

HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.13217 of 2011

ORDER :

The petitioner, at relevant point of time, was working as Grade-II Mechanic in APSRTC and on the allegation that he was abstained from duties unauthorizedly from 06.04.2006, disciplinary action was initiated against him. The petitioner was served with the charge memo dated 15.04.2006 on the allegation that he was absented from the duties from 06.04.2006 without any intimation or prior sanction of leave, which constitutes misconduct. It appears, the petitioner submitted his explanation to the charge memo enclosing medical certificate and fitness certificates issued by the Civil Surgeon, Government Ayurvedic Hospital, Charminar, Hyderabad. Not satisfied with the explanation by the petitioner, domestic enquiry was ordered. Enquiry Officer conducted the enquiry and submitted his report holding that the charge was proved against the petitioner. At this stage, the petitioner informed that in future he would work sincerely. It further appears that the disciplinary authority deferred taking further course of action and intended to observe the petitioner's performance. It appears, since the petitioner again absented from duties, the disciplinary authority issued a show-cause notice calling upon him to submit explanation as to why he should not be removed from service and subsequently he was removed from service. Aggrieved by the removal order dated 17.08.2006, the petitioner raised industrial dispute before the Labour Court-I, Hyderabad, under

Section 2-A (2) of the Industrial Disputes Act, 1947. The said dispute was registered as I.D.No.97 of 2007. As the petitioner did not raise any objection against the manner in which the enquiry was conducted, the Labour Court went into the quantum of punishment vis-à-vis the allegation of unauthorized absence.

Though in the enquiry report the Depot Manager stated that the petitioner was in the habit of absenting from duties and in the entire service his annual increments were deferred for 14 times and was also removed from service on one occasion, the Labour Court held that the prior misconduct and habitual absentism from duty were not part of the charge levelled against the petitioner and the charge levelled against the petitioner was confined to the absence from duty from 06.04.2006 and therefore merely because the petitioner was visited with punishment earlier could not have been a ground to impose punishment of removal, and punishment is disproportionate to the gravity of the allegations levelled and proved. While setting aside the order of the removal, the Labour Court has directed the respondent APSRTC to reinstate the petitioner into service without back wages. This writ petition is filed challenging the award of the Labour Court to the extent of denial of back wages.

Learned counsel for the petitioner would only submit that the petitioner was suffering from illness, therefore, he did not attend the duties and his absence was not deliberate.

It is evident from the award of the Labour Court that the said contention of the petitioner was not accepted by the disciplinary

authority. It appears that medical report submitted by petitioner covered the period of October 2006, whereas, the allegation levelled against the petitioner was relating to April 2006. Except stating that he was suffering from sickness, no material is brought on record in support of the stand taken by him that his absence was on account of his sickness. No averments are made in the affidavit filed in support of the writ petition to show that the absence of the petitioner was not willful, deliberate and without just cause. Having regard to the nature of the allegations levelled in the charge memo and the punishment imposed against the petitioner, the Labour Court came to the conclusion that the punishment of removal from service imposed against him is excessive and the same was set aside. Thus, the finding recorded by the Labour Court is not on the merits of the contentions urged by the petitioner, but on the question of quantum of punishment and the factum of absence from duty without just cause and without prior permission, stood established and no material was brought on record to disprove the said finding. No reassessment can be made by this Court in exercise of its power of judicial review and record a different finding from finding arrived at by the Labour Court. Admittedly, the petitioner did not discharge duties for the period he was out of employment. Once the finding of guilty is proved against the petitioner, he cannot, as a matter of right, seek back wages. The punishment was visited by the petitioner due to his absence from duties. Hence, I see no illegality or perversity in the order under challenge and the Writ Petition is liable to be dismissed.

Accordingly, the writ petition is dismissed.

As a sequel, miscellaneous petitions pending, if any, shall stand dismissed. No costs.

13th October 2016.

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P. NAVEEN RAO, J



