

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION NO.17588 OF 2001

ORDER:

1. This writ petition is filed by the petitioner seeking to issue a writ of Certiorari calling for the records relating to and connected with the award in I.D.No.36 of 2000 on the file of the Industrial Tribunal-II, Hyderabad and to quash the same by holding it as illegal and arbitrary.

2. Heard Sri V. Narasimha Goud, learned Counsel for the petitioners and Sri N. Vasudeva Reddy, learned Standing Counsel for APSRTC.

3. It is the case of the petitioner that he was appointed as driver on 17.3.1988 and while he was working as such, it was alleged that he misbehaved with on duty Deputy Superintendent Mechanic on 5.10.1991 at about 20.15 hours by using filthy language in the premises of the garage in an intoxicated condition, and that his act was construed as misconduct, and that the respondent-Corporation issued a charge sheet to the petitioner on 11.10.1991 setting out two articles of charges, for which, the petitioner submitted explanation denying the same. Being not satisfied with the explanation submitted by the petitioner, disciplinary proceedings were initiated by appointing an enquiry officer, and the enquiry officer conducted a detailed enquiry and submitted a report holding that the charges leveled against the petitioner were proved. Basing upon the said report, the disciplinary authority imposed punishment of removal from service vide orders dated 1.6.1992. Aggrieved by the same, the petitioner herein preferred an appeal, which was rejected by the appellate authority on 18.5.1993. Thereafter, the petitioner raised an industrial dispute before the Labour Court way back in the year 1994, which was transferred to the Industrial Tribunal and renumbered as I.D.No.36 of 2000. The Labour

Court had decided the preliminary issue as to whether the procedure adopted by the respondent-Corporation was right in issuing the charge sheet and conducting the enquiry. The Labour Court vide order dated 9.3.1998 held that the domestic enquiry is valid and thereafter, the matter was transferred to the Industrial Tribunal. The Tribunal proceeded to adjudicate the matter basing on the material available on record under Section 11-A of the Industrial Tribunal Act and on the point as to whether the punishment imposed is shockingly disproportionate to the proved misconduct of the petitioner. The Industrial Tribunal considered several judgments relied upon by the petitioner and held that the punishment imposed on the petitioner is not shockingly disproportionate, and passed nil award on 30.11.2000. Challenging the same, the present writ petition is filed.

4. It has been contended by the learned Counsel for the petitioner that the punishment imposed by the disciplinary authority is shockingly disproportionate. In support of his contention, while relying upon **P. Laxmaiah Vs. Telangana State Road Transport Corporation, Hyderabad and another¹**; **Ram Kishan Vs. Union of India and others²** ; **Scooter India Limited, Lucknow, Vs. Labour Court, Lucknow and others³**; **A.V. Subbaiah Vs. Depot Manager, APSRTC, Bus Depot, Kadapa and others⁴**; **Divisional Manager, APSRTC and another Vs. E. Raja Reddy and another⁵**; **A.V. Swami Vs. Industrial Tribunal-cum-Labour Court, Warangal⁶**; **The Workmen of M/s Firestone Tyre and Rubber Co. of India P. Limited Vs.**

¹ 2016(6) ALD 403

² (1995) 6 SCC 157

³ AIR 1989 SC 149

⁴ 2017 (1) ALD 284

⁵ 1999 (5) ALD 735

⁶ 1991(2) LLJ 430

The Management and others⁷ and Neeta Kaplish Vs. Presiding Officer, Labour Court and another⁸, the learned Counsel for the petitioner contended that as the punishment imposed on the petitioner is shockingly disproportionate in all the above said cases, the Courts have interfered and set aside the punishments on the ground that the punishment imposed is shockingly disproportionate. He further contended that the Tribunal while giving a categorical finding on each judgment relied upon by the petitioner, held that the punishment imposed by the disciplinary authority is not shockingly disproportionate, taking into account the past record of the petitioner wherein even on previous occasions he misbehaved with the staff and the respondent corporation imposed punishment on the petitioner, basing on the stand taken by the respondent-corporation in the counter-affidavit filed before the Tribunal and that the approach of the Tribunal is not justified. The learned Counsel for the petitioner further contended that the charge framed against him was very defective because the words what were alleged to have been uttered by the petitioner in filthy language were not described therein, and in the absence of the same, it would not be possible for the petitioner to defend on such vague charge and on that count alone, the punishment imposed against him is liable to be set aside. It has further been contended by the learned Counsel for the petitioner that the petitioner expired during the pendency of the writ petition on 9.5.2011 and legal representatives of the deceased were brought on record vide orders of this Court, dated 9.7.2015. The learned Counsel for the petitioner further contended that the impugned punishment order passed by the disciplinary authority and confirmed by the appellate authority and by the Industrial Tribunal in I.D.No.36 of 2000

⁷ AIR 1973 SC 1227

⁸ (1999) 1 SCC 517

should be set aside and the compensation should be awarded to the legal representatives of the deceased petitioner and the writ petition may be allowed to that extent.

5. On the other hand, the learned Standing Counsel for the respondent contends that every opportunity was given to the petitioner to defend the charges leveled against him and that the disciplinary authority rightly imposed the punishment which was confirmed by the appellate authority and the said punishment was confirmed by the Industrial Tribunal. He further contends that the Labour Court had decided the preliminary issue as to the validity of the procedure adopted in conducting the enquiry, vide orders dated 9.3.1998, and held that the domestic enquiry is valid, and thereafter, the case was transferred to the Tribunal, and that the petitioner had not challenged that order of the Labour Court dated 9.3.1998. He further contends that in view of the specific finding recorded by the Labour Court vide orders dated 9.3.1998 to the effect that the domestic enquiry is held as valid, the only scope of the Tribunal is to examine the point as to whether punishment of removal, which is imposed on the petitioner, is shockingly disproportionate or not and that until and unless the petitioner challenged the orders dated 9.3.1998, it is not open for the petitioner to contend that no opportunity was given to him in the domestic enquiry on the charge, which is defective. He further contends that the judgments relied upon by the petitioner were considered, and after considering each judgment, the Industrial Tribunal held that the present case is not one of such cases where the punishments were declared as shockingly disproportionate. He further contends that taking into consideration the past conduct of the petitioner from the pleadings said to have been taken by the respondent-corporation and based on the other material available

on record, the Industrial Tribunal passed a reasoned order, and therefore, no interference is called for from this Court, and the writ petition is liable to be dismissed.

6. I have considered the rival submissions made by the parties. It is rightly contended by the learned Standing Counsel for the respondent that the Labour Court vide order dated 9.3.1998 had given a finding that the enquiry is valid and in view of the same, the only issue to be considered by the Tribunal is whether the punishment imposed on the petitioner is shockingly disproportionate or not. In respect of the grounds raised by the learned Counsel for the petitioner as to vagueness of charge and non-granting of opportunity in the domestic enquiry, this Court is of the view that those grounds cannot be urged until and unless the petitioner has not challenged the finding of the Labour Court made on 9.3.1998. One of the contentions that was raised by the learned Counsel for the petitioner is that the past record of the petitioner was taken into account while deciding the case and such approach of the Tribunal is not permissible in view of proviso to Section 11-A of the Industrial Disputes Act. I am afraid that it is not a new material which was taken into account by the Tribunal. The said pleading was raised by the respondent-corporation before the Industrial Tribunal in the counter-affidavit, which forms part of the record. No new material was gathered by the Industrial Tribunal while concluding that the punishment imposed on the petitioner is not shockingly disproportionate. The judgments relied upon by the learned Counsel for the petitioner are to the effect that each individual case has to be examined so as to come to a conclusion that the punishment imposed is shockingly disproportionate or not. In the instant case, the Industrial Tribunal had considered the judgments relied upon by the petitioner and held that those judgments

cannot come to the rescue of the petitioner and gave a finding that the punishment imposed on the petitioner is not shockingly disproportionate. The award impugned does not suffer from any illegality warranting interference by this Court and hence, the writ petition is liable to be dismissed.

7. Accordingly, the Writ Petition is dismissed. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.

5th January, 2018
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(ABHINAND KUMAR SHAVILI, J)



THE HON'BLE Mr. ABHINAND KUMAR SHAVILI



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