

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P.No.8298 of 2013

ORDER

This writ petition is filed seeking the following relief:

“.....to issue an appropriate writ, order or direction, especially in the nature of writ of Certiorari calling for the records relating to the impugned order dt. 22.09.2012 in I.D.No.30 of 2009, on the file of the Labour Court, Godavarikhani and set aside the same as illegal and arbitrary and to pass such other or orders just and necessary in the circumstances of the case.”

Heard Sri A.Ravi Babu, learned Standing Counsel appearing for the petitioner-Corporation, learned Government Pleader for Labour appearing for the 1st respondent and Sri V.Narasimha Goud, learned counsel appearing for the 2nd respondent-workman.

It is the case of the petitioner-Corporation that the 2nd respondent was appointed as Driver in the Corporation and while so, on 02.12.2003 he caused an accident, resulting in the death of one student viz., D.Sunitha. The disciplinary authority has construed the same as misconduct and initiated disciplinary proceedings against the 2nd respondent-workman. After conducting regular departmental enquiry and for the proven misconduct, the Corporation has removed the 2nd respondent from service vide proceedings dated 7.7.2004.

Challenging the same, the 2nd respondent has preferred an appeal before the appellate authority. The appellate authority *vide* order dated 4.12.2004 reinstated the 2nd respondent into service as Driver afresh. Challenging the same, the 2nd respondent raised a dispute through the 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-cum-Labour Court, Godavarikhani, under Section 10(1) clause (d) of the Industrial Disputes Act, 1947 (for short 'the Act'). The Tribunal entertained the said reference as I.D.No.30 of 2009 and partly allowed the Award on 22.09.2012 by directing the Corporation to give continuity of service to the petitioner by treating his suspension period as "on duty" for all purposes, full back wages, difference of salary and withholding one annual increment without cumulative effect for the year 2003-04. Challenging the same, the present writ petition is filed.

Learned Standing Counsel appearing for the petitioner-Corporation contended that the Tribunal had failed to appreciate the fact that the appellate authority has taken a lenient view and modified the punishment of removal to that of reinstatement afresh and partly allowed the appeal

preferred by the workman, granted continuity of service with full back wages. It is further contended that in pursuance of the Award passed by the Tribunal, the 2nd respondent-workman was reinstated into service with continuity of service and the petitioner-Corporation is insisting with regard to payment of back wages.

Learned counsel appearing for the 2nd respondent contended that in order to give a quietus to this litigation, the 2nd respondent is willing to forego 50% of the back wages and in all other aspects, rest of the Award be confirmed. It is brought to the notice of this Court that the 2nd respondent-workman retired from service on attaining the age of superannuation on 31.3.2019.

Having considered the rival submissions made by the learned counsel on either side, this Court is of the view that the Tribunal ought not to have granted full back wages to the 2nd respondent. Since the appellate authority has taken a lenient view and modified the punishment of removal to that of reinstatement afresh and the learned counsel appearing for the 2nd respondent-workman concedes that the workman is willing to forego 50% of the back wages, ends of justice would be met if the Award passed by the Tribunal is modified to the

extent of payment of 50% back wages to the 2nd respondent-workman.

Accordingly, the Writ Petition is disposed of by directing the petitioner-Corporation to release 50% of back wages to the 2nd respondent-workman along with other benefits within a period of two months from the date of receipt of a copy of this order. No costs.

Pending miscellaneous petitions, if any, shall stand closed.

1st October, 2019
rkk

JUSTICE ABHINAND KUMAR SHAVILI

