

**HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA**

**WRIT PETITION No. 26966 OF 2011**

**ORDER :**

Seeking to quash the Award dated 17.02.2010 in I.D.No. 123 of 2009 on the file of the Labour Court-III, Hyderabad published on 27.04.2010, in so far as it relates to the portion of 'excluding the charged period till the death of the petitioner's late husband', the Writ Petition is filed.

2. Petitioner submits that her husband Sri T. Narsimhulu (herein after be referred to as 'the workman') worked as Conductor from 01.08.1986 till he was removed from service by the 2<sup>nd</sup> respondent *vide* order dated 12.07.2006 on the charge that he absented from duties from 05.03.2006 to 23.03.2006 and that he maintained irregular attendance. It is her case that on 16.11.2006, her husband died. Aggrieved by the order of removal, the petitioner raised I.D before the Labour Court-I which was transferred to Labour Court-III and it was re-numbered as I.D.No. 123 of 2009 to treat her husband as in service from the date of removal till the date of death with all attendant benefits and back wages as her husband remained unemployed during the said period. It is stated that after conducting enquiry, the Tribunal passed the Award impugned setting aside the order of removal

dated 12.07.2006 and directing the respondents to count the service of the petitioner from the date of removal excluding the period of charged absence till his death ie. 16.11.2006 with all attendant benefits but without back wages.

3. A counter-affidavit was filed on behalf of the respondent Corporation stating that the Industrial Dispute itself is not maintainable before the Labour Court as the petitioner was not a 'workman' under the provisions of the Industrial Disputes Act and further, the workman did not choose to question his order of removal till his death. It is stated that the deceased was charged for having absented from duties from 05.03.2006 in continuation of private sick leave from 17.12.2005 without any intimation or prior sanction of leave from his supervisors and for irregular attendance which caused inconvenience to the travelling public as well as to the supervisors for arranging substitutes to the duty besides loss of legitimate revenue to Corporation which constitutes misconduct under Regulation 28(xxvii) and (ix)(a) of the APS RTC Employees' (Conduct) Regulations, 1963. It is stated that dissatisfied with the explanation submitted by the workman, the 2<sup>nd</sup> respondent nominated Enquiry Officer to conduct enquiry into the charges, but the workman failed to attend the enquiry on 19.04.2006, hence, the Enquiry Officer conducted *ex parte* enquiry and submitted a report holding that the charges are proved. It is

stated that a show-cause notice was issued on 21.06.2006 and the same was acknowledged by the deceased workman on 26.06.2006 but he failed to submit explanation. It is further stated that after considering the entire material, the 2<sup>nd</sup> respondent came to the final conclusion that the charges are proved and passed order of removal on 12.07.2006. According to the respondents, though the Labour Court held that the domestic enquiry conducted by the management was valid and the charges were proved, taking a lenient view, observed that the unauthorised absence was not willfull and as such, passed the Award continuing the service of the workman from the date of removal till his death duly excluding the absence period for payment of all attendant benefits and the same cannot be interfered with.

4. Learned counsel for the petitioner Sri A.K. Jayaprakash Rao submits that the Tribunal having held that the punishment of removal is unjustified, directing the respondents to count the service of the workman from the date of removal excluding the period of charged absence till his death is not proper. It is submitted that the Tribunal ought to have granted continuity of service of the deceased till his death.

5. In the Award of the Labour Court, it is observed that ExM1 – Report of Sr. Traffic Inspector, Parigi discloses that

the deceased was sick for some time before the date of charged unauthorised absence, Ex.M3 explanation to charge sheet revealed that the deceased underwent surgery on 18.01.2006 and was advised to take bed rest for two months, even after surgery; illness of the deceased did not cure and some side-effects ensued and the sickness and developed side-effects are probable to believe since they consumed the life of deceased on 16.11.2006, the charged absence is though unauthorised but not wilful or by negligence, hence, the punishment of removal is unjustified, while setting aside the order of removal, directed the respondents to count the service of the petitioner from the date of removal excluding the period of charged absence till his death.

Admittedly, the workman went on sick leave and soon after his undergoing surgery on 18.01.2006, he was advised bed rest and thereafter on 16.11.2006 he died due to ill-health. It is therefore, clear that the workman suffered severe health setback and he confined to bed till his death. In those circumstances and in view of the observation of the Labour Court that the charged absence is though unauthorised, not wilful nor by negligence, this Court taking lenient view, inclines to grant the relief prayed for by the petitioner.

6. The Writ Petition is therefore, allowed, directing the respondents to count the service of the workman from the date of removal till his death with all attendant benefits payable to the petitioner but without backwages within a period of two months from the date of receipt of a copy of this order. No costs.

7. Consequently, the miscellaneous Applications, if any shall stand closed.

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**NAGESH BHEEMAPAKA, J**

31<sup>st</sup> August 2023

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