

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.8738 of 2011

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Date: 27.08.2016

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Between:

The Depot Manager, APSRTC, Midhani Depot,
Hyderabad.

.....Petitioner

and

Sri K.Narasimha, S/o Salaiah, Conductor,
E.No.208716, R/o. 3-13-508, Bharathnagar,
Phase-II, L.B.Nagar, R.R. District and another.

.....Respondents

The Court made the following:

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ORDER:

First respondent is working as Conductor with the petitioner-Corporation. On the allegation that the first respondent was unauthorizedly absent from 11.07.2007 to 19.07.2007, Charge Memo, dated 20.07.2007 was caused. Not satisfied with the explanation filed by the petitioner, Enquiry Officer was appointed and Enquiry Officer submitted his report holding that the charge of unauthorized absence is proved. After following due procedure and considering the explanation, by order dated 12.09.2007, disciplinary authority removed the petitioner from service. Appeal and the revision preferred against the said order of removal were also rejected. Aggrieved thereby, petitioner filed I.D.No.71 of 2009 before the Labour Court-1, Hyderabad. By award impugned, the Labour Court directed reinstatement of the petitioner with continuity of service and granted 50% of the back- wages.

2. Heard Sri K.Madhava Reddy, learned standing counsel for petitioner-Corporation. No representation for the respondents.

3.1. Learned counsel for petitioner-Corporation submits that first respondent absented for the period of nine days without prior intimation or authorization. Whenever an employee is absent on account of ill-health, he must produce a Medical Certificate within 48 hours. No prior intimation was given and no Medical Certificate was produced within the time granted.

3.2. He would further submit that the first respondent produced medical certificate issued by the private Doctor and claimed that he was suffering with viral fever and joint pains during a period of his

absence. Since the medical certificate is not in prescribed form and first respondent did not intimate in advance about the sickness nor he had taken treatment with the corporation hospital, the defence taken by the petitioner that he was sick and absented on account of health ground, was not accepted and accordingly, the charge of absence was held proved.

3.3. According to him, first respondent was a chronic absentee. After the enquiry and after issuance of show cause notice for removal from service, 1st respondent again absented for period of 12 days from 25.08.2007 to 5.09.2007. Having regard to the conduct of the first respondent, punishment of removal was imposed.

3.4. He would submit that on account of absence of first respondent, the transport services were disrupted and Corporation was subjected to heavy loss. Learned standing counsel, therefore, justifies the decision to impose punishment of removal from service.

3.5. He would submit that Labour Court having upheld the disciplinary action taken against the 1st respondent, erred in interfering with the quantum of punishment and substituting far less severe punishment. If such kind of absence is condoned, it would encourage indiscipline.

4.1. The first respondent has only pleaded before the Labour Court that the punishment of removal was excessive for absence for a period of nine days and, therefore, he prayed to exercise power under Section 11-A of the Industrial Disputes Act and to impose a lesser punishment.

4.2. Labour Court considered the reasons of absence of the petitioner. Labour Court observed that petitioner filed medical certificate in support of his claim of absence. If the authority was not agreeing with the defence of the first respondent about his absence, action ought to have been initiated against him as per the CCA

regulations. The CCA Regulations prescribe that whenever a certificate is produced from the private medical practitioner, employer should be sent to the medical officer of APSRTC to verify the correctness or otherwise of such certificate and then only to accept or discredit such certificate produced by an employee and held that no such procedure was followed in the case of the first respondent.

4.3. Labour Court also observed that no evidence was placed on record to show that because of the absence of the first respondent, the services of the petitioner-Corporation was dislocated and that petitioner-Corporation was subjected to loss of revenue. As seen from the index of the evidence, no oral or documentary evidence was adduced by the petitioner-corporation to substantiate their allegation.

4.4. As noticed by the Labour Court, while imposing the severe penalty of removal, the subsequent absence of the first respondent from 25.08.2007 to 05.09.2007 was also taken into consideration. It is not in dispute that no show cause notice was issued calling for explanation for such absence nor opportunity was afforded to the first respondent to explain the reasons for his absence even at the stage of imposing penalty, but straightaway penalty of removal was imposed.

The Labour Court found fault with the said action. These are the finding of facts arrived at by the Labour Court based on the material available on record before it.

5. The award under challenge cannot be said as perverse. It is not in dispute that Labour Court has jurisdiction to adjudicate the dispute raised before it. I do not see any error warranting interference by this Court in the award of the Labour Court. Writ petition is dismissed.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.

JUSTICE P.NAVEEN RAO

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