

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

WP.No.28625 of 2007

ORDER:

This Writ Petition has been filed by the petitioner challenging the proceedings No.P1/1/(68)/2007-MTM, Machilipatnam dt.27.12.2007 (for short, '**the impugned order**') of the 4th respondent, removing the petitioner from service of the 1st respondent-Corporation.

2. The petitioner was employed as a conductor in the 1st respondent-Corporation at its Machilipatnam Depot.

3. Alleging that the petitioner was unauthorisedly absent from 09.05.2007, a charge-memo dt.24.05.2007 was issued to petitioner with the following charges :

"1. For having unauthorisedly absented to his duties from 09.05.2007 without any intimation or sanction of leave, causing much inconvenience in operational routine.

2. For having availed E.leave 18 days, reported sick for 63 days and absented for 90 days during the years from 2005 to 2006 and caused much inconvenience in operation of service.

3. For having produced Govt. Hospital sick from 09.05.2007 to 15.05.2007 to cover absenteeism even though RTC Dispensary available at Machilipatnam itself."

4. No explanation was submitted by the petitioner to the said charges. Therefore, the Assistant Manager, Transport, Machilipatnam was appointed as an enquiry officer.

5. He submitted a report dt.17.07.2007 stating that the charges leveled against the petitioner were proved.

6. Copy of the said report was served on petitioner on 18.07.2007, and he was to submit his comments thereon.

7. The petitioner then made a request on 29.07.2007 to grant him more time to submit his remarks. Since this request was made long after the time fixed in the proceeding dt.18.07.2007, the 4th respondent considered the evidence on record and agreed with the findings of enquiry officer. He held that the plea of petitioner, that he suffered with piles and blood motions and his family members admitted him in Government Hospital for taking treatment, was not established since he did not bring any evidence of his admission into the Government Hospital. He concluded that petitioner was unauthorisedly absent from 08.05.2007 to 28.05.2007 without any intimation or sanction of leave; that he produced a certificate from the Government Hospital that he was sick from 09.05.2007 which was extended up to 28.05.2007 even though there was a notified dispensary of the 1st respondent available at Machilipatnam; and therefore, petitioner had no interest in the job, and he ought to be removed from service.

8. Thereafter, another notice dt.03.09.2007 was issued to petitioner to show-cause why punishment of removal should not be imposed on him.

9. The petitioner gave an explanation on 24.09.2007 assuring that he would discharge his duties sincerely in future and requested to give

him an opportunity to serve the Corporation and to prove that he was a good productive employee.

10. On the basis of this explanation, he was taken on duty by dropping the proposal to remove him from service.

11. However, he availed then 17 days of Earned Leave, produced a sick certificate for three days from the RTC Hospital, another sick certificate from Government Hospital for 35 days and absented for 14 days after 28.05.2007.

12. The 4th respondent found that petitioner was absent from 14.12.2007 to 17.12.2007 and produced a sick certificate from the Government Hospital, Machilipatnam for 3 days from 18.12.2007, violating the promise made by him that he would work sincerely in future. Therefore, the 4th respondent concluded that petitioner had no interest to perform his duties, that he was causing much inconvenience to the travelling public, that it was undesirable to continue him in service. So he then passed the impugned order of removal.

13. The counsel for petitioner contended that the punishment of removal from service is disproportionate to the alleged misconduct and that without there being any charge for his subsequent absence, the punishment of removal imposed on him was contrary to law and cannot be sustained. He placed reliance on the Division Bench

judgment of this Court in **M. Murali Krishna v. APSRTC, Musheerabad, Hyderabad and another**¹.

14. The respondents filed a counter-affidavit stating that petitioner absented from duties from 09.05.2007 without any intimation or sanction of leave and produced a certificate from Government Hospital for a period of one week from 09.05.2007 to cover his absenteeism, and therefore, the charge-memo dt.24.05.2007 was issued to him. It was stated that though punishment of removal was proposed in the show-cause notice dt.03.09.2007 issued to petitioner by the 4th respondent after accepting the report of the enquiry officer, but taking note of the explanation dt.24.09.2007 given by petitioner to the said show-cause notice undertaking to discharge his duties sincerely in future, he was taken on duty. It is stated that contrary to the said undertaking, the petitioner again availed (17) days of Earned Leave, produced R.T.C. sick certificate for (3) days, another sick certificate from Government Hospital for (35) days and absented for (14) days. Therefore, in view of his unauthorized absence from 14.12.2007 to 17.12.2007 and production of sick certificate from Government Hospital, Machilipatnam from 18.12.2007, it was concluded that petitioner was not interested to perform his duties and the impugned order of removal was passed.

15. The evidence on record reveals that petitioner had history of unauthorized absence and the charge-memo dt.24.05.2007 specifically mentioned his conduct in taking leave without sanction and producing

¹ Judgment dt.05.04.2005 in W.A.No.769 of 2005

sick certificate from Government Hospital though an R.T.C. dispensary was available at Machilipatnam itself.

16. After the charges were held proved, a show-cause notice dt.03.09.2007 was issued to the petitioner, but he submitted explanation dt.24.09.2007 undertaking to discharge his duties sincerely in future and requested to give him one more opportunity to serve the Corporation and to prove himself as a productive employee in future. Therefore, taking a sympathetic view, the petitioner was taken on duty.

17. But, even thereafter, he availed (17) days of Earned Leave, produced sick certificate from R.T.C. Hospital for (3) days, and another sick certificate from Government Hospital for (35) days, and absented for (14) days after 28.05.2007.

18. Taking these facts into account and his subsequent absence unauthorisedly from 14.12.2007 to 17.12.2007, the impugned order of removal of service was imposed on the petitioner.

19. The above conduct of petitioner in repeatedly availing leave without sanction and producing sick certificate from Government Hospital when there is a dispensary of the 1st respondent available might no doubt indicate that petitioner was not interested to perform his duties.

20. However, the fact remains that no charge was framed against the petitioner for his subsequent absence for this period and the

charge-memo issued on 24.05.2007 did not cover his absence for the period after 28.05.2007.

21. Therefore, it was not fair on the part of the Corporation to terminate his services without framing a specific charge and conducting enquiry against him on the basis of the said charge. Therefore, there has been a gross violation of principles of natural justice.

22. The Division Bench of this Court in **M. Murali Krishna** (1 supra) also held that without there being a specific charge for the duration of unauthorized absence on the basis of which the punishment was imposed, it was not proper to terminate the services of an employee and that it would amount to arbitrariness.

23. Moreover, this Court, while admitting the Writ Petition, had directed that petitioner be continued in service by suspending the proceedings dt.27.12.2007 terminating his services. This order has been in vogue for almost nine years. It is not complained by the respondents that during this period also the petitioner was irregular in attending his duties. Therefore, it would not be in the interests of justice at this point of time to give an opportunity to the respondents to conduct an enquiry into the conduct of petitioner relating to his absence after 28.05.2007.

24. Accordingly, the Writ Petition is allowed, and the impugned proceedings dt.27.12.2007 of the 4th respondent is set aside on the

ground of violation of principles of natural justice. No order as to costs.

25. As a sequel, miscellaneous petitions, pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 22.02.2017

Ndr/*

