

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.1681 OF 2002

-

ORDER:

This writ petition is filed challenging the award dated 01.08.2000, passed in ID.No.72/1997 by the Chairman-cum-Presiding Officer, Industrial Tribunal-cum-Labour Court, Anantapur, wherein the tribunal set aside the punishment, imposed by the Reviewing Authority-Regional Manager against the 1st respondent herein, holding that the 1st respondent is entitled to get notional increment without any monetary effect till the date of joining the service; and that the petitioner is entitled to get monetary benefit with effect from the date of joining into service as per the proceedings of the Regional Manager.

The case of the petitioners is that they have removed the 1st respondent from service for his unauthorized absence after duly conducting an enquiry into the charge leveled against him in the charge sheet dated 06.05.1987, by giving reasonable opportunity to him to defend himself. The appeal preferred by the 1st respondent before the Divisional Manager, Chittoor was also dismissed vide order dated 16.05.1990. Against the same the petitioner preferred revision before the Regional Manager, Nellore; wherein the Regional Manager held that the charges framed against the 1st respondent are proved and that the Depot Manager was justified in awarding the punishment. But, however, the Regional Manager passed the following order on 14.11.1990, holding that the order of removal is excessive when compared with the gravity of the offence and took lenient view of the matter.

“Order of the Regional Manager: “ 1) the proceedings of removal passed by the Depot Manager, Chittoor depot and the appeal rejection proceedings of the Divisional Manager, Chittoor against the petitioner are hereby set aside and he be reinstated into service with immediate effect.

- 2) The intervening period from the date of removal from service to the date of reporting for duty be treated as 'Not on duty'.
- 3) On reinstatement his pay is reduced to the minimum scale of the post permanently and he will earn increment only after completion of one year service after reporting for duty on reinstatement into service.....”

Thereafter, the 1st respondent unconditionally accepted the review order and reported to duty. But, after a lapse of seven years the Regional Joint Secretary, A.P.S.R.T.C.Employees Union, Chittoor District, raised an industrial dispute, wherein the Tribunal without considering the contentions raised by the petitioners allowed the ID.No.72/97 vide order dated 01.08.2000, setting aside the punishment imposed by the Regional Manager. Aggrieved by the same present writ petition is filed.

Learned counsel for the petitioners submits that only on the ground of laches, the Labour Court should have dismissed ID preferred by the 1st respondent. He also contends that as per Regulation No.35(A) of A.P.S.R.T.C.Employees (Classification, Control and Appeal) Regulations, 1967 (*for short 'regulations'*) notice was also properly served on the 1st respondent, as such the finding of Labour Court that the notice was not properly served and publication of notice was not ordered is erroneous. He also submits that Circular No.6/94, dated 19.10.1994, authorizes all the Regional Managers to issue 'Vakalats' and sign counters on behalf of the Managing Director and all other Officers of the Corporation in legal proceedings where the Corporation is made a party. As such, the finding, of the Labour Court that the Regional Manager, Anantapur cannot defend the case, is erroneous. He further submits that the Disciplinary Authority itself held that the enquiry was conducted properly and that the charges leveled against the 1st respondent are proved, as such, the Labour Court

cannot hold otherwise without any basis, when the notice is served as per the Regulations.

On the other hand, learned counsel appearing for the 1st respondent submits that the Labour Court has considered all the aspects and allowed the ID.No.72/97. He also submits that the unauthorized absence is only for fifteen days for which the punishment imposed by the petitioners is harsh, excessive and disproportionate. He further submits that when the 1st respondent was not available at home at the time of serving notice, the petitioners should have issued paper publication, but having not done so conducted ex parte enquiry, as such the 1st respondent could not properly defend himself in the enquiry. He also submits that the unauthorized absence is only on account of treatment taken by 1st respondent for Jaundice.

In the present case the original authority basing on the evidence has held that charges are proved and imposed punishment of removal from service against the 1st respondent. The same was confirmed by the Appellate Authority. But, the reviewing authority-Regional Manager has taken a lenient view and ordered reinstatement of the petitioner after holding that the charges are proved. Thereafter, the 1st respondent approached the Labour Court. In the award, though the Labour Court observed that notices sent to the residential address of the 1st respondent were returned unserved and that the petitioners displayed the said notices in the notice board, but, still holds that the notice is not served on the 1st respondent. The said finding is erroneous.

Regulation No.35(A) of A.P.S.R.T.C.Employees (Classification, Control and Appeal) Regulations, 1967 reads follows;

35 (A) Manner of service of communication, notices or orders on employees:

(1) A communication, notice or order addressed to an employee in pursuance of any action taken or contemplated

under these Regulations shall, if practicable, be served personally on him by delivering or tendering to him one of the duplicates of such communication, notice or order.

(2) Where, however, it has not been found practicable to serve the duplicate communication, notice or order personally on the employee, it shall be sent to the last known address of the employee by properly addressing, pre-paying and posting by registered post with acknowledgment due, and unless the contrary is proved, the communication, notice or order shall be deemed to have been served on the employee at the time at which the copy so sent is delivered in the ordinary course by post.

(3) For the purpose of this regulation, it shall be the duty of every employee to notify at the time of his first appointment to service, the address to which communication etc., intended for him may be sent when he is not on duty and to keep the head of the office or unit to which he is attached for the time being, the changes, if any, occurring in his address from time to time.

(4) If a communication, notice or order sent by post under clause (2) for any reason returned un-delivered then a copy of such communication, notice or order shall be displayed for a period of not less than one week on the notice board of the office or unit in which the employee was last working, and on the expiry of such period, the communication, notice or order shall be deemed to have been served on the employee for the purpose of these Regulations.”

As per sub rule(2) of regulation 35 (A) of the Regulations, notice was sent to the 1st respondent to his residential address and when the same was returned un-served, as per Sub-rule(4), the notice was displayed in the notice board of the respondent Corporation. This aspect was also observed by the Tribunal in the award. But still hold that the respondents have failed to issue notice to the workman before proceeding to enquiry into the matter, which is erroneous. When the mode of service is provided under the Regulations, the respondents have resorted to the same, as such, it cannot be said that the notice is not served as per the Regulations. Further, punishment of removal was

already modified by the Reviewing Authority. As such, question of further allowing the ID by the Labour Court without considering Regulation 35(A) of the Regulations does not arise.

Immediately after passing orders by the Reviewing Authority on 14.11.1990, modifying the punishment imposed by the Depot Manager, the 1st respondent joined duty. The ID was taken up by the 2nd respondent only in the year 1997 at the instance of 1st respondent which is at a belated stage. As such, on the ground of laches also the Tribunal should have dismissed ID.

In support of his contentions learned counsel for the petitioners relied on the Judgment in ***P.V.Narayana and Others etc. v. A.P.State Road Transport Corporation and others etc.*** ^[1] wherein it is held as follows;

51. In City and Industrial Development Corporation v. Dosu Aardeshir Bhiwandiwalla (2009) 1 SCC 168, this Court held: “26. It is well settled and needs no restatement at our hands that under Article 226 of the Constitution, the jurisdiction of a High Court to issue appropriate writs particularly a writ of *mandamus* is highly discretionary. The relief cannot be claimed as of right. One of the grounds for refusing relief is that the person approaching the High Court is guilty of unexplained delay and the laches. Inordinate delay in moving the Court for a writ is an adequate ground for refusing a writ. The principle is that the Courts exercising public law jurisdiction do not encourage agitation of stale claims and exhuming matters where the rights of third parties may have accrued in the interregnum.”

In view of the aforementioned reasons discussed and in view of the principles laid down in the aforesaid Judgment relied on by the petitioners, the award dated 01.08.2000, passed by the Chairman-cum-Presiding Officer, Industrial Tribunal-cum-Labour Court, Anantapur, in ID.No.72/1997 is liable to be set aside.

Accordingly, the writ petition is deserves to be allowed and the punishment imposed by the Reviewing Authority is restored. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

A.RAJASHEKER REDDY, J

09.07.2015
tk

[\[1\]](#) 2013 (3) ALT 711