

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

WRIT PETITION No.3447 OF 2003

ORDER:

This writ petition is filed under Article 226 of Constitution of India challenging the award dated 20.4.1999 in I.D.No.78 of 1997 on the file of Labour Court-II, Hyderabad and seeking a writ of Mandamus to declare the action of the first respondent in awarding double punishment viz., (1) not awarding continuity of service and backwages and (2) deferring three annual grade increments with cumulative effect for three years is illegal, arbitrary and consequently direct the second respondent to pay the arrears of backwages and continuity of service with attendant benefits.

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) 10.10.1985. The second respondent – Depot Manager issued charge memo dated 04.9.1990 stating that the petitioner unauthorisedly absented for duty from 13.6.1990 to 19.9.1990. The petitioner submitted his explanation to the charge memo. The second respondent being not satisfied with the explanation submitted by the petitioner initiated domestic enquiry. On 19.1.1992, the Enquiry Officer issued notice to the petitioner directing him to attend enquiry, but the notice returned as unserved. The Enquiry Officer conducted enquiry and submitted report. On 03.3.1993, the second respondent issued show cause notice to the petitioner calling for his explanation as to why he cannot be removed from service. The petitioner has not received the said show cause notice. The second respondent passed orders dated 16.3.1993 terminating the services of the petitioner. The petitioner filed appeal before the Divisional Manager, APSRTC and the same was dismissed. The revision petition filed by the petitioner

before the Regional Manager, APSRTC was also rejected. Having no other alternative, the petitioner raised industrial dispute being I.D.No.78 of 1993 on the file of Labour Court-II, Hyderabad.

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 deferring three annual increments with cumulative effect. 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 all 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 gainable service and therefore, he is entitled for backwages.

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 or modify 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 from 13.6.1990 to 19.9.1990. The petitioner has not submitted medical certificate as contemplated under A.P.S.R.T.C. Employees (Conduct) Regulations, 1963 (hereafter, the Regulations). As per Regulation 28 (xxvii) of the Regulations, absence of an employee without leave, without reasonable cause and without permission shall be treated as misconduct.

6. The petitioner has taken specific plea that due to ill-health he could not attend the duty. The petitioner also at some other stage of the proceedings has taken plea that due to fear of facing Police case and threat of relatives of the deceased, he absented from the duty. It clearly shows that the petitioner has taken mutually self-destructive pleas to justify his unauthorised absence. This itself indicates that the petitioner somehow or the other wants to justify his unauthorised absenteeism. Because of the mutually self-destructive pleas of the petitioner, the Enquiry Officer disbelieved the version put-forth by the petitioner. The petitioner, for one reason or the other, has not strictly adhered to the procedure contemplated under the Regulations. Long after his absence the petitioner produced the medical certificate to cover up his laches. The Corporation has not violated the principles of natural justice while conducting the enquiry. Considering all these aspects, the Labour Court arrived at the conclusion that the

Corporation has given reasonable opportunity to the petitioner at every stage of the proceedings ie., from the date of show cause notice till issuance of termination notice. This Court can interfere with the award passed by the Labour Court if the finding *ex facie* perverse or the finding was based on the material which is not legally admissible. The Labour Court has considered the material which is legally admissible and arrived at the conclusion.

7. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited *supra*, I am of the considered view that the petitioner has committed misconduct. I am fully agreeing with the said finding of the Labour Court. There are no grounds much less valid grounds to set aside or interfere with the said finding of the Labour Court.

8. The next question that falls for consideration is whether the punishment imposed by the Corporation as modified by the Labour Court is excessive or disproportionate to the gravity of the proved misconduct. Admittedly the petitioner absented for duty for a period of more than three months. During that period, the Depot Manager might have faced lot of inconvenience to run the buses in time so as to avoid inconvenience to the passengers. Unauthorised absence on the part of the petitioner not only caused inconvenience to the Corporation but also the public at large, who are depending on public transport. Had the petitioner intimated in advance about his inability to attend the duty due to ill-health, the Depot Manager might have taken alternative steps to avoid inconvenience to the public. The petitioner was suspended on 04.9.1990 and reinstated on 20.4.1999. The Corporation has not availed the services of the petitioner for about nine years. If the Corporation is directed to pay backwages to the petitioner certainly it would amount to untold financial hardship to the Corporation and undue advantage to the petitioner. It appears that the Labour Court rightly refused to grant backwages keeping in mind the principle “no

work – no pay”. Apart from this, the petitioner has not proved that he was not gainfully employed elsewhere during that period. No doubt human approach is the paramount consideration while deciding this type of cases, but that does not mean that that undue bonanza should be given to the defaulting party. The finding of the Labour Court that the petitioner is not entitled for attendant benefits and backwages is fully justified and there are no grounds to interfere with the said finding.

9. Learned counsel for the petitioner submitted that deferring of three annual increments with cumulative effect may cause untold hardship to the petitioner. Basing on the enquiry report, the Corporation terminated the services of the petitioner. The Labour Court set aside the order of the Corporation and directed it to reinstate the petitioner into service. In view of the facts and circumstances of the case, imposing of penalty of the deferment of three annual increments with cumulative effect is just and reasonable. The petitioner worked in the Corporation for a period of five years prior to the suspension order. The petitioner legitimately entitled for all benefits during that period. Having regard to the facts and circumstances of the case, I am of the considered view that it is a fit case to modify the order of the Labour Court with regard to reinstatement of the petitioner without continuity of service.

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.

T.SUNIL CHOWDARY, J

March 26, 2015.
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[\[1\]](#) (2011) 4 SCC 584