

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

W.P.No.8860 OF 2002

ORDER

This writ petition is filed questioning the award of the Labour Court in I.D.No.305/1998 dated 19.08.2001 wherein the Labour Court directed the 2nd respondent Corporation to issue fresh appointment orders to the petitioner.

The brief facts of the case are:

The 1st respondent was appointed as driver in the respondent Corporation in the year 1987. Later he was transferred from Jammalamadugu Depot to Rayachoti Depot and reported Rayachoti Depot on 13.06.1996. After performing his duties from 13.06.1996 to 20.06.1996, the petitioner was attacked with jaundice and fell sick and for the absent period, the petitioner submitted his sick certificate. Thereafter, the petitioner was issued charge sheet dated 21.09.1996 alleging three following charges.

- "1) for having absented for duties from 18.07.1996 to 15.08.1996 unauthorisedly without taking prior sanction.
- 2) For having reported sick for 29 days and absented for 25 days out of 58 days from 21.06.1996 to 07.08.1996.
- 3) For having failed to obtain prior permission to leave hours."

In pursuant to the charge sheet, the petitioner submitted his explanation denying the charges. Having not satisfied with the said explanation, an enquiry was ordered on 21.11.1996. The petitioner could not attend the enquiry as he was not well and in respect of the same he submitted medical certificate. Finally, the respondents without considering the same passed orders removing the petitioner from service on 17.12.1996.

Aggrieved by the same, the petitioner preferred an appeal before the Deputy Chief Traffic Manager, Cuddapah and the same was rejected. Even the Review made to the Regional Manager, Cuddapah was also rejected.

Against the order of removal, the petitioner preferred I.D.No.305/98 before the Labour Court, Anantapur and the Labour Court passed an order directing the respondent Management to issue fresh appointment to the petitioner. Aggrieved by the same, the present writ petition is file.

Learned counsel for the petitioner submits that the petitioner submitted medical certificates in respect of his absence. He also submits that petitioner could not attend the enquiry on 21.11.1996 as he was not well and explaining the same, the petitioner has submitted his sick certificate. But the respondent authorities without considering the same, passed order of removal on 17.12.1996. The appellate authority and the review authority also dismissed the appeal and review without considering the matter in proper perspective and without giving any cogent reasons. As such, the punishment of denying continuity of service and backwages is erroneous.

On the other hand, Sri A. Rama Rao, learned Standing counsel for the respondent-Corporation submits that the enquiry officer has found that the charges proved basing on the evidence. He also submits that the petitioner in spite of issuing notice has not attended the enquiry and is in the habit of absenting from duty without leave. Even the Disciplinary authority has agreed with the findings of the Enquiry Officer and the appellate authority and review authority also confirmed the same. Therefore, this Court cannot interfere with the punishment imposed by the Labour Court exercising judicial review under Article 226 of Constitution of India.

In this case, it is to be seen that three charges are framed against the petitioner. A perusal of the enquiry report goes to show that petitioner was absent on several occasions without obtaining permission and the Enquiry Officer after considering the report held that charges are proved. The Disciplinary authority also considered the enquiry report and passed the order of removal and the same was

confirmed by both appellate and review authorities. The Labour Court while exercising jurisdiction under Section 11(A) of the Industrial Disputes Act held that charges are proved and granted relief of fresh appointment.

It is the specific case of the petitioner that the enquiry was conducted on the very same day on which the show cause notice for removal was issued. He could not attend the enquiry on that day as he was sick and submitted his medical certificates. Unless it is proved that they are not satisfied with certificates, then only it can be held that petitioner was unauthorisedly absent. Since the proceedings relate to the year 1996, it will not be proper to remit the matter back to the authorities to find out whether the certificates produced by the petitioner are genuine or not and whether he was sick on the date of enquiry i.e., 21.11.1996. There is no allegation of misappropriation against petitioner, as such I do not see any reason to deny the past service to the petitioner. Since the petitioner has not worked all these years, I am not inclined to grant back wages.

In view of the above facts and circumstances, the punishment awarded by the Labour Court is modified ordering reinstatement of the petitioner with continuity of service but without backwages, instead of fresh appointment.

Accordingly, the writ petition is disposed of. There shall be no order as to costs.

As a sequel, miscellaneous petitions pending if any, shall stand closed.

A.RAJASHEKER REDDY,J

Date: 20.08.2015

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