

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

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WRIT PETITION No.260 of 2010

Between:
S.Ravindra

....Petitioner

and

The Industrial Tribunal cum Labour Court,
Anantapur, Rep.by its Chairman cum
Presiding Officer, and another.

....Respondents

JUDGMENT PRONOUNCED ON : 23.03.2016

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO :

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgments?
2. Whether the copies of judgment may be : No
Marked to Law Reporters/Journals?
3. Whether Their Ladyship/Lordship wish to : No
see the fair copy of the Judgment?

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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WRIT PETITION No.260 of 2010

ORDER:

Heard the learned Counsel for the petitioner and the learned
Standing Counsel for respondent No.2.

The petitioner was appointed as a conductor on 01.08.1989.
While so, on 30.08.2004 he was issued a charge sheet containing two
charges for his unauthorized absence from 01.04.2004 to 25.08.2004.
Though he submitted his explanation, an enquiry was initiated. On the
basis of the report of the Enquiry Officer, he was removed from service

on 15.12.2004. Challenging the same, the petitioner preferred I.D.No.59 of 2005 before the first respondent. The first respondent modified the punishment by award dated 29.09.2008 by substituting the punishment of removal from service with withholding of four annual increments with cumulative effect and denial of salary from 16.07.2004 to 25.08.2004. Challenging the same, the present Writ Petition is filed.

Learned Counsel for the petitioner submits that the unauthorized absence of the petitioner was due to the accident that occurred on 07.02.1991 while he was discharging his duties and the consequential surgeries he underwent. He further submits that the award of the Labour Court did not specify with regard to the payment of back wages and also the application of the circular dated 17.05.1979 in case of unauthorized absence to the facts of the present case.

As seen from the record, the charges framed against the petitioner are as follows:

- “1. For having absented for duties unauthorisedly from 16-7-2004 to 25-8-2004 without intimation or prior sanction of leave, due to your sudden absence, the dislocation of services booked to you thereby caused inconvenience to the traveling public besides loss of revenue to the Corporation, which constitutes misconduct under Reg.28(xxvii) of APSRTC Employees (Conduct) Reg.1963.
2. For having maintained irregular attendance i.e. 20 days leave, 125 days sick and 16 days absent during the period from 1-1-2004 to 25-8-2004, which constitutes misconduct under Reg.28(xxvii) of APSRTC Employees (Conduct) Regs.1963.”

The Labour Court noticed that the petitioner earlier suffered deference of annual grade increments on six occasions due to absenteeism only. It modified the award with the following observations:

“...The APSRTC has issued a circular No.PD.19-80 dt.17-5-1979, issued from the office of the General Manager, Mushirabad, Hyderabad, clause v of the circular deals with the guidelines as follows.

UN-AUTHORISED ABSENCE OF EMPLOYEES:

Normally no employee who is charged for un-authorised absence may be suspended. By resorting to suspension, un-warranted subsistence allowance is paid. Necessary recourse should be resorted to regulation 17 and 39 of Leave Regulations.

In this case the disciplinary authority has not invoked the said circular. The Petitioner has not submitted any application prior sanction of leave or did not inform to the authorities in respect of his absence from 16-7-2004 to 25-8-2004 and that the Petitioner has not reported to duty even after issuing fitness certificate by registered post and did not report for duty, though the charge is rightly held to be proved, the punishment of removal in the facts and circumstances of the case discussed above is disproportionate to the misconduct proved. Therefore the order of the disciplinary authority is modified as follows.

The order of removal of the Petitioner from service vides proceedings No.P1/1(9)/2004-MPL-II dt.15-12-2004 is modified as follows:-

- (1) The four annual increments of the Petitioner are withheld with cumulative effect which shall have effect on his future increment?
- (2) The Petitioner since did not work and remained absent, he is not entitled for any salary from 16-7-2004 to 25-8-2004 under rule "no work no pay" or such other period for which he did not work."

It is clear from the above that the effect of circular dated 17.05.1979 was not considered by the Labour Court. The Labour Court also did not give a finding with regard to the payment of back wages from the date of removal from service and to the date of the award. It is submitted by both the learned Counsel that the petitioner is given an alternative appointment due to his medical condition and he has been continuing in the alternate post.

In the circumstances, this Court is constrained to set aside the impugned award dated 29.09.2008 and remand the matter to the first respondent for consideration of the application of the circular dated 17.05.1979 to the facts of the case and also giving a finding with regard to the entitlement of back wages from the date of removal from service

to the date of the award, and for passing a fresh award in accordance with law, within a period of six months from the date of receipt of a copy of this order. The parties are not entitled to adduce any fresh evidence, but they have to argue the case on the basis of the evidence already available on record. Since the petitioner is already reemployed in the alternate post, the petitioner shall not be disturbed pending the award to be passed by the first respondent.

The Writ Petition is, accordingly, allowed to the extent indicated above. The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

(A.RAMALINGESWARA RAO, J)

23.03.2016

vs