

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.1559 of 2010

ORDER:

The petitioner joined the service of the respondents' Corporation as Conductor on 08.04.1985 after due process of selection and his services were regularised with effect from 01.07.1987. While so, he was removed from service on 02.07.2004 and challenging the same, he preferred an appeal. But, the appellate authority dismissed the appeal by order dated 25.05.2005. The revision against the said order also ended in dismissal on 19.09.2005. Challenging the order of removal passed by the respondents, the petitioner filed I.D. No.86 of 2006 before the Labour Court-II, Hyderabad. The Labour Court by its order dated 05.03.2009 directed the respondents therein to reinstate the petitioner into service with continuity of service, but without back wages and any other consequential benefits. Challenging the portion which went against him in the said order, the petitioner filed the present writ petition. However, pursuant to award of the Labour Court, the petitioner was reinstated and retired from service.

A counter affidavit is filed on behalf of the respondents stating that the petitioner was engaged at Armour Depot as Conductor on daily wage basis and thereafter, his services were regularised with effect from 01.07.1987. As he was unauthorisedly absent to his duties from 04.12.2003 to 12.03.2004, he was removed from service on 02.07.2004. Though a charge sheet was issued and an enquiry was conducted, he did not attend the same. In view of his previous history of absenteeism, the appeal preferred by him was dismissed. The petitioner was awarded several punishments for his absence in duty. In fact, in the year 1993 he was removed from service on

09.07.1993 for his unauthorised absence at Armoor Depot. By virtue of the appellate authority's order, he was reinstated into service and again he was removed from service on 27.11.1995 on the ground of absenteeism. However, after consideration of the review petition filed by the petitioner, he was reinstated into service. Thus, the petitioner was a habitual absentee.

Since the petitioner did not appear before the enquiry officer, he adduced evidence before the Labour Court wherein he was examined as W.W.1 and marked Ex.W.1. On behalf of the respondents, the Assistant Manager, Bheemgal Depot was examined as M.W.1. The Labour Court did not appreciate the evidence, but considered the arguments of both sides. Ultimately, it passed the award with following observations:

“Having regard to the facts and circumstances of the case and the fact that the petitioner was sick for some period on medical grounds and which fact was known to the corporation and in view of the same, the punishment imposed by the respondent is disproportionate.

In the result, this petition is allowed partly. The removal order dt. 02/07/2004 is set aside. The respondent is directed to reinstate the petitioner into service with continuity of service but without back wages and any other consequential benefits. The award is passed accordingly. The award shall come into force U/s. 17-A of I.D. Act, after 30 days of its publication.”

A perusal of award passed by the Labour Court would clearly show that the Labour Court neither set aside the finding with regard to absenteeism nor appreciated the absence of petitioner. Since it found that the punishment imposed on the petitioner was disproportionate, it ordered the reinstatement of petitioner with continuity of service but without back wages. The order was passed by the Labour Court by taking into consideration the overall facts and circumstances and in exercise of the discretionary power. As stated above, the petitioner was reinstated into service and he was retired also.

In view of the exercise of discretionary powers by the Labour Court in the facts and circumstances of the case, this Court is not inclined to interfere with the impugned award and the same is hereby confirmed.

In the result, this Writ Petition is dismissed. No order as to costs. Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

A.RAMALINGESWARA RAO, J

13.04.2016

MVA