

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

WRIT PETITION No.6727 of 2004

ORDER:

This writ petition, filed under Article 226 of the Constitution of India, challenges the award, dated 25-11-2002 passed by the Industrial Tribunal – cum – Labour Court, Visakhapatnam (hereafter called ‘the Tribunal’) in I.D.No.75 of 2000.

Heard Sri S.A. Razak, learned counsel for the petitioner and Sri S.V. Ramana, learned Standing Counsel for respondent – Road Transport Corporation.

Petitioner No.1 herein was a Mechanic in the 1st respondent – State Road Transport Corporation and while working so, a charge sheet was issued by the Disciplinary Authority, framing the following charge:

“For having absented to his duty unauthorisedly from 22-12-1998 to till date (25-12-1998) which constitutes mis-conduct under Regulation 28 (XXVII) of A.P.S.R.T.C. Employee’s (Conduct) Regulations, 1963.”

Followed by an enquiry, petitioner No.1 was removed from service on 15-11-1999. After un-successfully availing the appellate and review remedies, petitioner No.1 herein raised I.D.No.75 of 2000 on the file of the Industrial Tribunal

– cum – Labour Court, Visakhapatnam under Section 2A(2) of Industrial Disputes Act, 1947 (hereafter called ‘the Act’).

The Tribunal based on the material available on record framed the following two points for consideration:

1. *Whether the order of removal is liable to be set aside?*
2. *Whether the Workman is entitled for reinstatement with continuity of service and back wages?*

Before the Tribunal no oral evidence was adduced by the parties and on behalf of the management Exs.M1 to M21 were marked.

The Tribunal, by virtue of an award, dated 25-11-2002, dismissed the said I.D.No.75 of 2000. Assailing the validity and legal sustainability of the said Award, the present writ petition came to be instituted.

This Court, issued *rule nisi* on 08-04-2004 and responding to the same, a counter-affidavit deposed by the Law Officer of the respondent corporation has been filed, denying the allegations and averments made in the affidavit filed in support of the writ petition and in the direction of justifying the impugned award and the action of the Disciplinary Authority in inflicting the punishment of removal from service.

Pending writ petition, the sole petitioner died on 29-09-2015 and an application under Rule 16 (a) of the Writ

Rules came to be filed vide W.P.M.P.No.53166 of 2015 by the wife of the sole petitioner, seeking to permit her to come on record as petitioner No.2. This Court, allowed the said application vide order, dated 09-11-2016.

It is contended by learned counsel for the petitioners that the impugned Award, confirming the order of removal passed by the disciplinary authority as confirmed by the appellate and reviewing authorities is erroneous, contrary to law and opposed to the very spirit and object of the provisions of the Industrial Disputes Act, 1947. It is contended that the Tribunal grossly erred in dismissing the Industrial Dispute without noticing the crucial aspect that the Disciplinary Authority took into consideration the period not covered by the charge for inflicting the punishment of removal from service. According to the learned counsel, the said punishment is shockingly disproportionate to the charge leveled against the 1st petitioner. In support of his submissions and contentions learned counsel for the petitioner placed reliance on a judgment in case of ***K. Balanagi Reddy v. APSRTC, Hyderabad and others***¹.

On the contrary, totally supporting the order of removal as confirmed in the impugned award, it is vehemently contended by learned Standing Counsel, Sri S.V. Ramana,

¹ 2002 (3) ALT 422

appearing for the 1st respondent that there is no illegality nor there exists any procedural infirmity in the impugned action and in absence of the same the impugned Award, confirming the order of removal is not amenable for any judicial review under Article 226 of the Constitution of India. It is further submitted that though in the order of Disciplinary Authority the subsequent period was referred to, the authorities did not take into consideration the said aspect while inflicting the punishment of removal from service. It is further submitted that the Workman was a chronic absentee from duties, as such, the authorities are perfectly justified in inflicting the punishment of removal from service.

In the above background, now the issue that emerges for consideration of this Court in the present writ petition is:

Whether the Tribunal is justified in dismissing the Industrial Dispute, confirming the order of removal passed by the Disciplinary Authority or whether the same warrants any interference by this Court under Article 226 of the Constitution of India?

The information available before this Court reveals that the Disciplinary Authority issued Ex.M2 charge sheet, dated 29-12-1998, alleging that the Workman absented from duty un-authorizedly from 22-12-1998 till the said date.

A perusal of the order of removal passed by the Disciplinary Authority on 15-11-1999 candidly discloses that

a show cause notice was issued by the Disciplinary Authority on 06-11-1999, indicating the alleged absence of Workman during the period 06-11-1999 to 12-11-1999 and having considered the said subsequent absence also and while observing that the Workman was accustomed to unauthorized absence and had no interest in performing his duties and became unprofitable employee to the corporation, the Disciplinary Authority dispensed with the services of the Workman. Therefore, it is very much apparent on the face of the order of removal that the Disciplinary Authority also took into consideration the subsequent absence of the Workman also and inflicted the punishment of removal from service.

The Tribunal in the impugned Award also observed at paragraph No.12 that the Workman absented continuously for a long time thereafter also and at paragraph No.14 of the impugned Award there is a categorical observation of the Tribunal that there is no justification on the part of the Workman to remain absent for months together. Therefore, the contention of the learned counsel for the respondent Road Transport Corporation that the subsequent period of absence for which there was no charge sheet and enquiry, was not taken into consideration by the authorities while inflicting the punishment cannot be sustained.

In this context it may be appropriate to refer to the judgment of this Court in Writ Appeal No.769 of 2005. In the

said judgment a Division Bench of this Court categorically ruled that passing of the proceedings impugned by taking into consideration the unauthorized absence for the subsequent period without any charge or enquiry amounts to depriving the opportunity of the delinquent to defend his case and would tantamount to arbitrariness. While observing so, the Division Bench did set aside the order of removal from service of the petitioner therein.

There is absolutely no dispute with regard to the reality that the Workman had put in twenty (20) years of service in the respondent organization. The Tribunal ought not to have taken into consideration the said length of service as a disqualification for consideration of the case under Section 11-A of the Act.

In this context, it may also be appropriate to refer to the judgment 1st cited, wherein this Court while dealing with the punishment of similar nature basing on the absence of the employee for one day did set aside the order of removal and remitted the matter back to the authorities for fresh consideration while holding that the punishment was disproportionate to the proven misconduct.

In the instant case, the sole petitioner died pending writ petition and the wife of the Workman is now prosecuting the present writ petition by coming on record as legal

representative. The learned Standing Counsel submits that in the judgment reported in 2002 (3) ALT 422 this Court remanded the matter to authorities for fresh consideration. But this Court at this length of time, having regard to the facts and circumstances of the case including the death of the Workman does not propose to remand the matter.

In these circumstances, this Court finds that the punishment inflicted on the Workman is shockingly disproportionate to the proven misconduct and the Tribunal failed to exercise the discretion under Section 11-A of the Act.

For the aforesaid reasons, the writ petition is partly allowed, setting aside the order of removal, dated 15-11-1999 passed by the Disciplinary Authority as confirmed by the Tribunal in I.D.No.75 of 2000, dated 25-11-2002 and further holding that the Workman be entitled for continuity of service, attendant benefits and half of the back-wages. There shall be no order as to costs.

The Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

A.V. SETHA SAI, J

November 16, 2016

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