

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

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WRIT PETITION No.549 of 2010

Between:

B.P.Reddy

....Petitioner

and

The Assistant Director (Vigilance & Security),
APSRTC, Hyderabad Zone, JBS, Secunderabad,
And another.

....Respondents

JUDGMENT PRONOUNCED ON : 02.03.2016

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO :

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgments?
2. Whether the copies of judgment may be : No
Marked to Law Reporters/Journals?
3. Whether Their Ladyship/Lordship wish to : No
see the fair copy of the Judgment?

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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WRIT PETITION No.549 of 2010

ORDER:

The petitioner was a Security Guard in the APSRTC. He was appointed on 24.10.1986 on regular basis after getting selected through regular process. While he was working in Dubbaka Depot, Medak District, a charge sheet was issued on 29.01.2001 alleging that he was absent from duty on 07.12.2000 from 16 hours to 00.00 hours and he entered the picket depot at 23.30 hours in an intoxicated condition and misbehaved with the Security Head Guard of Picket Depot. The petitioner submitted his explanation stating that he applied for leave for

the shift commencing from 16.00 hours to 00.00 hours on 07.12.2000 and requested for allotment of duty when the shift commenced from 00.00 hours on 7/8.12.2000. The petitioner was granted leave and, accordingly, he reported for duty at 23.30 hours for joining the shift duty from 00.00 hours. No enquiry was conducted in respect of the charge, but however, he was transferred to Dubbaka Depot. Though an Enquiry Officer was nominated, he did not conduct any enquiry as no witness turned up for the prosecution side. However, another charge sheet was issued on 08.12.2003 alleging that he absented from duty unauthorisedly from 24.09.2003 to 17.11.2003 without any intimation or prior sanction of leave. The said charge sheet was based on the reports of the Security Inspector, Medak, dated 14.11.2003 and 20.11.2003. Those two reports were not furnished to the petitioner in spite of his specific request. However, he submitted his explanation stating that he was suffering from Jaundice and he took treatment for the same in the Government Unani Hospital, Charminar, from 24.09.2003 onwards. He also stated that he intimated the same to the Depot Manager, Dubbaka, who in turn intimated to the Security Head Guard. After recovering from illness he reported for duty on 17.11.2003. He was asked to attend for an enquiry in respect of the said charge and he attended before the Enquiry Officer. No copy of the enquiry report was furnished to the petitioner. However, a show cause notice was issued to him proposing to impose punishment of removal from service. He submitted his explanation on 08.04.2004 stating that the charge leveled against him was not proved. In spite of the same, when an order of removal from service was passed on 30.04.2004, the petitioner filed I.D.No.3 of 2005 before the learned Additional Industrial Tribunal – cum – Additional Labour Court, Hyderabad. The Labour Court considered both the charges and gave a finding that, so far as the first charge was concerned, the evidence on record was not sufficient to take anything adverse to the petitioner and the material created volumes of doubt about true state of affairs. Regarding the second charge, the Tribunal came to the conclusion that

the petitioner could not attend the duties from 24.09.2003 due to sickness, which was a reasonable and sufficient cause for his absence. The Tribunal also observed that, though the petitioner submitted a detailed explanation, without considering the same, the order of removal from service was passed. Accordingly, it held that the removal of the petitioner from service was not proper. It passed an award on 21.03.2007 setting aside the order of removal from service dated 30.04.2004 as confirmed by the appellate authority on 19.11.2004 and directed reinstatement of the petitioner into service with all consequential benefits except back wages by observing as follows:

“Upon perusing the material available on record and for the reasons mentioned above I find that the petitioner is entitled for the relief as prayed for except back wages as the petitioner failed to place any evidence that he has not attended any work during that period on the ground of no work no pay.”

Challenging the denial of back wages, the present Writ Petition was filed.

A perusal of the Award of the Labour Court clearly shows that the charges against the petitioner were not proved. The Labour Court also came to the conclusion that without considering the explanation of the petitioner, the order of removal was passed and it was confirmed by the appellate authority on 19.11.2004. The only point that remained for consideration for the Labour Court is with regard to the back wages.

The petitioner in his petition categorically stated in paragraph 7 as follows:

“The applicant humbly submit that ever since the date of removal from service, he has remained un-employed as he could not get any alternative employment in spite of his best efforts. As such he and his entire family members are facing untold hardship for no fault on their part.”

In spite of the same, the Labour Court made the above observations and denied the back wages.

Learned Counsel for the petitioner brought to the notice of this

Court the observations of the Supreme Court in a case like this in **Deepali Gundu Surwase v. Kranti Junior Adhyapak**

Mahavidyalaya^[1], wherein it was observed as follows:

“Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averment about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.”

Learned Counsel for the respondents relied on **Reetu Marbles v.**

Prabhakant Shukla^[2]. He brought to the notice of this Court the following observations of the Supreme Court in the said decision:

“18. In the writ petition the respondent was mainly concerned with receiving wages in accordance with the Minimum Wages Act and for inclusion of the period spent in conciliation proceedings for the calculation of financial benefits. The High Court without examining the factual situation, and placing reliance on the judgment in **Hindustan Tin Works (P) Ltd. v. Employees** ((1979) 2 SCC 80) held that the normal rule of full back wages ought to be followed in this case. We are of the considered opinion that such a conclusion could have been reached by the High Court only after recording cogent reasons in support thereof, especially since the award of the Labour Court was being modified. The Labour Court exercising its discretionary jurisdiction concluded that it was not a fit case for the grant of back wages.

19. In **P.V.K. Distillery Ltd. v. Mahendra Ram** ((2009) 5 SCC 705), it is observed as follows: (SCC p.709, para 15)

“15. The issue as raised in the matter of back wages has been dealt with by the Labour Court in the manner as above having regard to the facts and circumstances of the matter in the issue, upon exercise of its discretion and obviously in a manner which cannot but be judicious in nature. There exists

an obligation on the part of the High court to record in the judgment, the reasoning before however denouncing a judgment of an inferior tribunal, in the absence of which, the judgment in our view cannot stand the scrutiny of otherwise being reasonable.”

20. In our opinion the High Court was unjustified in awarding full back wages. We are also of the opinion that the Labour Court having found the termination to be illegal was unjustified in not granting any back wages at all. Keeping in view the facts and circumstances of this case we direct that the respondent shall be paid 50% of the back wages from the date of termination of service till reinstatement.”

The ratio laid down in the above cases clearly shows that after the removal, the workman would not be in a position to lead negative evidence and when a specific averment is made in the petition, it is for the management to lead the evidence to show that the workman was gainfully employed. In the absence of such evidence, the removed workman is entitled for back wages. But, whether the workman is entitled for the entire back wages or not is in the discretion of the Labour Court.

In the instant case, the Labour Court has not properly applied its discretion in denying the back wages even in the face of specific averment in the petition and absence of any evidence by the employer.

In the circumstances, this Court feels that the petitioner is entitled for 50% of the back wages for the period from 30.04.2004 to the date of reinstatement.

The Writ Petition is, accordingly, allowed to the extent indicated above. The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

(A.RAMALINGESWARA RAO, J)

02.03.2016

vs

[\[1\]](#) (2013) 10 SCC 324

[\[2\]](#) (2010) 2 SCC 70