

HON'BLE SRI JUSTICE M.S.K. JAI SWAL

WRIT PETITION No.17843 of 2006

ORDER:

This writ petition is filed with the following prayer:

“to issue a writ, order or direction more particularly one in the nature of writ of certiorari and after calling for the records in I.D.No.69 of 2003, dated 15.09.2005 on the file of the Hon'ble 1<sup>st</sup> respondent in so far as denying continuity of service, attendant benefits, back wages to the petitioner's husband is illegal, arbitrary and unjust, consequently quash the award in I.D.No.69 of 2003, dated 15.09.2005 by granting continuity of service, attendant benefits, back wages, to the petitioner's husband and pass such other order or orders”.

2. The brief facts are that the petitioner's husband, by name Y.S.Narayana, while working as Driver in the respondents Corporation, was absented from his duties from 14.10.1999 onwards due to his sickness and admitted in University Government Hospital, Vijayawada and that though the same was informed, the respondents issued a charge sheet on 08.12.1999, for which, he gave an explanation denying the charges. After due enquiry, petitioner's husband was removed from service, vide proceedings, dated 15.06.2000 of the 3<sup>rd</sup> respondent. Aggrieved by the same, petitioner's husband carried the matter to the Industrial Tribunal. By award, dated 15.09.2005, in I.D.No.69 of 2003, the Labour Court set aside the order of removal from service and directed reinstatement of the petitioner into service without back wages and without continuity of service. Subsequently, the petitioner's husband died on 14.09.2005. Hence, the petitioner filed the present writ petition, challenging the proceedings in I.D.No.69 of 2003.

3. Learned counsel for the petitioner submits that the reinstatement of the deceased workman afresh by loosing the service of more than 16 years for the unauthorized absence without attendant benefits and back wages, is a harsh punishment and a lenient view may be taken in the matter. Learned counsel relied on the decision of the Apex Court in *Chairman-cum-Managing Director Coal India Limited v. Mukul Kumar Choudhuri*<sup>1</sup> wherein it was held as under:

“So far as our legal system is concerned, the doctrine is well settled. Even prior to CCSU, this Court has held that if punishment imposed on an employee by an employer is grossly excessive, disproportionately high or unduly harsh, it cannot claim immunity from judicial scrutiny, and it is always open to a Court to interfere with such penalty in appropriate case”.

Learned counsel for the petitioner further submits that after taking into consideration the totality of the facts and circumstances, the Court may direct the respondents to treat the deceased husband of the petitioner as having compulsorily retired from service from the date of expiration, i.e., on 14.09.2005, instead of reinstatement afresh.

4. The admitted fact is that the deceased employee had put in service of 16 years in the Corporation as a Driver and was absent unauthorizedly for about two months by the date when the charge sheet was issued. However, he appears to have reported duty on 15.06.2000 and produced a medical certificate, dated 05.02.2000, certifying that the deceased employee was sick. However, on the ground that the medical certificate submitted belatedly, the deceased employee was not subjected to medical examination and treating his absence for nearly four months as unauthorized, he was visited with the punishment of removal from service, which was challenged by him, but unfortunately, a day before he

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<sup>1</sup> (2009) 15 SCC 620

could achieve partial success, he died. The award was came to be passed on 15.06.2000, directing that the removal of the employee set aside, and the employee is directed to be reinstated into service without back wages and without continuity of service. The Tribunal further directed that the employee is not entitled to any monetary benefit from the date of his removal till the date of the award. But however, on his reinstatement, the pay of the employee shall be fixed at not less than his last pay.

5. Having carefully perused the material on record and the decision of the Apex Court, cited supra, while the Tribunal exercising its discretion to a considerable extent in favour of the employee, but in view of the fact that the employee died a day before the award was passed, the relief of reinstatement that was granted could not be implemented. Therefore, taking into consideration the totality of the facts and circumstances and the fact that the employee died, I feel that the interests of justice would be met, if the Corporation is directed to treat the deceased employee having retired compulsorily, with continuity of service, as on date of his death, i.e., 14.09.2000, granting the consequential benefits other than back wages during the period of his being out of service.

6. The Writ Petition is accordingly allowed, to the extent indicated above. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

Date: October, 2017  
Sj/Dsr

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M.S.K.JAI SWAL, J