

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION Nos.276 and 13513 of 2016

COMMON ORDER:

These two cases are being disposed of by this common order as they were filed by the same petitioner.

The petitioner filed W.P.No.276 of 2016 challenging the action of the respondents in not allowing him to perform his duties even after submission of explanation on 14.11.2013 to the show cause notice dated 08.11.2013. The petitioner was appointed as a Conductor in the year 1985 and his services were regularized on 01.07.1987. He was absent from duties from 02.05.2013 to 05.05.2013 and when a leave letter was submitted, the same was granted. He submitted an application seeking extension of leave from 06.05.2013 to 15.05.2013. He reported for duty on 16.05.2013 along with medical certificate and the petitioner was allowed to perform the duties. However, a charge sheet was issued on 20.05.2013 treating the period of absence from 06.05.2013 to 15.05.2013 as unauthorized absence. The petitioner submitted his explanation on 04.07.2013. However, an enquiry was conducted and the enquiry officer submitted his report on 23.10.2013. When the show cause notice was issued on 08.11.2013 based on the said report, the petitioner submitted his explanation on 14.11.2013. In those circumstances, without communicating any order,

when the petitioner was not permitted to discharge the duties, he filed W.P.No.276 of 2016.

A counter affidavit is filed stating that the show cause notice for removal from service was issued on 08.11.2013 and the petitioner acknowledged the same. The petitioner was not kept under suspension and he was discharging his duties. Since the disciplinary authority has come to the conclusion that the charges levelled against the petitioner were proved, an order of removal was passed on 26.11.2013. The said order of removal was communicated to the petitioner through registered post and the petitioner acknowledged receipt of the same. In spite of the same, the petitioner did not prefer any appeal. It was also stated that even if it is assumed that the proceedings dated 26.11.2013 was only a show cause notice, the petitioner should have enquired with regard to the further proceedings, but he has kept quiet for two years.

In view of the order of this Court on 06.01.2016, the petitioner was allowed to continue in service and he attained the age of superannuation on 30.06.2016. Challenging the order dated 26.11.2013, the petitioner filed W.P.No.13513 of 2016.

A perusal of the order dated 26.11.2013 shows that the petitioner was removed from service under the said order. Thereafter, the petitioner was kept out of service and the petitioner filed the Writ Petition only in the year 2016 stating that no order was communicated to him, and in any event, the

said order dated 26.11.2013 cannot be construed as a final order. But, from the fact that the petitioner was kept out of service from the date of passing of the order till the interim order dated 06.01.2016 clearly shows that the petitioner was removed from service by order dated 26.11.2013. The consideration of W.P.No.13513 of 2016 requires some time and in view of the availability of alternative remedy, this Court feels that both the Writ Petitions can be disposed of giving liberty to the petitioner to prefer an appeal, though he has not availed such remedy immediately after passing of the order, by condoning the delay in preferring the appeal.

Accordingly, these two Writ Petitions are disposed of giving liberty to the petitioner to prefer an appeal to the competent authority, within a period of two weeks from the date of receipt of a copy of this order against the order dated 26.11.2013, and on receipt of such appeal, the competent authority shall consider and dispose of the same in accordance with law, within a period of three months thereafter. The miscellaneous petitions pending in these Writ Petitions, if any, shall stand closed. There shall be no order as to costs.

(A.RAMALINGESWARA RAO, J)

07.09.2016

vs