

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.34389 of 2015

O R D E R:

Heard Sri S.V.Ramana, Standing Counsel for petitioners and Sri V.Rama Krishna, Counsel appearing for 1st respondent-Union.

2. Petitioners have assailed in this Writ Petition Award dt.09.07.2013 in I.D.No.17 of 2010 passed by the 2nd respondent.

3. The said Award arose out of a reference by the 1st respondent-Union under Section 10(1) of the Industrial Disputes Act, 1947 for adjudication of a dispute between one A.S.Rayudu, a driver employed by the APSRTC, and the Management of the said Corporation.

4. Alleging that the said workman was driving a vehicle belonging to the Corporation, which was involved in a road accident with a trailer-lorry on 02.06.2005 at Vemagiri Center, which was a bye-pass road, a charge memo was issued to the workman, that because of the accident four passengers in the bus and the workman himself suffered injuries and the vehicle of the Corporation was damaged.

5. After considering the explanation of the petitioner, a Disciplinary Enquiry was conducted and punishment of reduction of pay by two incremental stages for a period of two years with cumulative effect besides treating the suspension period as not on duty, was imposed on him.

6. The said punishment was confirmed in appeal by the Divisional Manager, Kakinada, but on Review, the Regional Manager, Rajahmundry modified the punishment into reduction of basic pay by two incremental stages with cumulative effect for a period of two (02) years.

7. Questioning the same, the Corporation filed I.D.No.17 of 2010 before the Industrial Tribunal-cum-Labour Court, Visakhapatnam (for short 'the Tribunal').

8. Before the Tribunal, the workmen contended that the punishment imposed on him is excessive and disproportionate and the punishment ought to be modified and set aside.

9. The management marked Exs.M1 to M27.

10. After considering the contentions of both parties, though the Industrial Tribunal did not interfere with the finding of the Enquiry Officer, it however, came to the conclusion that the punishment imposed was disproportionate and modified the punishment imposed on the workman to deferment of one annual grade increment for a period of two years without cumulative effect. It gave the following reasons:

“While exercising discretion under Sec.11A this Court has to examine the case from the perspective of the bonafidies of the workman and whether he was deliberate and absolute negligent in conducting himself while discharging his duties while driving.

It appears, as seen from material available on record, evidently it is not a case of lack of taking precautionary measures. The precaution taken by driver not only appears to be sufficient but also proper. There is no malice in his conduct. In fact, the accident itself is an accident without intention. In the present case as contended by the counsel for workman, the negligence is on the part of both the drivers and it can be said that it is a contributory negligent. Therefore, meeting such conduct with severe punishment is not justified and disproportionate. In cases like this nature, both drivers are equally responsible and here in this case also it is very clear that both the drivers are responsible for the accident and it is a contributory negligence on the part of the workman. For all the reasons, I am of the view that the workman is exclusively negligent in driving the bus.

Therefore, having regard to all these facts and circumstances, I find that punishment is to be modified into that of deferment of annual increment for a period of two years without cumulative effect would meet the ends of justice. Accordingly, point No.1 is answered.”

11. Challenging the same, this Writ Petition is filed by the Corporation.

12. The Standing Counsel appearing for the Corporation contends that the Industrial Tribunal having accepted the findings of the Enquiry Officer could not have interfered with the quantum of punishment.

13. This contention is without any merit, because Section 11A of the Act empowers the Industrial Tribunal to interfere with the quantum of punishment, if it comes to the conclusion that the punishment imposed is disproportionate to the misconduct.

14. I am of the opinion that the Tribunal had assigned valid reasons for modifying the quantum of punishment. So, I am of the opinion that there is no error of jurisdiction and the Tribunal had correctly applied the legal principles under Section 11A of the Industrial Disputes Act, 1947 and held that the punishment imposed was disproportionate and too harsh and modified the same.

15. I therefore find no merit in the Writ Petition and it is accordingly dismissed. No order as to costs.

16. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

24th December, 2018.
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M.S. RAMACHANDRA RAO, J

