passed the award totally discarding the fact that the petitioner-workman was acquitted by the Criminal Court for the offences punishable under Sections 304-A, 337 and 338 IPC. He also contended that having categorically found that there was no involvement of the petitioner in any fatal accidents earlier, the Industrial Tribunal ought to have completely set aside the order of punishment.

On the contrary, it is vehemently submitted by the learned Standing Counsel for the respondent-Corporation that there is no illegality nor there exists any infirmity in the impugned award and the

same is in accordance with the provisions of the Act and in the absence of the same, the award passed by the Industrial Tribunal is not amenable to judicial review under Article 226 of the Constitution of India. It is further submitted that duly taking into consideration the entire material available on record, the Industrial Tribunal modified the punishment and the punishment awarded is strictly in commensurate with the allegations levelled against the petitioner. It is also contended that in the absence of any perversity in the finding, the writ in the nature of certiorari cannot be issued.

In the above backdrop, now the issues that fall for consideration of this Court are:-

- (1) Whether the award under challenge passed by the Industrial Tribunal is in accordance with law?
- (2) Whether the Industrial Tribunal is justified in denying back wages and directing recovery of compensation amount and expenses and directing to treat the period of suspension as 'on leave'?

The information available before this Court candidly discloses that as a consequence of a fatal accident, which resulted in death of five children travelling in an auto, the petitioner was charge-sheeted, which ultimately culminated with the order of termination passed by the disciplinary authority on 04.12.1998. Obviously, the very basis for initiating the disciplinary enquiry against the petitioner was that as

he failed to take precautionary measures while driving the bus towards left, the accident occurred.

A perusal of the impugned award clearly discloses that the auto was coming in opposite direction without any lights and the passengers, who appeared as witnesses namely K.Kashi Reddy Adi Reddy and A.Badam Hanmantha Reddy, categorically stated before the Enquiry Officer that on seeing an over-loaded auto near R.E.C., the bus driver applied brakes suddenly and stopped the bus, but the auto driver could not control the Auto. It is, no doubt, true that the respondent-Corporation spent an amount of Rs.10,251.55 ps. towards treatment for those who sustained injuries and the Corporation also paid a sum of Rs.2,97,500/- towards compensation to the deceased and injured. It is also significant to note, as observed by the Industrial Tribunal, that there was no involvement of the petitioner in any fatal accidents earlier. It is also important to note that the petitioner was acquitted by the Criminal Court for the offences punishable under Sections 304-A, 337 and 338 IPC.

In the light of the above aspects, this Court is of the considered opinion that the award passed by the Industrial Tribunal to the extent of directing recovery of compensation amount from the petitioner is irrational and unwarranted, particularly in view of the acquittal order passed by the Criminal Court.

For the aforesaid reasons, the writ petition is partly allowed and consequently, the award passed by the Industrial Tribunal is modified deleting the portion which directs recovery of compensation of Rs.2,97,500/- and expenses of Rs.10,251.55 ps. from the petitioner. It is also made clear that in all other respects, the award passed by the Industrial Tribunal shall remain intact.

Consequently, Miscellaneous Petitions, if any pending in this writ petition shall stand disposed of. There shall be no order as to costs.

Dt:02.11.2016.

Note: L.R. copy to be marked.
kdl

A.V.SESHA SAI, J

