

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.9989 of 2011

Date :06.09.2016

Between :

V Nagaraju S/o Veeraiah
H NO. 4-2-112,
Near Manik Prabhu Mandir
Post Sadasivapet, Medak district- 502291

Petitioner

And

The Regional Manager,
APSRTC, Ranga Reddy Region
Ranga Reddy District and others

Respondents

The Court made the following:



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ORAL ORDER:

Petitioner absented from duty from 2.5.2007 to 19.5.2007. Alleging that he was unauthorisedly absent for the said period, disciplinary proceedings were initiated. The charge leveled in the disciplinary proceedings is “unauthorisedly absented to duties from 2.5.2007 to 19.5.2007 without any intimation or prior sanction of leave”. Not agreeing with the explanation submitted by the petitioner, domestic enquiry was ordered. It appears, petitioner did not participate in the domestic enquiry. Based on the evidence of sole witness on behalf of management, the charge was held proved. On the basis of the findings recorded by the enquiry officer, Disciplinary Authority imposed punishment of removal from service by order dated 15.11.2007. Aggrieved by the order of termination, petitioner preferred appeal. The Appellate Authority by order dated 3.1.2008 modified the punishment to that of reduction of pay by one incremental stage permanently and also directed treatment of period out of duty as discontinuity in service for all purposes viz., Provident Fund, Gratuity, Increment, Seniority and Promotion etc. Aggrieved thereby, this writ petition is filed.

2. Heard learned counsel for petitioner Sri G.Ravi Mohan and learned standing counsel for respondent corporation Sri N.Vasudeva Reddy.

3. Sri G.Ravi Mohan, contends that petitioner was absented on account of viral fever, therefore he could not attend to duties. After he recouped from the said fever, he has appeared before the competent Authority by producing the medical certificate issued by the Doctor, he has consulted. There was no justification for termination of the services of the petitioner on the sole ground that he was unauthorisedly absented for a brief period. He further submitted

that Disciplinary Authority proceeded on the wrong premise that petitioner was habitual absentee. The enquiry officer was misled by the witness who stated that petitioner was habitual absentee and not improved his attendance in spite of counseling given on many times. The said statement of the witness was not supported by any material on record, but enquiry officer simply accepted said statement in holding the charge as proved. The Disciplinary Authority, without application of mind and without looking into records, straightaway passed the order imposing the punishment. It appears, Disciplinary Authority was persuaded by the findings of the Enquiry Officer that the petitioner was habitual absentee. On appeal, the Appellate Authority considered the record and found that this was solitary absence in the service of the petitioner, therefore modified the punishment. He therefore submits that having accepted the contention of the petitioner that his absence is on medical ground and when it was found that it was a solitary absence, he could not have imposed severe penalty of reduction of pay by one incremental stage permanently that has cascading effect. He further submitted that though it is reduction of pay by one stage, it shall have impact on postponement of increments by two stages.

4. Learned standing counsel submitted that by looking at the report of the enquiry officer and order of the Disciplinary Authority, it is clear that petitioner was in the habit of absenting from duties and on account of his absence from duties, there was disruption of services. Sudden absence from duty impacts the provision of services as it would be difficult for the Depot Manager to arrange another conductor at the last minute and to run the service. Disruption of the service affects the passengers as well as reputation of the corporation and financial implications are more severe. Absence was without justification and without prior consent, as such, corporation viewed it as a serious misconduct.

5. The charge as extracted above would show that disciplinary action was initiated against the petitioner for his absence for a period of 18 days only. It is

seen from the enquiry record, during the course of enquiry, officer representing the management deposed that petitioner was in the habit of absenting from duties. However, the report of the enquiry officer do not disclose that any material was placed before him in support of the statement made by the witness that petitioner was a chronic absentee. Enquiry officer simply accepted the statement of the witness and recorded a finding accordingly. A reading of the order of the Disciplinary Authority shows that he was simply persuaded by the findings of the enquiry officer. Controversy on this aspect is put at rest on account of the findings of the Appellate Authority. The Appellate Authority clearly holds that this was a solitary absence from duty in the long service of the petitioner.

6. In view of the fact that petitioner has rendered a long service and was not involved in any such misconduct earlier, as noted by the Appellate Authority, the issue whether the punishment as imposed by the Appellate Authority is justified in the context of the allegation leveled against the petitioner, requires consideration.

7. Absence from duty perse does not amount to major misconduct. Willful and deliberate absence from duty without cause does amount to misconduct. Unauthorized absence for a long period and habitual absence may be treated as major misconduct by the employer. In the instant case, in support of his contention that he was suffering with viral fever, petitioner submitted medical certificate. The material on record disclose that petitioner was not referred to corporation hospital for medical examination to find out the genuineness of the claim of sickness. In the absence of further medical examination, the stand of the petitioner that he was sick during the relevant period could not have been simply brushed aside, more so, as noted by the Appellate Authority, petitioner was not in the habit of absenting from duties. Thus, even punishment imposed by the Appellate Authority on the allegation of absence for 18 days in long

service of petitioner on the ground that petitioner was suffering from viral fever is shockingly disproportionate and not sustainable. In the facts of this case, petitioner's absence cannot be treated as willful or deliberate.

8. The issue of unauthorized absence relates to the year 2007. The disciplinary proceedings were concluded in the year 2007. The petitioner was reinstated into service after the orders of the Appellate Authority dated 3.1.2008. The disciplinary action relates back to 9 years by now and at this stage remanding the matter for reconsideration on the quantum of punishment, to the Appellate Authority is not equitable. There must be an end to the service dispute. Thus, in the peculiar facts of this case, I am of the considered opinion that instead of remanding the matter to the Appellate Authority, the punishment as imposed at paras 3 and 4 by the Appellate Authority, can be modified.

9. The record discloses that petitioner was suffering from viral fever during the relevant period. Thus, his absence was not willful and deliberate. At the same time, he was negligent in informing the employer about his absence and applying for leave. Having regard to the above facts, I am of the considered opinion that punishment of withholding of one increment with cumulative effect instead of reduction of pay by one incremental stage permanently as imposed, would meet the ends of justice and the period of absence shall be treated as continuity of service for the purposes of Provident Fund, Gratuity and Leave Encashment.

10. Subject to above, the writ petition is disposed of. No costs. Having regard to the same, miscellaneous petitions, if any pending, are closed.

P NAVEEN RAO,J

DATE: 6.9.2016
TVK

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