

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

WRIT PETITION No.24674 OF 2003

ORDER:

This writ petition is filed under Article 226 of Constitution of India seeking a writ of Mandamus to declare the action of the first respondent in not granting attendant benefits and continuity of service and backwages and reinstating the petitioner as fresher is illegal, arbitrary and violative of principles of natural justice; and consequently direct the second respondent to grant continuity of service with all consequential reliefs with attendant benefits to the petitioner.

2. The facts leading to filing of this writ petition, in brief, are as follows. The petitioner was appointed as driver in Andhra Pradesh State Road Transport Corporation (hereafter referred to as, the Corporation) on 04.6.1980 and his services were regularised on 05.12.1980. The Corporation issued charge memo dated 26.5.1990 stating that the petitioner unauthorisedly absented for duty from 26.4.1990 to 22.5.1990 and irregular attendance/absenteeism for about 111 days in the years 1989 and 1990. The petitioner submitted explanation along with medical certificate dated 21.6.1990 issued by Osmania General Hospital, Hyderabad. Being not satisfied with the explanation submitted by the petitioner, the Corporation initiated domestic enquiry, wherein and whereunder the petitioner was found guilty for the unauthorised absence. The Corporation issued show cause notice to the petitioner calling for his explanation as to why he cannot be removed from the service. On 09.8.1990, the petitioner submitted explanation. After considering the explanation submitted by the petitioner, the Corporation issued the impugned order dated 14.8.1990 removing the petitioner from service. The petitioner by way of statutory appeal challenged the order of removal from service

dated 14.8.1990 before the Divisional Manager, APSRTC, but the same was rejected on 25.2.1991. Feeling aggrieved by the order passed in the appeal, the petitioner raised industrial dispute being I.D.No.152 of 1991 on the file of Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad, which was transferred to the file of the Labour Court-I, Hyderabad and renumbered as I.D.No.410 of 1993.

3. After giving reasonable opportunity to both parties, the Labour Court allowed the I.D. in part ordering to reinstate the petitioner into service without backwages and attendant benefits but directed to consider his service for pensionary benefits only. Feeling aggrieved by the award of the Labour Court, the present writ petition is filed.

4. Sri S.Pradeep Kumar, learned counsel for the petitioner submitted that the punishment imposed by the Corporation is not commensurate with the gravity of misconduct committed by the petitioner. He further submitted that the Labour Court ought to have granted the relief of continuity of service with backwages and attendant benefits in view of length of service rendered by the petitioner without any blemish. The Labour Court failed to see that the petitioner was not engaged in any gainful service and therefore, he is entitled for backwages and attendant benefits.

Per contra, Sri N.Vasudeva Reddy, learned standing counsel for the second respondent – Corporation submitted that the Labour Court has assigned cogent and valid reasons to its findings and therefore, it is not a fit case to set aside the award passed by the Labour Court. He has drawn my attention to the decision in **State**

Bank of Bikaner and Jaipur v Nemi Chand Nalwaya^[1]. It para 7, it was held as follows:

7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has

been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (Vide *B.C. Chaturvedi v. Union of India*, (1995) 6 SCC 749, *Union of India v. G. Ganayutham*, (1997) 7 SCC 463, *Bank of India v. Degala Suryanarayana*, (1999) 5 SCC 762 and *High Court of Judicature at Bombay v. Shashikant S. Patil*, (2000) 1 SCC 416.)

5. Let me consider the facts of the case on hand in the light of the principle enunciated in the case cited supra. The petitioner unauthorisedly absented for duty for a period of 57 days and 54 days in the years 1989 and 1990 respectively. The Corporation issued charge memo dated 26.5.1990 calling for the explanation of the petitioner. The petitioner submitted explanation along with medical certificate dated 21.6.1990 issued by the Osmania General Hospital, Hyderabad. As per Regulation 28 (xxvii) of the A.P.S.R.T.C. Employees (Conduct) Regulations, 1963 (hereafter, the Regulations), absence of an employee without leave, without reasonable cause and without permission shall be treated as misconduct. It is not in dispute that the medical certificate produced by the petitioner relates to the period from 26.4.1990 to 22.5.1990 only. The fact remains that the petitioner has not followed the procedure contemplated under the Regulations. The Corporation initiated domestic enquiry and the Enquiry Officer submitted report dated 17.7.1990 stating that both the charges levelled against the petitioner are proved. The Corporation passed orders dated 14.8.1990 removing the petitioner from service. Suffice it to say that this court cannot sit on appeal over the award passed by the Labour

Court. This Court while exercising jurisdiction under Article 226 of the Constitution of India can set aside the award, if the findings recorded by the Tribunal or court are perverse or contrary to fundamental principles of law.

6. A perusal of the record reveals that the Labour Court has considered various documents filed by the Corporation in right perspective and arrived at the conclusion that the conduct of the petitioner certainly would amount to misconduct. It is the duty of the driver to inform the Depot Manager or any other officials in advance if his health does not permit him to attend duty. If the driver of the Corporation abstains from duty without intimation to superior authorities, it may cause much inconvenience not only to the higher authorities of the Corporation but also to the public at large, who are solely depending upon public transport system. The Labour Court considered all these aspects keeping in mind the future of the petitioner. Viewed from any angle the finding recorded by the Labour Court, on this aspect, is supported by material available on record. I am fully agreeing with the finding recorded by the Labour Court. There are no grounds much less valid grounds to set aside the finding recorded by the Labour Court that the unauthorised absence of the petitioner amounts to misconduct.

7. The next question that falls for consideration is whether the punishment imposed by the Corporation is commensurate with the gravity of proved misconduct of the petitioner. The Corporation removed the petitioner from service. The Labour Court modified the punishment imposed by the Corporation and ordered to reinstate the petitioner into service without backwages and attendant benefits. The petitioner was removed from service on 14.8.1990 and was reinstated into service on 29.9.2001 in pursuance of the award passed by the Labour Court on 06.12.1996. The petitioner was out of service from 14.8.1990 to 29.9.2001 i.e., for about 11 years. If the

termination of an employee is *ex facie* illegal, then only the employer shall be made liable to pay backwages, attendant benefits and continuity of service. In the instant case, the misconduct committed by the petitioner forced the Corporation to terminate his services. If the Labour Court awards backwages and attendant benefits, certainly it amounts to undue benefit to the petitioner and untold hardship to the Corporation. The finding of the Labour Court denying backwages and attendant benefits to the petitioner is fully justified.

8. The petitioner was out of service nearly for a period of 11 years. The petitioner joined in the Corporation as driver on 05.6.1980 and he was removed from service on 14.8.1990. The Tribunal ordered reinstatement of the petitioner as if his appointment as a fresh one. If the award of the Labour Court, on this aspect, is allowed to stand, certainly the petitioner has to lose 10 years of service i.e., from 1980 to 1990. Prior to his suspension, it appears that the petitioner has rendered unblemished service to the Corporation. In view of the award passed by the Labour Court, the petitioner has to forego his previous service. While deciding this type of cases, human approach should be paramount consideration.

9. Having regard to the facts and circumstances of the case, I am of the considered view that the petitioner is legitimately entitled for computation of his previous service for the purpose of pensionary benefits only. The petitioner is not entitled for backwages or attendant benefits. The award passed by the Labour Court is modified accordingly.

10. In the result, the writ petition is allowed in part modifying the award of the Labour Court. The reinstatement of the petitioner shall be treated as with continuity of service for the purpose of computation of pensionary benefits only, but without backwages and attendant benefits. There shall be no order as to costs.

Miscellaneous petitions if any pending in the writ petition shall stand closed.

March 26, 2015.
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T.SUNIL CHOWDARY, J

[\[1\]](#) (2011) 4 SCC 584