THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

WRIT PETITION No.16704 OF 2013

ORDER:

The present writ petition came to be filed seeking issuance of writ of *mandamus* to declare the action of the respondents in imposing penalty by respondent No.3 *vide* proceedings No.SO (R&W) No.Dues/2012-13, dated 09.05.2012, as illegal and arbitrary and consequently, set aside the same and direct the respondents to return the deducted amount of Rs.24,043/- from the retirement benefits of the petitioner with interest.

2. The facts, in brief, are as under:-

The petitioner herein was appointed in Andhra Pradesh State Road Transport Corporation (for short, "the Corporation") as Electrician on 20.09.1977. However, in the year 2011, he was charge sheeted for causing loss of material and negligence. An explanation came to be submitted to the said charge sheet on 15.11.2011. But without considering the same and without giving reasonable opportunity as per CCA Regulations, respondent No.3 imposed penalty *vide* proceedings, dated 09.05.2012. After retirement of the petitioner from the service on 30.12.2011, respondent No.3 issued the punishment order for recovery of Rs.24,043/-. Challenging the same, the present writ petition came to be filed.

3. The main ground urged by the learned counsel for the petitioner is that as per Regulation No.9(3) of the CCA Regulations and the provisions of the Payment of Wages Act, 1936, the

authorities erred in imposing the punishment without conducting any enquiry. It is further urged that the authorities have no right to impose the said punishment on the petitioner after his retirement.

4. The same is opposed by the learned Standing Counsel for the respondent Corporation. According to him, respondent No.3 informed respondent No.4 for recovery of Rs.9,193/-, which was towards the shortage of the material, accounted by the petitioner, supplied by M/s. Bharat Industrial Engineering, Vijayawada, along with a sum of Rs.14,850/- towards shortage of material supplied by M/s.Bosch Limited, Hyderabad. Since the amount ordered to be recovered does not amount to imposing penalty, the question of conducting enquiry does not arise. Having regard to the above, it is urged that the order under challenge warrants no interference. He further submits that instead of availing the remedies available under law, the petitioner ought not to have approached this Court in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India.

5. Pursuant to the charge sheet issued, wherein the Corporation suffered loss due to the negligence of the petitioner, an explanation came to be submitted by the petitioner within the time prescribed. In the said explanation, it was stated that there was heavy work load due to which the shortage has occurred. Since the explanation said to have been given by the petitioner was not accepted and recovery was ordered, the present writ petition is filed.

6. The main ground urged by the learned counsel for the petitioner is with regard to failure on the part of the respondent Corporation in following Regulation 9(3) of the CCA Regulations, which reads as under:

> ***"Regulation 9(3) : Other penalties: Any of the other penalties specified in regulation 8, viz., other than dismissal or removal, may be imposed on an employee in the following circumstances:-***
>
> ***(a) Acts or omissions for which the employee is liable to be dismissed or removed from service, but in respect of which such a penalty is considered excessive in view of the attendant circumstances;***
>
> ***(b) Any minor loses or delinquency;***
>
> ***Provided that in the case of employees governed by the provisions of the Payment of Wages Act, 1936 (Central Act No.4 of 1936), a penalty of fine or recovery from the payment not be imposed except in accordance with the provisions contained in that Act in this behalf."***

7. Rule 14 of the Andhra Pradesh Payment of Wages Rules, 1937 (for short, "the Rules") prescribes procedure in imposing fines and deductions, which reads as under:-

> ***"14. Procedure in imposing fines and deductions:- Any person desiring to impose a fine on an employed person or to make a deduction for damage or loss shall explain personally to the said person the act or omission, or damage or loss, in respect of which the fine or deduction is proposed to be imposed, and the amount of the fine or deduction, which it is proposed to impose, and shall hear his explanation [in the presence of at least one witness]. The charge in respect of which it is proposed to impose the fine or deduction, and the explanation of the person concerned shall be reduced to writing, [the signature or thumb impression of such person and witness] being obtained to the latter."***

8. In the instant case, no punishment is given except ordering recovery of the amount, for the loss caused. Learned Standing Counsel for the respondent Corporation submits that in the absence of any order imposing punishment, Regulation 9(3) of the CCA Regulations would not apply to the case on hand. Similarly, Rule 14 of the Rules also will not apply as it also deals with the procedure in imposing fines and deductions. Even assuming for a moment that recovery of the loss caused to the Corporation falls within the meaning of the word "deductions", Rule 14 of the Rules states that deduction for the damage or loss shall be made from the wages of an employed person after he is given an opportunity to show cause against such deduction and that it has been established that damage or loss sustained by an employee is strictly attributable to the negligence or default of the employed person. In the instant case, a notice came to be issued asking the petitioner to explain as to why deductions should not be made. The petitioner herein gave a reply giving reasons. Rule 14 prescribes that apart from giving show cause notice, it has also to establish that damage or loss sustained by the employer is directly attributable to the negligence or default of the employed person. The impugned order is silent on this aspect. No reasons are given as to how the petitioner was negligent or responsible for the loss caused. Even assuming that Rule 14 of the Rules does not apply, as urged by the learned Standing Counsel for the respondent Corporation, the impugned order is bereft of any reason showing as to how the petitioner is responsible for the loss caused. Hence, the order under challenge is set aside and the matter is remanded

back to the authority to pass orders afresh, in accordance with law.

9. Accordingly, the Writ Petition is allowed and the matter is remanded back to respondent No.3 directing him to pass orders afresh, in accordance with law, as expeditiously as possible, preferably, within a period of four (4) months from the date of receipt of a copy of this order. There shall be no order as to costs.

10. Miscellaneous Petitions pending, if any, in this Writ Petition shall stand closed.

JUSTICE C.PRAVEEN KUMAR

Date:27.04.2017
AMD

THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

WRIT PETITION No.16704 OF 2013

DATE:27.04.2017

AMD