

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

W.P.NO.4385 OF 2010

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ORDER:

This writ petition, filed under Article 226 of the Constitution of India, assails the action of the respondents in recovering a sum of Rs.25,067/- from the salary of the petitioner at the rate of Rs.1,000/- per month without any notice or any Office Order, as illegal, arbitrary and violative of principles of natural justice.

Heard Sri P.Gonvinda Rajulu, learned counsel for the petitioner and Sri A.Rama Rao, learned Standing Counsel for the Respondent-Corporation and perused the material available before this court.

The petitioner herein was initially appointed as a Conductor in the year 1996 and in the year 2000, pursuant to a disciplinary enquiry, the service of the petitioner was dispensed with. Questioning the said order of removal, the petitioner herein raised Industrial Dispute and the Industrial Tribunal refused to interfere with the said order of removal and as against the said Award passed by the Industrial Tribunal, the petitioner filed W.P.No.27376 of 2003 and the learned single judge of this Court, by way of an order, dated 19-08-2005, dismissed the said writ petition, confirming the order of the Labour Court. Challenging the said order passed by the learned single Judge, the petitioner preferred Writ Appeal No.54 of 2006 before this Court and a Division Bench of this Court, by way of an order dated 24-09-2009, following the earlier judgment of this Court in a batch of Writ Appeals, disposed of the said Writ Appeal and the operative portion of the said judgment reads as under :

“i) The order of removal passed against the appellant-workmen is hereby set aside and they are directed to be re-instated into service, if not already retired, forthwith.

ii) The appellants are imposed a punishment of stoppage of two increments with cumulative effect.”

Subsequently, the Respondent-Corporation reinstated the petitioner into service by way of an Office Order bearing No.T3/372(11)/2009-RM(T), dated 29-10-2009. Thereafter, the Respondent-Corporation started recovery of a sum of Rs.25,067/- at the rate of Rs.1,000/- per month from the salary of the petitioner obviously in the guise of the orders of punishment issued by the Depot Manager vide proceedings No.2/95(143)/99-CTR-2, dated 18-08-2000. Assailing the validity and legal sustainability of the said action on the part of the respondent-authorities in seeking to recover the amounts, the present writ petition came to be filed. This Court on 25-02-2010, granted interim stay of recovery. Responding to the Rule Nisi issued by this Court, a counter-affidavit has been filed on behalf of the respondents, denying the averments in the writ affidavit filed in support of the Writ Petition and justifying the impugned action.

It is contended by the learned counsel for the petitioner that the impugned action of recovery is highly illegal, arbitrary, unreasonable, violative of Article 14 of the Constitution of India and violative of principles of natural justice. It is the further submission of the learned counsel that since the entire order of removal was set aside by this Court in Writ Appeal No.54 of 2006, there is absolutely no justification on the part of the Respondent-Authorities in recovering the amount covered by the orders of removal.

On the contrary, it is vehemently contended by the learned Standing Counsel that there is absolutely no illegality nor any

procedural infirmity in the impugned action and the Respondent-Corporation is perfectly justified in ordering recovery of amount, since this Court in Writ Appeal No.54 of 2006 did not set aside the recovery order.

In the above backdrop, now the issue that falls for consideration by this Court is – “whether the impugned action of recovery resorted to by the respondents herein is sustainable?”

The information available before this Court vividly discloses that as against the order of removal and recovery of amount, dated 18-08-2000, the petitioner herein raised an Industrial Dispute and the Labour Court dismissed the said Industrial Dispute and the learned Single Judge also confirmed the said order of removal and punishment. There is absolutely no dispute with regard to reality that in Writ Appeal No.54 of 2006, a Division Bench of this Court, while setting aside the order of removal and while directing reinstatement of the petitioner, directed imposition of punishment of stoppage of two increments with cumulative effect.

It is the categorical submission of the learned counsel for the petitioner that once the punishment order is set aside, the element of recovery, which is an integral part of the said order of punishment, does not stand and this Court finds sufficient force in the said submission of the learned counsel for the petitioner. Therefore, the justification sought to be offered by the respondents for resorting to the impugned action cannot stand for judicial scrutiny. Though it is the specific case of the petitioner herein that prior to resorting to the impugned action of recovery, no notice was given to the petitioner, the same is not specifically denied in the counter-affidavit.

On the other hand, the counter avers that the writ petitioner was already informed about the said recovery and that it is a part of

proceedings of removal. The said averment in fact lends support to the case of the petitioner herein to contend that recovery is also integral part of order of punishment. Therefore, this Court has absolutely no scintilla of hesitation nor any traces of doubt to hold that the impugned action of recovery cannot be sustained in the eye of law and the same is also violative of principles of natural justice.

For the aforesaid reasons, the Writ Petition is allowed declaring the action of the respondents in recovering Rs.25,067/-, as illegal and arbitrary and consequently, the respondents are directed to pay back the amount, if any, recovered already. There shall be no order as to costs.

Pending miscellaneous petitions in this writ petition, if any, shall stand dismissed in consequence.

A.V.SESHA SAI, J.

08.06.2016
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