

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P.No.6660 of 2012

ORDER

This writ petition is filed seeking the following relief:

“....to issue an appropriate writ, order or direction more especially one in the nature of Writ of Certiorari to call for the records relating to Award dated 24-06-2011 passed in I.D.No.16 of 2008 on the file of the Industrial Tribunal-I at Hyderabad, published in G.O.Rt.No.1383, dated 29-08-2011 and quash or set aside the same in the interest of justice and pass such other order or orders as this Hon'ble Court deems fit and proper in the circumstances of the case.”

Heard Sri A.Ravi Babu, learned Standing Counsel appearing for the respondent-Corporation and Sri V.Narasimha Goud, learned counsel appearing for the 1st respondent-Union.

It is the case of the petitioner-Corporation that one B.Kanaka Rao was engaged as casual Conductor in the year 1987 and his services were regularized and while discharging his duties, he had committed certain cash and ticket irregularities. Hence, the Corporation had initiated disciplinary proceedings against him and after conducting enquiry and for the proven misconduct, removed him from service *vide* order dated 26.04.1994. Challenging the said order, the said B.Kanaka Rao filed appeal and the same was

rejected. Thereafter, he filed revision before the revisional authority. The revisional authority *vide* order dated 30-11-1995 modified the punishment of removal to that of deferment of annual grade increment for a period of two years with cumulative effect, besides treating the suspension period as “not on duty”. Questioning the same, the said B.Kanaka Rao raised a dispute through the 1st respondent-Union before the Conciliation Officer. The Conciliation Officer, after negotiations, submitted a failure report to the appropriate Government. The appropriate Government had referred the dispute to the Industrial Tribunal-I, Hyderabad vide G.O.Rt.No.1753, dated 27.8.2008. The Tribunal vide order dated 24th June, 2011 allowed the I.D.No.16 of 2008 modifying the punishment of deferment of annual increment for a period of two years with cumulative effect to that of without cumulative effect by treating the suspension period as ‘on duty’, but without back wages. Challenging the same, the present writ petition is filed.

Learned counsel appearing for the petitioner contended that the revisional authority had modified the punishment of removal to that of deferment of annual increment for a period of two years with cumulative effect vide order dated 30.11.1995. It is further contended that since the said ID was

preferred after lapse of 13 years from the date of modified punishment imposed against the employee by the revisional authority, it is not maintainable. It is further contended that the Tribunal erred in holding that the enquiry was not conducted properly and the enquiry officer failed to summon the two passenger witnesses to give evidence and that the employee has also raised an objection in this regard. Further, the checking officials have failed to follow the regulations of the Corporation. It is prayed that the Award passed by the Tribunal is liable to be set aside.

Learned counsel appearing for the 1st respondent contended that the Tribunal has rightly passed the Award in favour of the employee-B.Kanaka Rao by modifying the punishment of deferment of annual increment for a period of two years without cumulative effect and treated the suspension period as “on duty”, however, denied back wages. There are no merits in the writ petition and the same is liable to be dismissed.

Having considered the rival submissions made by the learned counsel on either side, this Court is of the considered view that the contention of the petitioner-Corporation that the ID preferred by the 1st respondent is barred by limitation cannot be accepted since the employee has raised a dispute

before the 1st respondent-Union and it is for the Conciliation Officer to submit a failure report to the appropriate Government, which referred the dispute *vide* G.O.Rt.No.1753, dated 27.8.2008. When the dispute was referred in the year 2008, the question of delay on the part of the employee does not arise.

The contention of the petitioner that the Tribunal had given a finding that two passenger witnesses were not examined during the course of enquiry and the enquiry was not properly conducted is concerned, this Court is not in a position to appreciate the said contention as no material is placed before this Court in support of the same. In the absence of any material it is difficult for this Court to say that the employee has not objected for non-examination of the two passengers at the time of enquiry. More over, the Tribunal has ample power to modify the punishment. After considering the entire case, the Tribunal has rightly modified the punishment imposed against the employee. Unless and until grave irregularity or illegality has been pointed out in the Award passed by the Tribunal, this Court cannot interfere with the Award passed by the Tribunal. There are no merits in the writ petition and the same is liable to be dismissed.

Accordingly, the Writ Petition is dismissed. No costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

25th September, 2019
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