

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.26247 of 2012

ORDER:

Heard the learned counsel for the petitioner and Sri N.Vasudedva Reddy, learned counsel for the respondent Nos.1 to 3.

2. Petitioner assails order dt.27-06-2012 in I.D.No.19 of 2011 of the Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad (4th respondent).

3. Petitioner was employed as Lab Assistant in the Andhra Pradesh State Road Transport Corporation (APSRTC). On 22-10-2010, the Senior Medical Officer issued memo to the petitioner alleging that the petitioner was not cleaning the articles for the previous two days.

4. Petitioner gave an explanation to the same.

5. Thereafter, enquiry was conducted and ten witnesses were examined. Petitioner did not lead any evidence.

6. A show cause notice proposing to terminate his services was given on 14-03-2011.

7. Petitioner gave an explanation and pointed out certain infirmities committed by the enquiry officer during the course of enquiry proceedings.

8. On 07-04-2011, petitioner services were terminated.

9. Petitioner then filed an application under Section 2-A (2) of the Industrial Disputes Act, 1947 challenging the order dt.07-04-2011 passed by 3rd respondent terminating his services and sought relief of reinstatement into service with continuity of service, attendant benefits and back-wages.

10. The 4th respondent Tribunal framed an issue as to the validity of the domestic enquiry, and while passing the impugned order held the domestic enquiry valid in para-25. It also gave certain findings on merits of the charge against the petitioner.

11. Petitioner contends that, while deciding the question of validity of domestic enquiry, it is not open to 4th respondent to go into the truth or otherwise of the charges framed against the petitioner, and since the action of 4th respondent Tribunal indicates a pre-disposition to uphold the termination order, he has filed the present Writ Petition questioning the said order.

12. On 24-08-2012, this Court admitted the Writ Petition and granted interim stay of all further proceedings before 4th respondent in the I.D.No.19 of 2011.

13. Counter affidavit has been filed by the respondent Nos.1 to 3 justifying the action of the respondents in terminating the services of the petitioner. It is stated that during the course of proceedings before 4th respondent, the petitioner disputed the procedure in the conduct of enquiry, and after hearing the arguments and considering

the material on record, 4th respondent rightly came to the conclusion that the domestic enquiry is valid and posted the matter for filing documents and that no prejudice was caused to the petitioner.

14. Learned Standing Counsel for respondent Nos.1 to 3 reiterated the said submissions.

15. From the facts narrated above, it is clear that the petitioner had questioned order passed by 3rd respondent terminating the services on 07-04-2011 before 4th respondent-Tribunal under Section 2-A (2) of the Act, 1947 and the same was numbered as I.D.No.19 of 2011.

16. When an issue was raised about the validity of domestic enquiry, 4th respondent held that the domestic enquiry was validly conducted but in paragraph 25, observed as follows:

“Clause-5 of the appointment order is very clear that if the work of the petitioner is not satisfactory he will be terminated without assigning any reasons. As per the evidence of Doctors, the Patients themselves gave complaint. The evidence of complainants and the petitioner statement was also recorded. Sufficient opportunity is afforded to the petitioner. It is not the case of the petitioner that he was falsely charged. The petitioner clearly admitted in the statement as well as in the explanation during enquiry that due to ill health he could not clean the lab ware but no negligence on his part. The behavior and conduct of the petitioner shows that he himself misconducted. The refusal to clean lab ware causing much inconvenience to the patients and disobeying the instructions of superior Officer, asking not to entrust ward boy duty amounts to misconduct. I do not find any violation of the

principles of natural justice and hold that the enquiry was properly conducted.”

17. The above passage in the impugned order passed by 4th respondent clearly shows that 4th respondent went into the question whether petitioner was guilty of the charge or not while deciding the question of validity of domestic enquiry. It is settled law that while deciding validity of domestic enquiry, 4th respondent can only see whether enquiry was conducted in accordance with principles of natural justice and cannot go into the correctness of the charge framed against the applicant before it or the validity of the punishment imposed on the applicant by the respondent.

18. Therefore, I am not inclined to accept the stand taken by the respondents that 4th respondent had acted in accordance with law and decided that the domestic enquiry was valid.

19. Accordingly, the Writ Petition is allowed. The impugned order is set aside in all aspects and the matter is remitted back to 4th respondent to decide afresh the question of validity of the domestic enquiry conducted by respondent Nos.1 to 3 against the petitioner also, and then proceed to decide whether the termination of the petitioner by the respondents is valid or not in accordance with law. This exercise shall be completed within four months from the date of receipt of a copy of this order. No costs.

20. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 29-11-2016
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