

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.6713 of 2015

ORDER :

This Writ Petition has been filed by petitioner seeking a *Writ of Mandamus* declaring the order dt.05.04.2002 in proceedings No.M1/2(18).2000-VKD of the 6th respondent imposing punishment of removal on petitioner as arbitrary, illegal, without jurisdiction, apart from being violative of principles of natural justice, and seeking a consequential direction to the respondents to re-instate him into service by paying all consequential benefits with effect from 06.11.2000.

2. The petitioner herein was employed as a driver in the Vakadu Depot of the Andhra Pradesh State Road Transport Corporation.

3. On 06.11.2000 at about 17:20 hours vehicle bearing No.AP-9Z-5322 driven by petitioner on Mallam-Gudur service via Kota hit a vehicle bearing No.AP-10Z-4731 of Gudur Depot coming from the opposite direction, causing death of a lady passenger and injuring twenty passengers and also to petitioner, apart from causing damage to both vehicles.

4. On 23.11.2000, a charge-memo was issued to petitioner alleging that he had driven the vehicle AP-9Z-5322 without precaution and with lack of anticipation resulting in the accident and

this constituted a misconduct under Regulation 28(ix)(a) of the Andhra Pradesh State Road Transport Corporation Employees (Conduct) Regulations, 1963.

5. The petitioner submitted an explanation on 05.12.2000.

6. Not satisfied with the explanation an enquiry officer was appointed who submitted enquiry report on 07.03.2002.

7. Copy of the same was furnished to petitioner for his remarks, and he filed his remarks on 11.03.2002.

8. After considering the same, the 6th respondent passed the impugned order dt.5.4.2002 imposing punishment of 'removal from service' on the petitioner.

9. Thereafter, the petitioner preferred an appeal against the said order to the Divisional Manager, A.P.S.R.T.C. The said appeal was also rejected on 15.12.2003 by a reasoned order.

10. The petitioner thereafter filed W.P.No.283 of 2004 before this Court questioning the order of removal dt.05.04.2002 passed by 6th respondent, which was confirmed by the Divisional Manager on 15.12.2003.

11. In that Writ Petition, the petitioner contended that he was not paid subsistence allowance, but the plea was rejected on the ground that he was never been suspended pending enquiry and he was not paid wages due to non-availability of leave and so the period of

absence was treated as leave without pay. He also contended that he was entitled to alternative employment under the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (**for short, 'the 1995 Act'**) on the ground that he lost a leg in the very same accident during course of his employment. This contention was also rejected by this Court taking a view that the provisions of the said Act would be applicable to petitioner only if his dispensation from service is a direct consequence of a disability. The Court held that otherwise an employer would not be able to initiate disciplinary action against a delinquent employee and dispense with his services or reduce him in rank as a result of departmental action against such delinquency, merely because the said employee also sustained a physical disability in the course of the delinquency. It was held that if an employee committed theft and sustained a disability in the course of such a theft, the employer can not only proceed against him departmentally and remove him from service, but the employee would also be denied benefit under Section 47 of the 1995 Act. This Court further held that petitioner's removal from service had no connection whatsoever with his disability and therefore he cannot rely on Section 47 of the 1995 Act.

12. The petitioner questioned the same in W.A.No.867 of 2011.

13. On 14.09.2012, the said Writ Appeal was also dismissed agreeing with the view of the Single Judge. It was held that imposition of punishment of removal from service by way of a penalty on

account of an established misconduct cannot be equated to dispensation of service on the ground of acquiring disability during service; and since the punishment of removal was imposed on petitioner for established misconduct and not on the ground of his acquiring physical disability, Section 47 of the 1995 Act was not attracted.

14. The petitioner then filed Review WAMP.No.2630 of 2012 challenging this judgment. The said Review petition was also dismissed on 08.10.2012.

15. The petitioner had questioned both the orders in Writ Appeal and in the Review petition by way of Special Leave Petitions in the Supreme Court in C.C.No.6973-6974 of 2013.

16. By order dt.05.04.2013, the said appeal was also dismissed by the Supreme Court. This order attained finality.

17. Thereafter, the petitioner filed the present Writ Petition again challenging the order dt.05.04.2002 passed by the 6th respondent imposing punishment of removal from service on him.

18. In the affidavit filed in support of this Writ Petition, the petitioner sought to bring out certain issues of fact relating to the incident in order to establish that the order of removal passed on him on 05.04.2002 was unsustainable. He once again raised the plea that the enquiry proceedings were vitiated on the ground that no subsistence allowance was paid during the period of his suspension,

and therefore, the enquiry proceedings and the punishment of removal have to be set aside. He also raised the plea that he is entitled to alternative appointment under Section 47 of the 1995 Act and sought re-employment on the said ground. In addition thereto, he also raised a plea that on 06.01.2014 there was a scroll on TV9, Sakshi, ETV2 television channels that the petitioner would be paid Rs.4 crores, that he would superannuate if he was in service on 30.04.2017, but he was removed on 19.09.2001, much before the said date by the impugned order.

19. The party-in-person reiterated the above contentions.

20. Sri P.Durga Prasad, Standing Counsel for the A.P. State Road Transport Corporation opposed the same and contended that the petitioner cannot be granted any relief in this Writ Petition in view of his failure to succeed in the earlier round of litigation.

21. I am of the opinion that the petitioner cannot again question the order of removal in the present Writ Petition having already assailed the same in W.P.No.283 of 2004 which had been dismissed on 17.12.2009, confirmed by order dt.14.09.2012 in W.A.No.867 of 2011 and also in the Special Leave Petition on 05.04.2013. The principle of *res judicata* would operate and preclude the petitioner from re-agitating the correctness of the order of the 6th respondent imposing punishment of removal on him on any ground including the ground

that he was not paid subsistence allowance which was negated in the earlier round of litigation.

22. He also cannot re-agitate the contention that he is entitled to benefit of Section 47 of the 1995 Act, since the termination of his service was for proved misconduct and not on account of disability suffered by him while in service.

23. He also cannot place any reliance on any television news item and seek compensation of Rs.4 crores from respondents. Any such demand by petitioner would have no legal basis when the order of removing him from service had been confirmed up to the Supreme Court and Tax payers' money cannot be used to pay compensation to persons who are removed from service on the ground of misconduct which has been upheld not only by this Court, but also by the Supreme Court.

24. Therefore, I do not find any merit in the Writ Petition, and is accordingly dismissed. No order as to costs.

25. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date : 23-11-2016

Ndr/*