

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

W.P.NO.21618 OF 2008

ORDER

This writ petition filed under Article 226 of the Constitution of India challenges the award dated 27-06-2005 passed by the Labour Court – I, Hyderabad in I.D.No.50 of 2004.

Heard Smt. K.Udaya Sri, learned counsel for the petitioner and Sri N.Vasudeva Reddy, learned Standing Counsel for the 1st respondent – Road Transport Corporation.

Followed by a charge sheet and appointment of an Inquiry Officer and submission of report by the said officer and issuance of a show cause notice of removal, petitioner herein was terminated from service by the 1st respondent – Corporation on 26.02.2003. After unsuccessfully availing the remedies of departmental appeal and review, which were rejected on 8.3.2003 and 10.9.2003 respectively, petitioner raised I.D.No.50/2004 under Section 2-A(2) of the Industrial Disputes Act, 1947, challenging the order of termination. The Labour Court by way of award under challenge dated 27.06.2005 did set aside the order of removal and directed reinstatement of petitioner into service with

continuity of service and attendant benefits, but without back wages and also directed to defer two annual increments with cumulative effect.

In the present writ petition, petitioner herein assails the said award to the extent of denying back wages and deferment of two annual increments with cumulative effect.

The 1st respondent – Corporation filed counter affidavit, denying the averments made in the writ affidavit and justifying the impugned award.

It is contended by the learned counsel for the petitioner that the award of the Labour Court to the extent of denying back wages and directing to defer two annual increments with cumulative effect to the petitioner, is illegal, arbitrary, unreasonable and violative of Article 14 of the Constitution of India and Regulations framed by the 1st respondent – Corporation. It is further argued by the learned counsel that having made categorical observations in favour of the petitioner, the Labour Court is not justified in denying back wages and directing deferment of two annual increments with cumulative effect.

On the contrary, it is submitted by the learned Standing Counsel that there is absolutely no illegality, nor there exists any infirmity in the award of the Labour Court and in the absence of the same, the impugned award is not amenable to judicial review. It is submitted by the learned Standing Counsel that though the Tribunal passed the award in the month of June 2005, the present writ petition came to be filed in the year 2008 and, therefore, on the ground of delay, the writ petition is liable to be dismissed. It is further submitted by the learned Standing Counsel that duly taking into consideration the evidence adduced on behalf of the Management, the Tribunal passed the impugned award and as such the same does not warrant any interference of this court under Article 226 of the Constitution of India.

In the above background, now the issue that falls for consideration of this court is – “whether the petitioner herein is entitled for any relief from this court under Article 226 of the Constitution of India?”

The disciplinary authority framed the following charge:

“For having been found in intoxicated condition while on duty on 9-7-2002 in the relief van No.APZ 5053 in the premises of Hyderabad-II Bus Stand and for misbehaving with ladies in the bus stand tarnishing the image of the corporation in the public, which constitutes misconduct under Reg.28(xv) of APSRTC Employees (Conduct) Regulations, 1963.”

Denying the said charge, petitioner herein filed his explanation. Thereafter, regular inquiry was held and during the course of inquiry, statements of G.Ramesh, M.F. and Y.Ramesh, Security Head Guard, were recorded and they were also cross-examined by the petitioner herein. Based on their evidence, the Inquiry Officer found the petitioner guilty. Before the Labour Court, no oral evidence was adduced. On behalf of the 1st respondent – Corporation, Exs.M-1 to M-20 were marked.

On the basis of material available on record, the Labour Court framed the following point for consideration:

“Whether the removal orders of the petitioner from service passed by the 1st respondent – Corporation, is justified? If not, to what relief the petitioner is entitled to?”

There is absolutely no dispute with regard to the fact that in order to prove the allegation that the petitioner was found in intoxicated condition, the management examined G.Ramesh, M.F. and Y.Ramesh, Security Head Guard. The statements of the said individuals were marked as Exs.M-10 and 11 respectively before the Labour Court. The inquiry proceedings have also been placed on record by the learned counsel for the petitioner. A perusal of the said proceedings, shows that

during the course of cross-examination, when they were asked as to whether they could produce the evidence to show that the delinquent was in drunken condition or not, they categorically deposed that there was no evidence available for proving the said condition. It is also a fact that no medical reports were available to support the alleged state of the petitioner herein.

The charge also includes the alleged misbehaviour of the petitioner with the lady passengers in the bus stand. No witness was examined by the management to prove the said allegation.

A perusal of the impugned award under challenge clearly shows that that learned Presiding Officer of the Labour Court categorically observed that “ *It is therefore appears that the petitioner is not found in a drunken condition in the premises of the depot where he actually worked in the work shop of Hyderabad-II depot.*” In fact, the Tribunal also categorically found fault with the action of the respondents in imposing major punishment of removal from service and directed imposition of lesser punishment. This court is of the considered opinion that without there being any evidence on record, the Labour Court ought not have directed imposition of punishment at all.

The Labour Court while directing reinstatement ordered continuity of service with attendant benefits, but denied back wages and also directed deferment of two annual increments with cumulative effect. Obviously, the deferment of two annual increments with cumulative effect, is a major punishment, which cannot be imposed without there being any evidence, pointing out the guilt of the petitioner.

At this point of time, it is pointed out by the learned Standing Counsel for the 1st respondent – Corporation that there is absolutely no reason for the delay in approaching this court and on the said ground, the writ petition is liable to be dismissed.

In the present case, petitioner herein approached this court by way of present writ petition after three years from the date of the award. Admittedly, in the present case, there is no involvement of any third party rights, as such the delay cannot be said to have vitiated the proceedings.

For the foregoing reasons, the writ petition is partly allowed, quashing the award only to the extent of denying full back wages and ordering deferment of two annual increments with cumulative effect. It is further directed that the petitioner is entitled only for half of the back wages having regard to the facts and circumstances of the case.

No order as to costs.

Miscellaneous petitions pending if any, shall stand closed.

A.V.SESHA SAI,J

DATE:08—06—2017
AVS

