

THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN

AND

THE HON'BLE SRI JUSTICE C.V.BHASKAR REDDY

WRIT APPEAL No.456 of 2019

JUDGMENT: *(Per the Hon'ble the Chief Justice Ujjal Bhuyan)*

Heard Mr. A.Ravi Babu, learned counsel for the appellants. None has appeared for the respondent.

2. This writ appeal has been preferred against the judgment and order of the learned Single Judge dated 23.11.2018 whereby W.P.No.25967 of 2007 filed by the respondent as the writ petitioner was disposed of by modifying the punishment imposed on him.

3. At the relevant point of time, respondent was serving as Conductor in the establishment of appellant No.1. As a matter of fact, he was inducted in the establishment of appellant No.1 in the year 1989. A charge memo was issued to him in the year 2003 with the charge that he was unauthorisedly absent for the period from 10.01.2003 to 11.02.2003 i.e., for a period of 33 days, construing the

same to be a misconduct on the part of the respondent. Following a departmental enquiry in which the charge against the respondent was proved, he was removed from service vide order dated 17.03.2003 issued by the disciplinary authority.

4. Respondent preferred a departmental appeal which was allowed by the appellate authority. Appellants were directed to reinstate the respondent by imposing lesser punishment of reduction of his pay by two incremental stages for a period of two years, which would have effect on future increments. Aggrieved by the imposition of penalty so modified, the writ petition came to be filed.

5. Learned Single Judge by the order dated 23.11.2018 modified the punishment imposed on the respondent by making it a punishment of reduction of his pay by two incremental stages for a period of two years without cumulative effect.

6. Hence the appeal.

7. Learned counsel for the appellants submits that no reasons have been assigned by the learned Single Judge while modifying the penalty imposed. Already the initial penalty imposed was modified by the appellate authority. Further modification of the penalty was not called for. Misconduct of the respondent was proved, whereafter the appellate authority had imposed commensurate penalty. No interference was called for.

8. We have heard learned counsel for the appellants and perused the order passed by the learned Single Judge. We have also considered the materials on record.

9. Basic charge against the respondent was that he was in unauthorised absence for the period from 10.01.2003 to 11.02.2003 i.e., for 33 days.

10. Respondent is serving as Conductor in the establishment of appellant No.1 having joined in the year 1989. We put a query to learned counsel for the appellants regarding the past conduct of the respondent as to whether respondent had faced any other proceedings in his service

career. Learned counsel for the appellants submits that he has no instructions in this regard.

11. The charge of remaining unauthorisedly absent for the period from 10.01.2003 to 11.02.2003, in our opinion, was not so grave as to have warranted the initial penalty of removal from service. As already noted above, respondent is a Conductor in the establishment of appellant No.1. The appellate authority reinstated the respondent in service and imposed the penalty of reduction of pay of the respondent by two stages for a period of two years having cumulative effect. This again is a major penalty.

12. Learned Single Judge, though has not expressed in so many words, had considered the past conduct of the respondent and the service rendered by him as Conductor in the establishment of appellant No.1. We are of the view that having regard to the nature of the charge against the respondent, imposition of the major penalty of reduction of pay by two stages for a period of two years having cumulative effect was disproportionate to the gravity of the offence. Therefore, learned Single Judge was justified in

modifying the punishment by making the same without cumulative effect.

13. We do not find any good reason to interfere with the judicious discretion exercised by the learned Single Judge under Article 226 of the Constitution of India.

14. Consequently, writ appeal is dismissed.

Miscellaneous applications pending, if any, shall stand closed. However, there shall be no order as to costs.

UJJAL BHUYAN, CJ

C.V.BHASKAR REDDY, J

25.08.2022
vs