

HON'BLE SRI JUSTICE S.V. BHATT

W.P.No.27234 OF 2003

ORDER:

Heard Mr.N.Vasudeva Reddy for petitioner and Mr.P.Venkateswara Rao for respondents 2 to 6.

The Depot Manager, Charminar Division and the Depot Manager, Barkatpura Depot, Hyderabad of Road Transport Corporation are the petitioners.

The petitioners pray for the following relief:

“.....this Hon'ble Court may be pleased to issue an appropriate to issue an appropriate Writ, order or direction, especially in the nature of a Writ of Certiorari, calling for the records relating to the impugned award dated 13.6.2003 made in ID No.120/2001, Labour Court-I, Hyderabad, published on 15.9.2003, setting aside the order of removal of 1<sup>st</sup> respondent from service dated 1.2.2001 and granting consequential/non-consequential benefits to respondents 2 to 6 and quash the same as being illegal, without jurisdiction and invalid and pass such other.....”

The Labour Court through the Award impugned in the writ petition granted the following relief to respondents 2 to 6:

“In the result, the petition is allowed partly holding that the order of removal from service imposed by R-2 depot manager on 1.2.2001 is hereby set aside, that non-attendance of the deceased 1<sup>st</sup> petitioner workman for the period from 23.7.2000 to 23.8.2000 shall be treated as sick leave, that the petitioners 2 to 6 are entitled for backwages from 23.7.2000 till his death i.e., 1.6.2002 which the deceased/workman must have been receive if alive and his death shall be treated as died during the course of employment and his widow 2<sup>nd</sup> petitioner shall be entitled for the pensionary benefits as per Rules, that the respondents shall consider to give a suitable employment

to the 2<sup>nd</sup> petitioner on compassionate grounds. The respondents herein shall deposit the said amounts in court within two months from the date of publication of the Award. After such deposit the 2<sup>nd</sup> petitioner shall be at liberty to withdraw to an extent of 25% to meet her immediate family expenditure and for her children and the remaining amount shall be invested equally in the names of the minor petitioners 3 to 6 in a local Nationalised Bank till they attain majority. According award is passed”.

The circumstances relevant for disposal of the writ petition are stated thus:

The 1<sup>st</sup> respondent was working as Driver in the Road Transport Corporation. On 13.10.1999, the 1<sup>st</sup> respondent on the ground of unauthorised absence for the period from 19.01.1999 to 08.02.1999 was removed from service. On appeal filed by the 1<sup>st</sup> respondent, on 29.02.2000, the 1<sup>st</sup> respondent was appointed afresh by the Corporation. On 26.08.2000, the Corporation issued show cause notice to 1<sup>st</sup> respondent for the misconduct of unauthorised absence from duty. On 01.02.2001, the 1<sup>st</sup> respondent was again removed from service. The removal order was confirmed on appeal. Thereafter, the 1<sup>st</sup> respondent filed application under Section 2-A(2) of the Industrial Disputes Act (for short ‘the Act’) questioning the removal order dated 01.02.2001 before the 7<sup>th</sup> respondent. The 7<sup>th</sup> respondent, as already noticed, having regard to the fact that the 1<sup>st</sup> respondent died on 01.06.2002, moulded the relief under Section 11-A of the Act. Hence, the writ petition.

Learned counsel for the petitioner confined the challenge against the relief of compassionate appointment to respondent

No.2 as illegal and contrary to the Regulations. The counsel by placing reliance upon BHARAT HEAVY ELECTRICALS LTD. v. M.CHANDRASEKHAR REDDY AND OTHERS<sup>1</sup>, U.P.STATE ROAD TRANSPORT CORPORATION v. VINOD KUMAR<sup>2</sup> and WEST BOKARO COLLIERY (TISCO LTD.) v. RAM PRAVESH SINGH <sup>3</sup> contends that the Award impugned in the writ petition firstly is illegal and unsustainable and secondly the 7<sup>th</sup> respondent acted as appellate body against the order of removal, and such course, in the peculiar facts and circumstances of this case, is completely illegal and unsustainable.

The learned standing counsel, having regard to the relief that can be worked out, even if the argument of petitioners basing on the above decisions is accepted viz., that the writ petition is remitted to 7<sup>th</sup> respondent thereafter the parties will have to adduce evidence before the 7<sup>th</sup> respondent. To adduce evidence at this length of time, particularly having regard to the fact that the first respondent died, both the learned counsel have fairly stated that even if the matter is remanded, the remand is not going to serve useful purpose and on the contrary, it is difficult to adduce oral evidence at this point of time.

The learned counsel appearing for respondents 2 to 6, on instructions, and also basing on the affidavit dated 16.04.2017 of 2<sup>nd</sup> respondent submitted that respondents 2 to 6 are not pursuing the relief of compassionate appointment granted by the 7<sup>th</sup> respondent and in lieu of compassionate appointment,

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<sup>1</sup> (2005) 2 SCC 481

<sup>2</sup> (2008) 1 SCC 115

<sup>3</sup> (2008) 3 SCC 729

respondents 2 to 6 are prepared to receive the compensatory benefit paid by respondent/Corporation to deceased employees' children. Having regard to the limited submissions and stand of the counsel for parties, I am satisfied that the writ petition can be ordered as follows:

“Respondents 2 to 6 are entitled to backwages for the period 01.02.2001 to 01.06.2002. The direction to consider the case of 2<sup>nd</sup> respondent for compassionate appointment is modified and the petitioners are directed to consider the case of 2<sup>nd</sup> respondent for paying monetary benefits to respondents 2 to 6, in lieu of compassionate appointment under the policy or scheme operated by the Corporation”.

The writ petition is ordered as indicated above. There shall be no order as to costs.

Consequently, miscellaneous petitions, if any pending, stand closed.

19<sup>th</sup> April, 2017

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S.V.BHATT, J