

HON' BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No. 7648 of 2003

ORDER:

The present writ petition is filed by the petitioner seeking *Certiorari* calling for records relating to and connected with the Award dated 31.12.2002 passed in ID No.78 of 2001 on the file of respondent No.1 and quash the same as illegal, arbitrary and unjust and consequently, direct respondent No.2 to reinstate him into service with continuity of service, backwages and all attendant benefits.

The brief facts of the case are that initially, the petitioner was appointed as a Driver in respondent No.2-Corporation in the year 1995. On 01.10.1999 2001 the petitioner, while performing duty on the bus bearing No.AP 10Z 3676 routing from Manugur to Hyderabad and while crossing the speed breakers at Kothapally village, a nine years girl came from left side and in an attempt to cross the road, she herself dashed and fell under the rear wheel of the bus, which resulted in her instantaneous death. Based on the same, the corporation authorities initially issued charge sheet dated 30.10.1999 against the petitioner, but, however, respondent No.2 without considering the explanation submitted by him ordered enquiry. The enquiry authority after conducting enquiry found the petitioner guilty of the charges levelled against him and submitted enquiry report dated 10.01.2000. Based on the same, the respondent No.2-Corporation issued show cause notice of removal,

by proceedings dated 28.01.2000 and finally, removed the petitioner from service. Against the same, the petitioner preferred an appeal and the same was rejected by the appellate authority by proceedings dated 07.08.2000. The petitioner carried the matter before the Reviewing authority-Regional Manager, who, by proceedings dated 04.01.2001 rejected the review petition. Aggrieved by the same, the petitioner filed ID No.78 of 2001 before respondent No.1 and the same was dismissed by impugned order dated 31.12.2002. Aggrieved by the same, the present writ petition is filed.

Heard Sri G.Ravi Mohan, learned counsel for petitioner and Sri B.Mayur Reddy, learned Standing Counsel for respondent No.2-Corporation and perused the material available on record.

Learned counsel for petitioner would submit that respondent No.1 by exercising its powers under Section 11-A of the Industrial Tribunal Act and by applying proportionality theory ought to have set aside the order of removal by reinstating the petitioner with all benefits, at best, as a fresh driver and prayed to set aside the order impugned.

Learned Standing Counsel appearing for respondent No.1-Corporation would submit that the petitioner indulged in a fatal accident resulting in death of a minor girl on the spot and that the petitioner having been unsuccessful in the appeal as well as in the review petition, approached respondent No.1, which rightly

observed and passed the impugned order and hence, there is no illegality or infirmity in the order passed by respondent No.1.

Having considered the submissions made by both the counsel this court is of the opinion that there is strong force in the contention of the learned counsel for petitioner that the labour court by applying proportionality theory, at least ought to have ordered fresh appointment of the petitioner without any back wages, continuity of service and other attendant benefits. Hence, this court is of the considered view that ends of justice would be met if the respondent No.2-Corporation is directed to consider the case of the petitioner and appoint him as a fresh conductor subject to his suitability and fitness.

With the above observations, the writ petition is disposed of. No costs. Miscellaneous Petitions, if any, pending in this writ Petition shall stand closed.

ABHINAND KUMAR SHAVILI, J

12th September, 2018
MjI/ *