

HONOURABLE SRI JUSTICE RAJA ELANGO

WRIT PETITION No.6328 of 2003

ORDER:

1. This writ petition under Article 226 of the Constitution of India is filed by the petitioner-Depot Manager, A.P.S.R.T.C., Hindupur Depot, challenging the award dated 5.11.2002 passed in I.D.No.228 of 2000 by the 1st respondent.

2. The case of the petitioner is as follows:

On 16.5.1999, while the 2nd respondent, who was a driver, was driving the vehicle bearing No.AP 9Z 3687, on route Madakasira to Hindupur, his bus met with an accident near Pargi Tank Bund, as a result of which, 62 sheep died on the spot, and 27 sheep got injuries. The 2nd respondent was suspended and an enquiry was conducted against him. Basing on the report of the enquiry, he was removed from service. Aggrieved by the same, the 2nd respondent preferred appeal before the Deputy Chief Traffic Manager, Ananthapur Region. The said appeal was rejected. Against the same, the 2nd respondent preferred revision before the Regional Manager, and the said revision was also rejected. Hence, the 2nd respondent approached the 1st respondent and filed I.D. No.228 of 2000. The 1st respondent passed the award impugned herein setting aside the order of removal and directing the petitioner to reinstate the 2nd respondent into service with continuity of service and half backwages, and to impose a penalty of deferment of two annual increments with cumulative effect. Aggrieved by the said award, the petitioner-Depot Manager filed the present writ petition.

3. The 2nd respondent filed a counter-affidavit stating that the 1st respondent after having heard both sides and basing on the evidence

available on record passed the award impugned since the punishment of removal is disproportionate to the alleged misconduct and that the award passed by the 1st respondent does not warrant any interference by this Court.

4. Learned Standing Counsel for the petitioner submitted that because of rash and negligent driving of the 2nd respondent, the Corporation paid Rs.1,32,375/- towards compensation to the owner of the sheep and that the 2nd respondent is responsible for the loss incurred to the Corporation and therefore, the award passed by the 1st respondent warrants interference by this Court. He further submitted that the 2nd respondent was removed from service on 11.10.1999 and since then, he was out of service and in view of the principle of 'no work no pay', he shall not be entitled to any back wages till his reinstatement. In support of his contentions, the learned Standing Counsel for the petitioner relied upon the judgments of the Apex Court in **Vijay Singh Vs. Union of India and others**¹; **Kendriya Vidyalaya Sangathan and another Vs. S.C. Sharma**² and **Managing Director, North-East Karnataka Road Transport Corporation Vs. K. Murti**³.

5. On the other hand, the learned Counsel for the 2nd respondent submitted that the incident in question occurred only due to failure of the breaks, for which the 2nd respondent cannot be fastened any liability and therefore, the award passed by the Tribunal does not warrant any interference.

6. There is no dispute as to the accident occurred and the result of such accident. From the material on record, it is evident that the disciplinary

¹ (2007) 9 SCC 63

² (2005) 2 SCC 363

³ (2006) 12 SCC 570

authority removed the 2nd respondent on 11.10.1999. However, considering the nature of the accident, the 1st respondent-Tribunal held that the punishment imposed is on higher side, and directed the petitioner to reinstate the 2nd respondent herein into service with half backwages and with continuity of service. Challenging the said award, the petitioner filed this writ petition.

7. The learned Counsel for the petitioner strongly opposed the service benefits awarded to the 2nd respondent by the 1st respondent. It is the case of the petitioner that due to negligent and rash driving of the 2nd respondent, the corporation paid compensation of Rs.1,32,375/- to the owners of the sheep, and in view of such misconduct, the 2nd respondent is not entitled to any service benefits.

8. Admittedly, the 2nd respondent was removed from service in the year 1999 and he was out of service till his reinstatement. Having regard to the facts and circumstances of the case and the submissions made by the learned Standing Counsel for the petitioner that compensation was paid by the Corporation, and applying the principle of 'no work no pay', this Court is of the view that the 2nd respondent is not entitled to the half back wages. Accordingly, the order of payment of half back wages made in the award is set aside. However, the award impugned in all other respects needs no interference.

9. Accordingly, the writ petition is disposed of. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.

RAJA ELANGO, J

Date: 11.09.2017
Nn.

RE,J
W.P.No.6328 of 2003

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Dated: 11.9.2017

Nn.

