

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.11896 of 2011

Date :29.9.2016

Between :

The Depot Manager, APSRTC
Kalwakurthy Bus Depot, Mahaboobnagar district

Petitioner

And

M Narasimha S/o Komraiah
C/o Sri K Venkateshwarlu Advocate
16-2-752/K/65, Opp Shiva Ganga Theatre
Saiganga colony, Dilsukhnagar Hyderabad and another

Respondents

The Court made the following:



THE HON'BLE SRI JUSTICE P. NAVEEN RAO**WRIT PETITION No.11896 OF 2011****ORDER:**

The 1st respondent is a Driver working with the petitioner – Corporation. The disciplinary proceedings were initiated against him on the allegation that he was unauthorisedly absent for duties from 24.10.2006 to 10.11.2006, resulted in imposing punishment of removal from service by order dated 23.10.2007. Aggrieved by the order of removal, he raised an Industrial Dispute under Section 2-A (2) of the Industrial Disputes Act, 1947 (for short, 'the Act'). The Labour Court – III, Hyderabad, registered the Industrial Dispute as I.D.No.38 of 2009. While holding that the absence was unauthorised, the Labour Court observed that the competent authority has not ascertained as to whether the cause shown by the 1st respondent was reasonable and justified before initiating disciplinary action resulting in removal from service. The Labour Court observed that the workman was claiming that he was sick and therefore he could not attend to duties. When the workman claimed sickness as a reason for absence from duty, he ought to have been referred to medical examination. The Labour Court, holding that the punishment of removal on the allegation of unauthorized absence for a period of 18 days as too harsh and disproportionate, has set aside the order of removal and directed reinstatement of the 1st respondent with continuity of service and other attendant benefits. The Labour Court denied back wages to an extent of 50%. Aggrieved thereby, this Writ Petition is filed by the Corporation.

2. Learned counsel for the petitioner - Corporation would submit that the 1st respondent did not intimate about his sickness which is mandatory according to the procedure evolved by the petitioner - Corporation that whenever an employee reports sickness, he must submit sick application and to the extent possible and he must take treatment in the hospitals run by the Corporation.

3. In the instant case, the 1st respondent did not submit any sick application after the period of absence, when he reported to duty and he submitted medical certificate issued by a private doctor in support of his contention that his absence was on account of sickness. On account of the absence of the 1st respondent for a period of 17 days, great inconvenience was caused to the petitioner - Corporation in providing services to the passengers and long absence of a driver causes lot of inconvenience in arrangement of work and dislocates the provision of services in various groups. Thus, the petitioner - Corporation treated the absence of the 1st respondent as grave misconduct and therefore justified the punishment imposed against the 1st respondent. The finding of the Labour Court that the punishment of removal is excessive is not valid.

4. Learned counsel for the petitioner – Corporation would further submit that the 1st respondent did not have good record of service and earlier he was visited with punishment of censure for two times, recovery of amounts due to loss caused to the Corporation on two occasions, withholding of annual increments on two occasions with cumulative effect and was suspended two times for causing accident. In view of such bad record of service,

the 1st respondent was not entitled to any leniency and the Labour Court has not properly appreciated this aspect. Before going into the issue of quantum of punishment, it is necessary to clear on this contention of the learned counsel for the petitioner.

5. When specifically asked, learned counsel for the petitioner fairly submitted that the order of disciplinary authority did not refer to the past disciplinary action. From a reading of the award also it appears that no such plea was raised. Thus, the order of removal from service which was set aside by the Labour Court was not based on the past misconduct, but was confined to the allegation of unauthorised absence for 18 days. No doubt, it is competent for the disciplinary authority to look into the misconduct while determining the quantum of punishment as a result of disciplinary action taken against the delinquent, but the same has not been reflected either in the charge sheet or in the show cause notice after the enquiry is completed or atleast in the order imposing punishment. In the absence of following such procedure and when the order of removal is not reflecting or not based on the past misconduct, this contention cannot be countenanced.

6. Thus, on clearing this issue, the only issue remains for consideration is, whether the award of the Labour Court modifying the punishment holding that the punishment of removal on the ground of absence for 18 days is invalid is sustainable?

7. At this stage, learned counsel for the petitioner - Corporation fairly submits that atleast, with regard to misconduct proved, the Labour Court ought not to have granted back wages so that it would act as some kind of deterrent against the persons like

1st respondent. Having committed such misconduct of unauthorized absence for a period of 18 days causing dislocation of services, not imposing any punishment and denying only 50% of back wages is not just and equitable.

8. The Labour Court found that first respondent was equally negligent for causing delay in disposal of the Industrial Dispute. Thus, denial of 50 % of the backwages was only on the ground that the first respondent was negligent for causing delay in disposal of the Industrial Dispute but not as a measure of substitution of punishment. The Labour Court erred in not prescribing any punishment, having held that the punishment of removal was harsh and lenient punishment should be imposed. It is not in dispute that first respondent has absented unauthorisedly and unauthorised absence was proved. The Labour Court ought to have taken note of the fact that the first respondent was earlier visited with punishments as noted above, while granting the relief in favour of the first respondent. Having regard to the fair submission made by the learned standing counsel and to give quietus to the litigation, instead of remitting the matter to the Labour Court, I deem it proper to modify the award of the Labour Court to the extent of payment of backwages and to hold that first respondent is not entitled to any backwages for the period as 'out of service' i.e., from 23.10.2007 to 5.4.2011.

Subject to above modification, the award of the Labour Court is confirmed and accordingly writ petition is disposed of.

JUSTICE P.NAVEEN RAO

Date: 29.09.2016
Tvkk

HONOURABLE SRI JUSTICE P. NAVEEN RAO



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