

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

Writ Petition No.1892 OF 2005

ORDER:

1 This Writ Petition is filed under Article 226 of the Constitution of India, seeking a writ of certiorari calling for the records pertaining to I.D.No.289 of 2001 on the file of the Labour Court, Anantapur and quash the award dated 22.03.2004.

2 The facts giving rise to the filing of the present Writ Petition are that the second respondent herein joined the service of the petitioner Corporation as Stores Supervisor in the year 1977. While the second respondent was working in Satyavedu depot, he was unauthorisedly absent for duty from 15.07.2000 to 08.08.2000 and again from 11.08.2000 to 14.08.2000. The Depot Manager, APSRTC, Satyavedu Depot issued a Charge Memo dated 14.08.2000 to the second respondent calling for his explanation for his unauthorised absence for which the second respondent submitted his explanation. Being not satisfied with the explanation submitted by the second respondent, the Depot Manager, APSRTC, Satyavedu Depot initiated regular departmental enquiry. After completion of the enquiry, the enquiry officer submitted a report holding that the charge levelled against the second respondent was proved. Thereafter, the Depot Manager, APSRTC, Satyavedu Depot issued a final show cause notice to the second respondent why he should not be removed from service for which also the second respondent submitted his explanation. Being not satisfied with the same, the Depot Manager, APSRTC, Satyavedu Depot passed final order dated 10.12.2000 removing the second respondent from service. Aggrieved by the said proceedings of the Depot Manager, APSRTC, Satyavedu Depot, the second respondent preferred an appeal to the Deputy Chief Mechanical Engineer, Tirupati and the same was rejected on 19.01.2001. The second respondent also filed a revision before the Regional Manager, APSRTC, Tirupati and the same was also rejected on 28.02.2001. Having no other alternative, the second

respondent raised an industrial dispute by submitting an application under Section 2 (A) 2 of the Industrial Disputes Act, 1947 and the same was numbered as I.D.No.289 of 2001 on the file of Labour Court, Anantapur. After affording a reasonable opportunity to both parties, the Labour Court, by the award dated 22.03.2004, allowed the I.D by setting aside the enquiry report and directed the petitioner to reinstate the second respondent into service. Feeling aggrieved by the award passed by the Labour Court, the petitioner Corporation filed the present Writ Petition.

3 The contention of the learned standing counsel for the petitioner Corporation is three fold: **1)** The findings recorded by the Labour Court are perverse as the same are not based on any evidence, much less, legally admissible evidence, **2)** the findings of the Labour Court that the enquiry was conducted in violation of principles of natural justice is factually incorrect, and **3)** The second respondent himself admitted about his unauthorised absence and in such circumstances the Labour Court ought to have dismissed the I.D.

4 *Per contra*, the learned counsel for the second respondent submitted that the petitioner conducted the enquiry in violation of principles of natural justice. He further submitted that the petitioner has not supplied the enquiry report to the second respondent along with the final show cause notice of removal. It is his further submission that the findings recorded by the Labour Court are supported by material, more so, legally admissible material and hence there is no need to interfere with the said findings recorded by the Labour Court and the present Writ Petition is liable to be dismissed.

5 It is an admitted fact that the second respondent was appointed as Stores Supervisor in the petitioner Corporation in the year 1977. For one reason or the other, the second respondent did not attend the duty from 15.07.2000 to 08.08.2000 and again from 11.08.2000 to 14.08.2000, which prompted the petitioner Corporation to issue a Charge sheet to the second

respondent, which reads as under:

- 1) For having absented for your duties unauthorisedly from 15.07.2000 to 08.08.2000 and again from 11.08.2000 to 14.08.2000, thus committed a misconduct under Reg.28 (xxvii) of APSRTC Employees (Conduct) Reg.1963".
- 2) For having left the head quarters without prior permission / intimation from your concerned, thus committed a misconduct under Reg. 5 of APSRTC Employees (Conduct) Reg.1963".

6 The predominant contention of the learned counsel for the petitioner is that the second respondent himself admitted about his unauthorised absence. To substantiate the same, he has drawn my attention to the explanation of the second respondent dated 17.10.2000 wherein the second respondent himself categorically stated that due to typhoid fever he could not attend duty from 15.07.2000 to 08.08.2000 and again from 11.08.2000 to 14.08.2000. Whether the second respondent was forced to abstain from attending the duties on the relevant dates due to typhoid fever or not has to be considered. It is needless to say that mere absence to duty by itself would not amount to misconduct unless the absence is with an ulterior motive or without any justifiable cause. Whether a person who is suffering from fever is justified from not attending the duties or not, is a point to be considered by the enquiry officer.

7 A perusal of the record reveals that the petitioner recorded the statement of the second respondent, who categorically stated that due to fever he could not attend duty from 15.07.2000 to 08.08.2000 and again from 11.08.2000 to 14.08.2000. During the course of enquiry, the department got examined one person by name Janaki Ramayya on 17.10.2000 who stated that due to fever the second respondent could not attend duty from 15.07.2000 to 08.08.2000 and again from 11.08.2000 to 14.08.2000. The learned counsel for the petitioner has drawn my attention to the statement of the said witness to convince this Court that in view of the categorical statement of the second respondent himself with regard to his absence during the above said dates, there no need to permit the second respondent to cross examine the witness.

8 By all means, it is the duty of the petitioner to establish that the stand taken by the second respondent that he was suffering from fever during the relevant period of time is factually incorrect. A perusal of the record clinchingly establishes that the enquiry officer did not permit the second respondent to cross examine the above said witness. It is the duty of the enquiry officer or the disciplinary authority to afford reasonable opportunity to the delinquent employee at every stage of enquiry. But for the reasons best known to the enquiry officer, he did not permit the second respondent to cross examine the said witness, which certainly amounts to violation of principles of natural justice.

9 The material placed before this Court clinchingly establishes that the enquiry officer has not given an opportunity to the second respondent to cross examine the witness. The very purpose of cross examination of a witness is to elicit the truth. No opportunity was given to the second respondent to elicit from the said witness whether the second respondent had intentionally absented himself from the duty or he could not attend the duty due to fever or not. If the contention of the learned counsel for the petitioner is accepted, conducting of enquiry without giving a reasonable opportunity to the delinquent employee is nothing but an eye wash.

10 The finding of the Labour Court that the enquiry officer has not permitted the second respondent to cross examine the witness is supported by the material available on record. In view of the above factual situation, I am fully agreeing with the submission made by the learned counsel for the second respondent that the enquiry was conducted in violation of principles of natural justice. I am unable to accede to the contention of the learned counsel for the petitioner that there is no necessity for the petitioner to permit the second respondent to cross examine the witness in view of his explanation dated 17.10.2000.

11 A perusal of the record further reveals that immediately after the enquiry, the petitioner got issued a final show cause notice to the second

respondent calling for his explanation as to why he should not be removed from service. The petitioner also got issued final proceedings dated 10.12.2000 removing the second respondent from service. The contention of the learned counsel for the second respondent is that the petitioner has not supplied copy of the enquiry report calling for the objections of the second respondent, if any, to it. I have carefully perused the entire record in order to ascertain whether the petitioner has supplied the enquiry report to the second respondent calling for his objections. No where it is mentioned that the enquiry report was supplied to the second respondent before passing the final order of removal. The learned standing counsel for the petitioner Corporation, in all fairness, admitted that the enquiry report was not supplied to the second respondent before passing the final order. The crucial question that falls for consideration is whether non supply of enquiry report would itself vitiate the entire proceedings. At this juncture this Court places reliance on ***Managing Director, ECIL, Hyderabad vs. B. Karunakar***^[1] wherein the Hon'ble apex Court held that when the Inquiry Officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the Inquiry Officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt of innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's report to defend himself against the charges levelled against him. A denial of the Inquiry officer's report before the disciplinary authority takes its decision on the charges is a denial of a reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice.

12 As per the principle enunciated in the case cited supra, non-supply of enquiry report to the delinquent employee would certainly amount to violation of principles of natural justice. The facts of the case on hand are almost identical to the facts of the case cited supra.

13 As per the principle laid down in ***Syed Yakoob vs. K.S.***

Radhakrishnan^[2], *Swaran Singh vs. State of Punjab*^[3] and *Union of India vs. P Gunasekaran*^[4], this Court, while exercising jurisdiction under Article 226 or 227 of the Constitution of India, can interfere with the findings recorded by the enquiry officer or the Labour Court/Tribunal, if they are perverse, or, if there is any error apparent on the face of the record.

14 In the instant case, the findings recorded by the Labour Court are supported by material, more so, legally admissible material. There is no infirmity or illegality in the orders passed by the Labour Court warranting interference of this Court while exercising jurisdiction under Article 226 of the Constitution of India.

15 Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am of the considered view that the Writ Petition is devoid of merit and is accordingly dismissed. No order as to costs. Consequently, miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed.

T. SUNIL CHOWDARY, J

Date: 14th June, 2016

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^[1] AIR 1994 S.C 1074 (1) = (1993) 4 SCC 727

^[2] AIR 1964 SC 477

^[3] (1976) 2 SCC 868

^[4] (2015) 2 SCC 610