

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

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WRIT PETITION No.5082 OF 2011

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DATED : 22.08.2016

Between :

Yeripalli Anand Rao S/o.Lachanna,
Aged 44 yrs, Ex.Workmen,
D.No.MIG-II/B-41, Gullalapalem Colony,
Malkapuram, Visakhapatnam.

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Petitioner

And

The Management, Visakhapatnam Steel Plant,
Visakhapatnam-530 031 & another.

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Respondents

This court made the following :

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

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WRIT PETITION No.5082 of 2011

ORDER :

Petitioner joined service as trainee on 12.02.1988 and appointed as Charge man in L-6 Grade on 13.08.1989 and promoted to L-7 on 31.12.1993. On the allegation of unauthorized absence for a period of 275 days during March 1999 to November 1999, disciplinary proceedings were initiated and charge sheet was drawn on 22.12.1999, alleging habitual absenteeism. As the charge sheet was returned undelivered and no explanation was filed by the petitioner, Enquiry Committee was constituted vide order dated 05.01.2000. It appears the Enquiry Committee has informed the date of enquiry, but petitioner failed to appear before the Enquiry Committee, several adjournments were granted and notices were sent informing the dates of holding of enquiry. All of them were returned except one dated 20.03.2003. However he has not appeared on the dates fixed for enquiry. Thus, ex parte enquiry was conducted wherein the charge of absenteeism was proved. It appears that enquiry report was also sent which was acknowledged by the petitioner. By order dated 30.06.2000 the punishment of removal from service was imposed.

2. Case of the petitioner is, after petitioner recouped from ailment, he filed appeal. But the same was rejected. In those circumstances, he raised industrial dispute in I.D.L.C.No.124 of 2004 on the file of Central Government Industrial Tribunal-cum-Labour Court at Hyderabad (for

short 'the Tribunal'). The Tribunal by award dated 17.08.2010 rejected the claim. Aggrieved thereby this writ petition is filed.

3. Heard Sri M.V.L.Narasaiah, learned counsel for the petitioner and Sri V.Ravinder Rao, counsel for Respondent No.1 and learned Government pleader for Labour.

4. It is the foremost contention of learned counsel for the petitioner that petitioner's absence was neither deliberate nor willful. He had absented on account of his mental illness. Since he was mentally ill, he could not take steps to inform the employer about his illness. His family members were not diligent in informing his illness to employer. He had undergone long treatment and only when he recouped from the ailment and became stable, he came to know about his removal from service and immediately he filed appeal. Along with the appeal he has submitted relevant documents in proof of ailment and the treatment taken by him. However, the appellate authority failed to consider the appeal in right perspective. He would further submit that on the allegation of unauthorized absence, punishment of removal was too harsh and disproportionate. Petitioner had rendered more than 10 years of service before imposing such harsh punishment. On account of removal from service, petitioner as well as entire family have become destitute. He would submit that the Tribunal erred in not exercising the power vested under Section 11-A of the Industrial Disputes Act (for short 'the Act') in substituting the punishment of removal with lesser punishment. Though the principle of law was cited on the issue of proportionality of punishment, vis-à-vis, unauthorized absence, the same was not properly appreciated and erred in accepting the defence of the respondents. He would therefore appeal that lesser punishment be imposed, atleast punishment of fresh appointment, and such course would mitigate the hardship of the petitioner as well as his family.

5. Learned counsel for the petitioner sought to contend that one of

the reasons assigned for not accepting the plea by the Tribunal is that the original documents were not produced. According to learned counsel all the original documents were filed along with the appeal preferred by the petitioner and therefore, he moved an interlocutory application before the Tribunal for production of records from the appellate authority. The said application was not considered and returned without taking any decision. He would fairly submit that no further steps were taken by the petitioner with reference to calling for records. However, as noticed from the Award, it is the clear and categorical stand of the respondents that no such appeal was preferred by the petitioner.

6. The facts as noted by the Tribunal would show that the absence on which the impugned disciplinary action initiated against the petitioner was not a solitary instance. It appears petitioner was absenting since the year 1997. On the first absence for about 99 days he was censured. On the second absence for a period of 92 days warning was administered. He again absented for 44 days in August and September 1998. The disciplinary action resulted in imposing punishment of stoppage of increment for a period of one year. It appears, he again absented from October 1998 to February 1999 continuously for a period of 151 days. The disciplinary action initiated on 08.03.1999 resulted in imposing punishment of reduction to the lower grade with cumulative effect by order dated 28.01.2000. While this disciplinary action was in motion, the present absence was noticed which necessitated initiation of separate disciplinary proceedings, resulting in punishment of removal. It is also seen from the Award that the disciplinary action was considered by the Tribunal and by its order dated 23.03.2010, has affirmed the disciplinary proceedings; this order of the Tribunal has become final.

7. Merits of the disciplinary action cannot be gone into at this stage, as the Award under challenge only deals with the issue of quantum of

punishment as noted above and the order of the Tribunal dated 23.03.2010 validating the disciplinary action has become final.

8. Thus, the only question remains is on imposing of appropriate punishment on the allegation of unauthorized absence. Tribunal was not inclined to exercise power under Section 11-A of the Act to come to the rescue of the petitioner, since the Tribunal noticed that absence of the petitioner was habitual and no cogent material was shown in support of his claim that his absence was on account of serious illness.

9. Now, the point for consideration is whether the Tribunal erred in not exercising power under Section 11-A of the Act in substituting the punishment ?

10. Unauthorised absence *per se* does not amount to serious misconduct and ordinarily would not result in termination from service. However, if such absence is willful and deliberate and without any valid ground, irrespective of the period of absence, it can result in removal from service. The principle of law is well settled that even absence for as less as 12 days can result in removal from service. Petitioner failed to satisfy the Tribunal that his absence was not willful and deliberate and such absence was on account of serious illness and there was no possibility for the petitioner or his family members appraising the employer of his sickness. Thus, there was no illegality in Tribunal refusing to exercise power under Section 11-A of Industrial Disputes Act.

11. In the instant case as noticed above, the absence of 275 days resulting in removal from service is not a solitary instance as chronicled by the Tribunal in Para No.6. Petitioner was habitually absenting for various reasons from 1997 and his absence resulted in imposing various punishments on four occasions. As seen from the Award in Paragraph No.6, the employer was considerate on his earlier absence and he took extreme step of imposing major punishment of

reduction to the lower grade when there was continuous absence from October 1998 to February 1999. It appears even this extreme decision did not alert the petitioner and to discipline himself in appraising the employer, if he was really sick or reporting back to duty and work sincerely. Since the absence resulting in removal is not solitary and for a very long time petitioner was habitually absenting for various spells and continuously from October 1998, it cannot be said that the punishment of removal is excessive or disproportionate, warranting exercise of equity jurisdiction under Article 226 of the Constitution of India for granting some relief.

12. In the above analysis the petitioner do not deserve any consideration and the writ petition is liable to be dismissed. Accordingly, the writ petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand dismissed.

22nd August, 2016
Rds

P.NAVEEN RAO,J

