

*** HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

+ WRIT PETITION No.160 OF 2009

% 29th March, 2016

V.C.S. Reddy, s/o Late Pitchireddy, Aged About 42 Years, Occ: Ex.Conducutor, E.No.505172, R/o 1-203-2-77, Near Power Station, Markapuram, Prakasam District.

... Petitioner

AND

\$ The Depot Manager, APSRTC, Kanigiri Depot, Kanigiri, Prakasam District.

... Respondent

! Counsel for the Petitioner : Sri V. Narasimha Goud

^ Counsel for the respondent : Sri P. Durga Prasad

< Gist:

> Head Note:

? Cases referred:

1. 2003 (3) ALT 96
2. (2014) 13 SCC 166
3. Writ Petition No.17425 of 1987, dated 21.06.1989
4. (2009) 15 SCC 620

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.160 OF 2009

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ORDER:-

The Writ Petition is filed questioning the Award dated 18.08.2008 passed in I.D.No.157 of 2005 by the Labour Court,

Guntur, refusing to interfere with the punishment of dismissal meted out to the petitioner.

2. The facts in brief are that petitioner is a Conductor appointed in 1989 and on 13.03.2003 he applied for leave for two days till 15.03.2003 and again took off on 16.03.2003. However, on his becoming sick, on 16.03.2003 he did not join duty on 17.03.2003 and reported to duty on 31.03.2003. Since the misconduct falling under Regulation 28 (xxvii) of APSRTC Employees (Conduct) Regulations 1963 (in short "the Regulations") a charge sheet was issued alleging unauthorised absence causing dislocated and inconvenience to the travelling public, besides causing loss of revenues to the Corporation. The domestic enquiry was conducted and the Enquiry Officer found the petitioner guilty. The appellate authority also confirmed the same. Before the Industrial Tribunal it was urged that in fact the petitioner personally contacted T.I.-III on 17.03.2003 to inform about his sickness and further as he was suffering from jaundice he left to Giddalur by informing the same to the on-duty Controller, one Brahman. After joining duty he did double duty for 13 days. Further, immediately on joining duty he submitted a sick certificate from the competent Medical Officer from whom he received treatment and the said certificate is valid as per the Regulation 12 (3) of the Leave Regulations. Instead of regularising the petitioner's absence by accepting the leave, the Enquiry Officer by ignoring the Regulations, found the petitioner guilty and hence he sought setting aside of the order of the termination as confirmed by the appellate authority.

3. It was brought on record by the respondent-Corporation that on earlier occasions also petitioner was censured for absenting

himself and his annual increments were differed for four times and even during the pendency of enquiry he once again absented unauthorisedly.

4. Learned counsel for the petitioner, Sri V. Narasimha Goud, specifically raised that in terms of the Leave Regulations the medical certificate submitted by the petitioner on 31.03.2003 ought to have been accepted and treated the petitioner's absence from 17.03.2003 for the purpose of granting leave, as the medical certificate was not rejected by the employer by referring the employee to Medical Officer. Further, the Labour Court erred in dismissing the case of the petitioner by observing that the petitioner had not placed on record any lab reports, prescriptions, case sheets and medical bills, when the same was not even the contention of the respondent-Corporation. In that view of the matter, the Labour Court had exceeded its jurisdiction in making out a new case on behalf of the respondent-Corporation. He further submits that the Labour Court ought to have seen, in the circumstances of the case, when the petitioner was sick the medical certificate submitted by him ought to have been accepted and thus the Labour Court committed a grievous error in rejecting the medical certificate. Learned counsel for the petitioner further submits that even assuming the charges were proved and a domestic enquiry to be valid, the Labour Court failed to exercise the discretion vested in it, to consider the harshness of punishment and to apply the principles of governing the proportionality of the punishment.

5. Learned counsel for the petitioner Sri V. Narasimha Goud by placing reliance on the judgment of this Court in **N. Balakrishna Vs. Security Officer, A.P.S.R.T.C., Hyderabad Zone and**

others^[1] with respect to the interpretation of Rule 11 (1) and (3) of APSRTC Leave Rules, for the proposition when the medical certificate submitted by the petitioner was not accepted there was a duty cast on the authority to refer the employee to medical board which was not done in the present case vitiates the enquiry report and order of dismissal.

6. Further, the learned counsel for the petitioner by placing reliance on the judgment in **Chhel Singh Vs. MGB Gramin Bank, Pali and others**^[2] submits that the delay in submission of medical certificate from the medical officer is not fatal especially when there was no allegation of absence on the part of the petitioner being unauthorised, wilful and deliberate.

7. Learned counsel for the petitioner further relies on the judgment in **A.V. Swamy vs. Industrial Tribunal Labour Court Warangal and another**^[3] for the purpose that the previous conduct cannot be the basis for removal of the petitioner.

8. The learned counsel appearing for the respondent Sri Durga Prasad, vehemently opposes and submits that all the authorities have consistently found that the petitioner's absence was unauthorised and the reasons stated by the petitioner were not genuine. He further contends that this Court in exercise of the powers conferred under Article 226 of the Constitution of India is not entitled to sit in appeal over the findings of the authorities and cannot interfere with the findings recorded by the Enquiry Officer as a Court of appeal. To support his contention he placed reliance on the Judgment in **Chairman-cum-Managing Director, Coal India Limited and another Vs. Mukul Kumar Choudhuri and**

others^[4].

9. Before Labour Court no witnesses were examined and no documents were filed on behalf of the petitioner and on behalf of the respondent-Corporation Exs.M1 to M16 documents were marked. The Labour Court, after pursuing the material on record and the documents filed before it, returned a categorical finding that petitioner absented unauthorisedly from 17.03.2003 till the date of joining and further the medical certificate submitted by the petitioner was not believable as there was no further supporting documents filed. At any rate the same cannot be treated as a valid medical certificate in terms of the Regulations as the same was not in conformity with the Regulations. The findings of the Enquiry Officer were accepted by the Labour Court and the Labour Court did not find any reason to interfere and disturb with the findings. Further the petitioner was absented himself from 28.01.2004 as well for 22 days. Further the Tribunal held the domestic enquiry was validly held.

10. Having considered the rival submissions, as evident from the record, the facts are not in dispute, that the petitioner had unauthorisedly absent from 17.03.2003 and it is only at the time of joining the duty he produced the medical certificate from private doctor about his alleged sickness. There was no other material produced before the reporting authority or Enquiry Officer to support his sickness. In other words, there was no material before the Enquiry Officer to show that the petitioner delinquent suffered from jaundice and received treatment. Though he was working at **Kanigiri** at relevant point of time the certificate was from **Giddalauru**. During the enquiry the petitioner failed to

establish that he had in fact informed TT-III or TT-I or STI with regard to his alleged intimation of the sickness and the production of sick certificate immediately as required under relevant regulations.

11. The question that is required to be considered is in terms of Rule 11 (2) of the Leave Rules whether production of medical certificate is in conformity with the Rules and the same is liable to be taken into consideration. Rule 11 reads as under:

“11. Procedure for obtaining leave on medical grounds:

(1) An employee who being unable to attend to his duties by reason of illness, applies for leave or an extension of leave shall produce or cause to be produced without delay a sick certificate issued by the competent medical officer or in special circumstances by the applicant's own medical attendant.

(2) The certificate from the medical attendant should distinctly state the nature of the illness, its symptoms, probable cause and duration, the period of absence from duty considered to be absolutely necessary for the restoration of the applicant's health and the date from which such absence should take effect, and should be sent so as to reach the employee's immediate superior officer within forty-eight hours of his absencing himself from duty.

(3) The authority competent to grant leave may in its discretion, but subject to the provisions of any general or special orders of the Corporation, either accept the certificate from the medical attendant or refer the case to the competent medical officer for advice or investigation and on receipt of his advice or report, deal with it as circumstances may require.

(4) The competent medical officer may, in his discretion, either accept the certificate from the medical attendant and issue in its place a sick certificate or he may take such steps as he considers necessary to investigate the sickness of the employee and report the result to the competent authority.

Note: The competent medical officer may in his discretion, require the employee to appear before him unless it appears from the certificate of his medical attendant that he is too ill to bear the journey.

(5) If the competent medical officer does not accept

a medical certificate issued by the employee's medical attendant, he will return it to the head of the office of the employee concerned with an endorsement as follows:

“Private medical certificate not accepted as The Period of absence may be treated by you as you consider fit.”

In such a case, unless the authority competent to sanction leave retrospectively sanctions leave to cover the period of absence, the period shall be treated as absence without leave and dealt with in accordance with sub-clauses(b) and (c) of clause (4) of regulation 17.

(6) Were the period an employee is under the treatment of his own medical attendant exceeds one month, the employee shall submit to the competent medical officer an intermediate medical certificate from medical attendant at the end of each month of absence on account of sickness.”

12. In terms of the above rules the absented employee is required to submit the leave application immediately or during the sickness period or within a reasonable time, and in the event of the same not being acceptable to the employer, the employer shall refer the employee to the competent Medical Officer for investigation, advise and to report whether the employee is really suffering with any illness as certified by private Medical Officer. In the case on hand, admittedly, the private medical certificate was submitted by the petitioner only at the time of rejoining the duty. In the circumstances, the question of referring the employee for competent Medical Officer does not arise and the private medical certificate submitted by the petitioner is of no use. In these circumstances, the judgment relied on by the petitioner in **N. Balakrishna case** (1 supra) is distinguishable. In that case the private medical practitioner's certificate was produced on 06.07.1994, and the same was during the sickness period claimed falling between 01.07.1994 to 15.07.1994.

13. Likewise, the judgment of the Supreme Court in **Chhel**

Chahar Singh case (2 supra) the rule under consideration was not the same as in the present case. In that case only delay in submission of the medical certificate was held not to vitiate the medical certificate in the absence of there being any doubt with regard to its genuineness and authenticity. As such, the said judgment is also not applicable to the facts of the present case.

14. The other judgment in **A.V.Swamy case** (3 supra) also does not help as in the present case it is not the case of the petitioner that the disciplinary authority had awarded punishment only on account of the past conduct. In fact, it was not even the case of the petitioner before the Labour Court. While dealing with the punishment, the Labour Court considered the material placed on record by the Corporation about the factum of petitioner having suffered punishment of censure and his annual increments having been deferred four times on earlier occasions for his unauthorised absence. This was evident from Ex.M.16 Service Register produced by the respondent-Corporation. In that view of the matter, the punishment meted out to the petitioner by the respondent authority cannot be said to be based on his previous conduct. In the circumstances, the contention of the petitioner that there was no appreciation of the relevant facts and rules by the Labour Court is not acceptable. However, one aspect of the matter which requires to be considered is whether in the facts and circumstances of the case even assuming that the charges held to have been proved, the question whether for the absence on the part of the petitioner for a period of 22 days the dismissal of the petitioner, who had put in a service of 10 years by then, was justified and is commensurate with the misconduct?

15. Learned counsel for the respondent referred to a judgment of

Supreme Court in **Coal India Case** (4 supra), **wherein the** Hon'ble Supreme Court had outlined the scope of interference of the High Court under Article 226 of Constitution of India. In the said decision the Supreme Court had left it open to the High court to consider the proportionality of the punishment in a given set of facts. In the facts of the present case this Court is of the view that the dismissal of an employee for mere absence from duty for a period of 22 days as unreasonable. Therefore, in the facts of the present case, interest of justice would be served if the respondent-Corporation is directed to reinstate the petitioner without back wages with continuity of service for the purpose of retirement benefits, if any.

16. Accordingly, the writ petition is disposed of. Miscellaneous petitions pending consideration, if any, shall also stand closed in consequence. There shall be no order as to costs.

CHALLA KODANDA RAM, J

Date: 29.03.2016
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[\[1\]](#) 2003 (3) ALT 96

[\[2\]](#) (2014) 13 SCC 166

[\[3\]](#) Writ Petition No.17425 of 1987, dated 21.06.1989

[\[4\]](#) (2009) 15 SCC 620