

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

W.P.No.14905 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.49 of 2001 dated 24.02.2003 on the file of the Hon'ble 1st respondent in not granting any relief to the petitioner is illegal, arbitrary and unjust consequently set aside the award in I.D.No.49 of 2003 dated 24.02.2003 by granting reinstatement with continuity of service, attendant benefits and back wages to the petitioner and pass such other order or orders”.

2. The petitioner, while working as Conductor in the respondent Corporation, was issued with a charge sheet dated 20.05.1998 on certain cash and ticket irregularities for having failed to observe the rule issue and start which constitutes misconduct; for having collected the amounts and issued tickets, which were already sold at that stages, to the passengers who boarded the bus at different stages and accounted their sale; and for having kept the tickets which were punched on the stages, which constitute misconduct on his part. Petitioner gave a detailed explanation to the charge sheet denying the charges. After due enquiry, the petitioner was removed from service vide proceedings dated 11.02.1999 of the 2nd respondent. Aggrieved by the same, the petitioner preferred appeal before the appellate authority, which in turn rejected the same on 23.10.1999. The review petition filed by him was also rejected on 11.08.2000. Challenging the said orders, he filed I.D.No.49 of 2011 before the Industrial Tribunal-cum-Labour Court, Warangal. By

award dated 24.02.2003, the Industrial Tribunal dismissed the dispute confirming the removal order passed by the 1st respondent. Aggrieved by the same, petitioner filed the present writ petition.

3. Heard learned counsel for petitioner and learned Standing Counsel for the respondent-Corporation.

4. Learned counsel for petitioner submitted that the punishment inflicted against the petitioner is disproportionate to the act of misconduct said to have been committed him. He further submitted that the petitioner had served the department without any blemish and that there was no other incident except the present one and therefore, a lenient view may be taken in the matter. He placed reliance on the decision of the Apex Court in **CHAIRMAN-CUM - MANAGING DIRECTOR COAL INDIA LIMITED v. MUKUL KUMAR CHOUDHURI**¹.

5. Learned Standing Counsel for respondent Corporation vehemently opposed the said submission stating that as the petitioner committed cash and ticket irregularities, the punishment imposed against him cannot be said to be harsh, excessive or disproportionate to the gravity of the charges.

6. In **CHAIRMAN-CUM-MANAGING DIRECTOR**, referred supra, the delinquent was charged for the alleged misconduct of unauthorized absence from duty for more than six months and after enquiry, charges were proved and he was removed from service,

¹ (2009) 15 SCC 620

which was also confirmed by the authorities concerned. The Apex Court considered the aspect and directed that the delinquent be reinstated forthwith without any back wages from the date of his removal until reinstatement. While arriving at such conclusion, the Apex Court 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 cases”.

Following the decision of the Apex Court, the punishment of removal from service imposed against the petitioner cannot be said to be proportionate to the gravity of the charges levelled against him. Therefore, the Tribunal did not properly exercise the discretion under Section 11-A of Industrial Disputes Act. In such a case, a lenient view can be taken in the matter.

7. Considering the facts and circumstances of the case, the respondents are directed to reinstate the petitioner into service without any back wages and without continuity of service with no attendant benefits. The petitioner can be treated as fresh appointee from the date of joining duty after reinstatement.

8. With the above direction, the Writ Petition is disposed of. No order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

M.S.K.JAISWAL,J

7th September, 2017
sj