

THE HON'BLE SRI JUSTICE DILIP B. BHOSALE
AND
THE HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

WRIT APPEAL No.121 OF 2015

-
-

P.C: *(Per Hon'ble Sri Justice A. Ramalingeswara Rao)*

This Writ Appeal is directed against the order dated 28.08.2013 in W.P.No.28029 of 2009. The order of the appellants removing the respondent from service was set aside and the appellants were directed to reinstate the respondent into service and consider imposition of penalty of withholding of one increment without cumulative effect as in the case of M. Srinivasa Rao, Assistant Engineer.

The facts of the case are that the respondent was appointed as Sub Overseer on 17.08.1992 and subsequently the post was re-designated as Sub Engineer. He was transferred and appointed as Additional Assistant Engineer on 23.11.2002. While he was holding the said post, he was absent from duty from 03.10.2004 till October, 2005. A memo was issued to the respondent on 04.11.2004 followed by further Memos, dated 11.11.2004, 20.01.2005, 24.02.2005. An enquiry officer was appointed on 05.10.2005. The respondent submitted his explanation on 28.10.2005 and enquiry was commenced on 02.12.2005. On 16.12.2005, the Enquiry Officer submitted his report holding that the charge of unauthorized absence was proved. Later, on 24.01.2006, a show cause notice was issued to the respondent.

In the show cause notice it was stated that it was provisionally concluded that the respondent was deemed to have been resigned with effect from 03.10.2004 and ceased to be the employee of the

appellants. The respondent submitted explanation on 02.02.2006 explaining the circumstances that the absence was not deliberate, but was on account of life threat to him. The appellants, having not satisfied with the said explanation, issued proceedings on 23.03.2006 treating that the respondent was deemed to have resigned from service with effect from 03.10.2004. The respondent preferred an appeal before the 2nd respondent and the said appeal was rejected. The respondent also filed a review on 10.10.2008 stating that similarly situated employee, by name, M. Srinivasa Rao was reinstated into service with penalty of stoppage of one increment without cumulative effect and that similar penalty be imposed against him. The said review application was not considered. In those circumstances, the respondent filed W.P.No.1453 of 2009 and this Court disposed of the same on 02.02.2009 directing the 2nd appellant to dispose of the review application of the respondent. The said review application was dismissed on 23.06.2009. The respondent again preferred an appeal against the rejection of review application and the said application was also rejected. Ultimately, the respondent preferred the above Writ Petition challenging the action of the appellants in imposing the punishment of deemed resignation from service as illegal and consequential direction to the appellants to reinstate him into service.

Before the learned Single Judge, the learned counsel for the respondent contended that the penalty of deemed resignation was not provided in the Service Regulations and such a punishment was unjust and improper. He also raised the point for consideration that the respondent deserved to be given the same treatment, which was given to one M. Srinivasa Rao, who was absent from 10.08.2000 to 27.08.2001, by imposition of penalty of stoppage of one increment without cumulative effect.

The learned Single Judge, taking the case of M. Srinivasa Rao and treating his case with a lesser punishment of stoppage of one increment without cumulative effect for his unauthorized absence for almost a similar period, disposed of the Writ Petition with a direction to the appellants to reinstate the respondent into service and to consider imposition of penalty of withholding of one increment without cumulative effect as in the case of M. Srinivasa Rao. Challenging the said order, the present appeal is filed.

Before us, the learned Standing Counsel for the appellants contended that the case of M. Srinivasa Rao is different, as he initially applied for leave and later on was absent from duty without applying for further leave. But in the instant case, the respondent did not apply for any leave at all.

We are of view that in both the cases, absence from duty was unauthorized and the appellants have treated the case of M. Srinivasa Rao, who was absent from duty for a similar period in a different manner and the appellants should have given the same treatment to the respondent herein also. The respondent's absence does not warrant the punishment of removal from service. The learned Single Judge has rightly interfered with the punishment and disposed of the Writ Petition, as aforesaid. In these circumstances, we do not find any reason to interfere with the order passed by the learned Single Judge.

The Writ Appeal is accordingly dismissed. There shall be no order as to costs.

The Miscellaneous Petitions filed in this Writ Appeal shall stand disposed of.

DILIP B. BHOSALE, J

A. RAMALINGESWARA RAO, J

23.02.2015

KH