

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

Writ Petition No.24830 of 2008

Between:

P. Pullaiah

.. Petitioner

AND

The Presiding Officer, Labour Court-III,
Hyderabad.

.. Respondent

Date of Judgment Pronounced: **29.06.2017**

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE A.V. SESA SAI

1. Whether Reporters of Local newspapers may be allowed to see the Judgments?
2. Whether the copies of judgment may be marked to Law Reports/Journals?
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment?

JUSTICE A.V. SESA SAI

*** HON'BLE SRI JUSTICE A.V. SESA SAI**

+WRIT PETITION No.24830 OF 2008

% Dated 29-06-2017

P. Pullaiah

Petitioner

VERSUS

\$ The Presiding Officer, Labour Court-III,
Hyderabad.

Respondent

! Counsel for Petitioner : Smt. K. Udaya Sri.

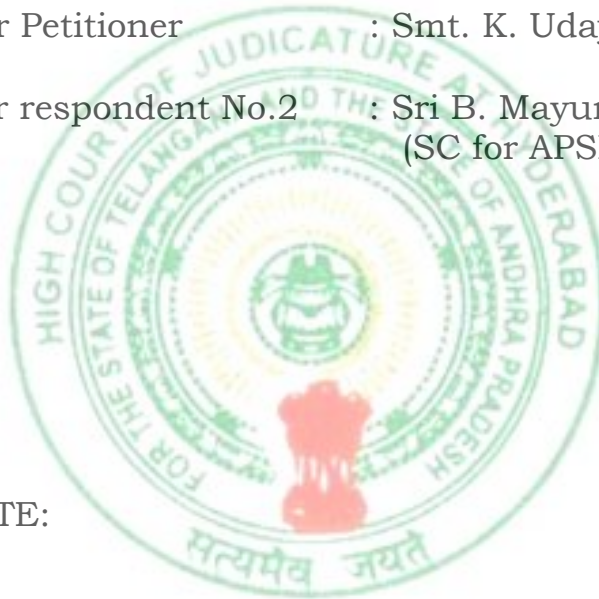
^Counsel for respondent No.2 : Sri B. Mayur Reddy
(SC for APSRTC)

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? Cases referred

2017 (2) SLR 171 (SC)



THE HON'BLE SRI JUSTICE A.V.SESHA SAI**WRIT PETITION No.24830 of 2008****ORDER:**

In the present writ petition filed under Article 226 of the Constitution of India, challenge is to the Award, dated 25.06.2008, passed by the Labour Court-III, A.P., Hyderabad (for short, "the Labour Court") in I.D.No.59 of 2007.

According to the petitioner, he joined in service of the State Road Transport Corporation (for short, "the Corporation") as a Driver in the year 1989 at Shadnagar Depot, and his services were regularized in the year 1992 and while working as such, he applied leave for the period 25.08.2005 to 10.09.2005 on the ground that his co-son-in-law died because of suicide and leave was granted by the Depot Manager. It is the case of the petitioner that after expiry of the leave period, when he reported for duty, the officials of the Corporation did not permit him to join. Initially, on 23.09.2005, a charge sheet was issued and on 26.09.2005, the petitioner submitted his explanation. Subsequently, two more charge sheets were issued on 15.11.2005 and 09.02.2006 alleging unauthorized absence for the period 09.10.2005 to 11.11.2005 and 09.10.2005 to 04.02.2006 and they were also replied to by the petitioner. Thereafter, basing on the above three charge memos, a common enquiry was ordered and an Enquiry Officer was appointed. The Enquiry Officer submitted his report on

18.02.2006 and based on the said report, the disciplinary authority issued an order, dated 16.03.2006, ordering removal of the petitioner from service. After unsuccessfully availing the remedy of appeal before the departmental authorities, the petitioner raised I.D.No.59 of 2007 on the file of the Labour Court-III, A.P., Hyderabad, under Section 2-A(2) of the Industrial Disputes Act, 1947 (for short, “the Act”). On the basis of the material available, the Labour Court framed the following points for consideration:

- “1. Whether the petitioner, having had opportunity of defending himself at various stages, neglected to defend himself?
2. Whether the respondent is able to prove that the petitioner was careless in performance of his duties and the unauthorized absence is as a result of such carelessness?
3. Whether the order of removal from service of corporation dated 16.03.2006 is liable to be set aside, valid or justified?
4. Whether the petitioner is entitled for the relief claimed for?
5. To what result?”

During the course of enquiry, the management filed Exs.M1 to M19 documents and no oral evidence was adduced by either side. Eventually, by way of an award, dated 25.06.2008, the Labour Court dismissed the industrial dispute. The present writ petition calls in question the validity and the legal sustainability of the said award.

Heard Smt. K. Udaya Sri, learned counsel for the petitioner, and Sri B. Mayur Reddy, learned Standing counsel

for respondent No.2 apart from perusing the material available before the Court.

It is contended by the learned counsel for the petitioner that the questioned award passed by the Labour Court confirming the order of removal is highly erroneous, contrary to law and is opposed to the very spirit and object of the provisions of the Act. It is further contended that the mode and manner in which the respondent authorities conducted the enquiry is in total violation of the principles of natural justice and no reasonable opportunity was afforded to the petitioner before terminating his services and that the impugned action is also contrary to the Andhra Pradesh State Road Transport Corporation Employees (Classification, Control and Appeal) Regulations, 1967 (for short, “the Regulations”). It is further contended that no enquiry report was given to the petitioner before ordering termination and that the Labour Court did not undertake any exercise in the light of the provisions of Section 11-A of the Act. In support of his submissions and contentions, learned counsel for the petitioner placed reliance on the judgment of the Hon’ble Apex Court in **H.P. State Electricity Board Ltd. v. Mahesh Dahiya**¹.

On the contrary, it is strenuously contended by the learned Standing counsel for the respondent – Corporation, Sri B. Mayur Reddy, that there is no illegality nor there exists

¹ 2017 (2) SLR 171 (SC)

any procedural infirmity in the impugned action and in the absence of the same, the action impugned is not amenable for any judicial review under Article 226 of the Constitution of India. It is further contended that despite affording reasonable opportunity, the petitioner did not avail the same, therefore, it cannot be complained that the impugned action is in violation of principles of natural justice. It is submitted by the learned Standing counsel that in the absence of any perversity in the impugned award, interference of this Court under Article 226 of the Constitution of India is not warranted. He further submitted that in view of the previous conduct of the petitioner, there is justification on the part of the respondent authorities in ordering removal of the petitioner from the service.

In the above background, now the issues that emerge for consideration of this Court in the present writ petition are:

1. Whether the questioned award passed by the Labour Court confirming the order of removal is sustainable and tenable?
2. Whether the disciplinary proceedings conducted by the respondent authorities are in accordance with law?
3. Whether the impugned order of termination, as confirmed by the impugned award, warrants any interference of this Court under Article 226 of the Constitution of India?

The information available before this Court manifestly discloses that by way of three charge memos the disciplinary authorities framed the following three charges against the petitioner.

“1. For having absented unauthorisedly for your duties from 11.09.2005 to till date neither with prior sanction of leave from the depot authorities nor submitted any sick certificate from the RTC Hospitals, which resulted in dislocation of services and inconvenience to the traveling public, besides loss of revenue to the corporation, which constitutes misconduct under Reg.28(xxvii) of APSRTC Employees (Conduct) Reg.1963.

2. For having absented unauthorisedly for your duties from 09.10.2005 to 11.11.2005 neither with prior sanction of leave from the depot authorities nor submitted any sick certificate from the RTC Hospitals, which resulted in dislocation of services and inconvenience to the traveling public, besides loss of revenues to the corporation, which constitutes misconduct under Reg.28(xxvii) of APSRTC Employees (Conduct) Reg.1963.

3. For having absented unauthorisedly for your duties from 09.10.2005 to till date neither with prior sanction of leave from the depot authorities nor submitted any sick certificate from the RTC Hospitals, which resulted in dislocation of services and inconvenience to the traveling public, besides loss of revenues to the corporation, which constitutes misconduct under Reg.28(xxvii) of APSRTC Employees (Conduct) Reg.1963.”

After framing the said charges, the disciplinary authority appointed an enquiry officer to hold regular enquiry. It is not in dispute that the enquiry officer held the proceedings on 14.02.2006, 16.02.2006 and 18.02.2006 i.e., on three days. According to the respondent authorities, the petitioner did not avail the opportunity given and failed to attend the said enquiry. It is also the case of the respondent authorities that the notices of the said enquiry were displayed on the notice board in the office of the respondent Corporation.

It is the serious objection taken by the learned counsel for the petitioner that the said action on the part of the respondent authorities in holding enquiry in such a manner, without serving any notice of enquiry, is patent contravention of the Regulations. In this context, it may be appropriate to refer to the relevant provisions of the Regulations. Regulation 35A stipulates as under:

“35(A) Manner of service of communication, notices or orders on employees:

- (1) A communication, notice or order addressed to an employee in pursuance of any action taken or contemplated under these Regulations shall, if practicable, be served personally on him by delivering or tendering to him one of the duplicates of such communication, notice or order.
- (2) Where, however, it has not been found practicable to serve the duplicate communication, notice or order personally on the employee, it shall be sent to the last known address of the employee by properly addressing, pre-paying and posting by registered post with acknowledgement due, and unless the contrary is proved, the communication, notice or order shall be deemed to have been served on the employee at the time at which the copy so sent is delivered in the ordinary course by post.
- (3) For the purpose of this regulation, it shall be the duty of every employee to notify at the time of his first appointment to service, the address to which communication etc., intended for him may be sent when he is not on duty and to keep the head of the office or unit to which he is attached for the time being, the changes, if any, occurring in his address from time to time.
- (4) If a communication, notice or order sent by post under clause (2) for any reason returned un-delivered then a copy of such communication, notice or order shall be displayed for a period of not less than one week on the notice board of the office or unit in which the employee was last working and on the expiry of such period, the communication, notice or order shall be deemed to have been served on the employee for the purpose of these Regulations.”

As per clause (2) of Regulation 35A, it is incumbent on the part of the respondent authorities that in the event of service of notice personally being found to be impracticable,

service needs to be effected by sending the intimation to the last known address of the employee by properly addressing, pre-paying and posting by registered post with acknowledgement due. In the instant case, admittedly, the procedure, as mandated under the above provision of law, was not adhered to by the respondent Corporation except saying that notices of enquiry were displayed on the notice board. It is also not the case of the respondents that they afforded reasonable time to the petitioner. On the other hand, the information available before the Court in vivid terms reveals that the respondent authorities concluded the enquiry by fixing three days within a span of four days. Therefore, the procedure undertaken by the respondent Corporation in holding the enquiry against the petitioner is opposed not only to the above said Regulation but also the principles of natural justice.

Yet another contention raised by the learned counsel for the petitioner is that the disciplinary authority did not furnish the copy of the enquiry report before coming to the impugned conclusion. Regulation 12(13) of the Regulations mandates, in clear terms, that the delinquent should be given an opportunity to show cause why the penalty should not be imposed. In this context, it may be appropriate to refer to the judgment of the Hon'ble Apex Court in **H.P. State Electricity Board Limited (supra)**. Paragraph 26 of the said judgment reads as under:

“Both the learned Single Judge and the Division Bench have heavily relied on the fact that before forwarding the copy of the report by letter dated 02.04.2008 the Disciplinary Authority cum Whole Time Members have already formed an opinion on 25.02.2008 to punish the writ petitioner with major penalty which is a clear violation of principle of natural justice. We are of the view that before making opinion with regard to punishment which is to be imposed on a delinquent, the delinquent has to be given an opportunity to submit the representation/reply on the inquiry report which finds a charge proved against the delinquent. The opinion formed by the Disciplinary Authority cum Whole Time Members on 25.02.2008 was formed without there being benefit of comments of the writ petitioner on the inquiry report. The writ petitioner in his representation to the inquiry report is entitled to point out any defect in the procedure, a defect of substantial nature in appreciation of evidence, any misleading of evidence both oral or documentary. In his representation any inputs and explanation given by the delinquent are also entitled to be considered by the Disciplinary Authority before it embarks with further proceedings as per statutory rules. We are, thus, of the view that there was violation of principle of natural justice at the level of Disciplinary Authority when opinion was formed to punish the writ petitioner with dismissal without forwarding the inquiry report to the delinquent and before obtaining his comments on the inquiry report. We are, thus, of the view that the order of the High Court setting aside the punishment order as well as the appellate order has to be maintained.”

In the instant case, there is absolutely no evidence on record to show that the disciplinary authority furnished the enquiry report to the petitioner for offering comments on the enquiry report before passing the order of termination. The said crucial aspect is also fatal to the case of the respondents. It is an undisputed reality that the petitioner worked with the respondent Corporation for approximately one and half decades. As correctly pointed out by the learned counsel for the petitioner the Labour Court did not exercise its jurisdiction under the provisions of Section 11A of the Act.

According to the learned Standing counsel, earlier conduct also disentitles the petitioner from praying for any relief. Even if the said contention is taken into consideration,

the impugned action of removal from service is shockingly disproportionate to the allegations made. Eventually, it is submitted by the learned Standing counsel that even if it is found that the quantum of punishment is disproportionate, the matter is required to be sent back. It is significant to note that the petitioner raised the industrial dispute in 2007 and this Court admitted the writ petition in the year 2008 and the petitioner is already aged about 56 years and is nearing the age of superannuation also. Therefore, this Court is not inclined to accede to the said request made by the learned Standing counsel in order to put a quietus to the litigation.

In the above circumstances, this Court has absolutely no scintilla of hesitation nor any shadow of doubt to hold that the order of removal, as confirmed by the impugned award, is in violation of the regulations and also the principles of natural justice and is shockingly disproportionate to the alleged delinquency.

For the aforesaid reasons, the writ petition is allowed setting aside the award, dated 25.06.2008, passed by the Labour Court in I.D.No.59 of 2007 and consequently, the order of removal passed by the Depot Manager, Kalwakurthy Depot, Mahabubnagar District, vide proceedings No.P1/1(3)/2006-KLKY, dated 16.03.2006, is also set aside. The respondent Corporation is directed to reinstate the petitioner into service with all benefits such as seniority,

increments and attendant benefits with half of the back wages.

Miscellaneous petitions, if any, shall stand closed.

There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 29.06.2017
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L.R. copies to be marked.

