

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

W.P.No.26288 of 2006

ORDER:

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This writ petition is filed challenging the award, dated 03-03-2006, of the Tribunal Court in I.D.No.253 of 2002, wherein the Industrial Tribunal-cum-Labour Court passed an award upholding the order of termination passed against the petitioner.

The brief facts of the writ petition are as under:

The petitioner joined as casual helper in the year 1995 and later appointed on permanent basis w.e.f.01-10-1999 and he was put on probation. A show-cause notice dated 27-03-2001 was issued to the petitioner alleging that he was absented for 110 days from March, 2000 to March, 2001 without sanction of leave or even without intimation. Petitioner gave Ex.M2 reply, denying the same. With regard to absence from 25th March to 31st March, the petitioner pleaded that he applied for sick leave for that period on 28-03-2001 and when wanted to give application to the time keeper, he refused to receive the same and for that he was not allowed to join duty on 30-03-2001. The management ordered enquiry and put him under suspension w.e.f. 20-04-2001 as per Ex.M3 letter of even date. The enquiry officer conducted enquiry and gave report under Ex.M.29 finding that the charge of unauthorized absence is proved. Thereupon, the 2nd show cause notice Ex.M31, dated 23-03-2002 was issued proposing termination of service and the petitioner submitted Ex.M32 explanation. Basing on the same, order of termination under Ex.M3, dated 18-04-2002 was issued. Challenging the same, the petitioner raised I.D. in I.D.No.253 of 2002 before the Tribunal. The Tribunal after considering the material, passed the impugned award dated 03-05-2006. Against which, the present writ petition is filed.

Learned counsel for the petitioner submits that there is discrepancy in the first show-cause notice and the second show-cause notice regarding number of days of unauthorized absence of the petitioner. As such, it goes to show that the Management has not applied its mind, while passing the order of termination. She

also submits that show-cause notice dated 27-03-2001 stating that the petitioner has absented from duty from 25-03-2001 till 31st March, 2001. She also submits that punishment imposed is directly disproportionate for the charge leveled against the petitioner. As such, the same is to be interfered with by this Court. She also submits that earlier absence, which is contended, cannot be a ground for passing the impugned order. The petitioner applied for leave from 25-03-2001 to 31-03-2001, the same cannot be taken as unauthorized absence. Though notice is issued and served, there is no appearance for the respondent-company. In this case, charge is unauthorized absence of 110 days from the period from March, 2000 to March, 2001 without sanction of leave or any intimation, which goes to show major misconduct in Standing Orders. The petitioner was issued show-cause notice and thereafter, an explanation was submitted. Having stood thus, enquiry officer was appointed and enquiry officer submitted report holding that unauthorized absence was proved and 2nd show-cause notice was also issued and for that the petitioner also submitted explanation. After considering the same only, termination order was passed. The Tribunal found that during enquiry, the petitioner has not produced sickness certificate sought to be submitted by him. The Tribunal also found that discrepancies in the date of show-cause notice and with regard to discrepancies of days of absence is also mistaken. The Tribunal found that the findings in the enquiry are based on evidence placed before it and upheld the order of termination. Even with regard to objection regarding termination order passed by the appointing authority, the Tribunal gave finding that Executive Director, who is a member of Board of Directors, the Governing Body of the company, is a superior in rank to the Vice President, who is not a member in the Board of Directors. As such objection taken by the learned counsel for the petitioner in this regard cannot be sustained. The Tribunal also found that past record of the petitioner was not made basis for arriving the finding or imposing punishment. The Tribunal relied on the judgment of **Delhi Transport Corporation v. Sardar Singh**^[1], wherein the Apex Court held that absence without sanction leave *prima facie* shows lack of interest in work and mere making an application after the event or before will be of no avail as sanction should be obtained in advance and the order of removal was held justified. The Tribunal also found that Enquiry Officer gave clear finding that petitioner was absent for 110 days and there is no explanation from him. The

Tribunal has gone through the record and findings of the enquiry officer and came to the conclusion that punishment of termination cannot be considered as disproportionate against the charge levelled against the petitioner. More so, when the order of the Tribunal is challenged under writ proceedings, this Court cannot sit in appeal, while exercising power of judicial review under Article 226 of Constitution of India. In the judgment of **M/s.Kalinga Mining Corporation v. Union of India**^[2], the Apex Court held that the Court cannot function as an appellate authority substituting the judgment for that of the administrator. Hence, I do not find any ground to interfere with the award of the Tribunal by exercising power of judicial review under Article 226 of Constitution of India.

Accordingly, the writ petition is dismissed. As a sequel thereto, miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed.

18-02-2016
nvl

A.RAJASHEKER REDDY,J

^[1] 2004 LLR 952 SC
^[2] 2013(5) SCC 252