

HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.359 OF 2009

ORDER:

The writ petition is directed against the Award dated 27.01.2006 in I.D. No.221 of 2003 on the file of the Labour Court, Guntur.

The workman is the writ petitioner. Through the order impugned in the Award, the Labour Court has modified the punishment in the following terms.

“In the result, the petition is partly allowed. The order of removal of the petitioner from the service is set aside. The petitioner shall be reinstated into service without back wages and without continuity of service. The petitioner is not entitled to any monetary benefit from the date of removal till the date of this order. On his re-instatement, the pay of the petitioner shall be fixed at not less than his last pay. Award is passed accordingly.”

The petitioner prays for certiorari to call for the records leading up to and inclusive of I. D. No. 221 of 2003 dated 27.01.2006 and declare the impugned Award declining to grant back wages and continuity of service from the date of removal till the date of order in I.D.No.221 of 2003, as illegal, arbitrary and contrary to the material available on record.

The circumstances relevant for disposal of the writ petition are that the petitioner did not attend the duty in two spells namely from 18.09.1999 to 25.09.1999 and 27.09.1999 to 15.10.1999. The 2nd respondent treating the absence as unauthorised issued charge memo to the petitioner and finally passed the order of removal dated 27.03.2000. The I.D. was raised against the removal.

For the purpose of understanding the contentions urged by the petitioner, I refer to the findings recorded by Labour Court which read

thus:

“With regard to the first charge the petitioner stated that due to severe pain in his leg, he remitted bus cash at 18-00 Hrs. instead of 11.00 Hrs on 18-9-99.

With regard to Charges 2,3 and 4 the petitioner repeated the same explanation.

5.The petitioner admitted that he remitted bus cash on 18-9-99 at Hrs. instead of 11-00 Hrs.

The petitioner admitted that he was absent from 18-9-99 to 25-9-99 and again he was absent from duty from 28-9-99 to 25-10-99.

The petitioner produced sick certificate on 27-9-99. But the petitioner did not submit sick certificate for the period 28-9-99 to 15-10-99.

The petitioner ought to have intimated in writing about his sickness immediately after 18-9-99. But he did not do so.

It is very easy to produce medical certificate after the period of absence. It cannot be verified because by that time the petitioner would be fit for duty.

The conduct of the petitioner shows that he was in the habit of absenting from duty unauthorisedly and later producing sick certificate.

I, therefore, hold that the charges against the petitioner are proved, but the punishment of removal of the petitioner from the service is not in proportion to the charges. Hence, I answer the point accordingly.”

Learned counsel for the petitioner submits that the reason for refusing to grant monetary benefit and continuity of service is primarily based on the finding recorded by the Labour Court that the petitioner is in the habit of absenting from duty and later producing the sick certificate. According to him, this finding is unwarranted and without material. Therefore, he prays for allowing the writ petition by granting monetary benefits and continuity of service.

Mr.Gopal appearing for the 2nd respondent contends that having regard to the brief and succinct consideration by the 1st respondent, the 2nd respondent in fact, ought to have challenged the very Award and there is no illegality or irregularity in the Award under challenge and prays for dismissal of the writ petition. The learned counsel alternatively submits that even assuming that the petitioner in Labour Court is successful in proving that there was just and sufficient cause for not attending the duty from 18.09.1999 to 25.09.1999, the admitted case of petitioner himself is that there is no evidence justifying his absence from duty for the period 28.09.1999 to 25.10.1999 and therefore, no relief can be granted to the petitioner.

I have perused the material available on record and noted the contentions urged by the learned counsel appearing for the parties.

At the outset, I am constrained to observe that the petitioner is not entitled for any monetary benefit from the date of removal till the date of reinstatement ordered by the Labour Court in I.D. No. 221 of 2003. Having regard to the findings recorded by the Labour Court, this Court would like to examine whether denial of continuity of service to the petitioner is justified and warranted in the facts and circumstances of the case.

As already noted, the petitioner could prove that for the reasons beyond his control he was not in a position to attend duty from 18.09.1999 to 25.09.1999, this is accepted by the Labour Court and held that only to the extent of not producing any evidence for the second spell, the punishment is modified. I am of the view that keeping in mind the finding recorded and the proof placed by the petitioner, denial of continuity of service without monetary benefit is untenable and to that limited extent the Award is modified as follows:

The petitioner is entitled for reinstatement into service with

continuity of service without any monetary benefit whatsoever.

The writ petition is allowed in part. No order as to costs.

S.V.BHATT,J

Date:29.02.2016

Stp