

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.4270 of 2006

ORDER:

This writ petition, under Article 226 of the Constitution of India, by the petitioner-workman is directed against the Award, dated 10.04.2003, of the learned Presiding Officer of the Labour Court II, Hyderabad, passed in ID.no.47 of 2001.

2. I have heard the submissions of *Sri P. Govinda Rajulu*, learned counsel for the writ petitioner, and of *Sri N. Vasudeva Reddy*, learned Standing Counsel appearing for the respondent. I have perused the material record.

3. The parties in this writ petition shall hereinafter be referred to as the petitioner-workman and respondent-Corporation.

4. The facts, which are necessary to be stated as a preface to this order, in brief, are as follows: "On 09.06.1980, the petitioner was appointed in the respondent Corporation as a temporary conductor. While working in Nirmal Depot, the petitioner unauthorisedly absented from duties. Therefore, he was removed from service with effect from 16.02.1982. However, pursuant to the orders of this Court holding the said orders of removal from service as void, the order of removal was revoked by an order, dated 22.04.1982; and, the petitioner was directed to report to duty at Kamareddy Depot. Accordingly, the petitioner reported at Kamareddy Depot, on 12.05.1982. Thereafter, he did not report to duty. Hence, he was removed from service *vide* order dated 17.09.1982. Therefore, in the year 2001, the petitioner-workman raised an industrial dispute by filing a claim petition before the Labour Court. The said claim petition was resisted by the Corporation, *inter alia*, contending that after reporting to duty at Kamareddy Depot, on 12.05.1982, the petitioner absconded from duties and that after having kept quiet for a long time of more

than 20 years, he approached the Labour Court and, therefore, his claim petition is liable to be dismissed. On merits and by the orders impugned in this writ petition, the Labour Court partly allowed the claim petition of the petitioner and directed his reinstatement into service as a fresh Conductor without back wages, continuity of service and attendant benefits. Aggrieved thereof, the petitioner is before this Court.”

5. Learned counsel for the petitioner while stating the chronology of events would submit as follows: “It is for the management of the Corporation to produce the service record of the petitioner to show as to what had happened in the case of the petitioner after 12.05.1982. However, no such record was produced. The services of the petitioner were terminated without conducting departmental enquiry and without following any procedure. The said course of action adopted by the respondent Corporation is arbitrary. Therefore, the petitioner approached the Labour Court. The Labour Court having held that the petitioner believed that he was orally terminated from service and that the petitioner is entitled to the relief ought to have granted the back wages and attendant benefits while ordering reinstatement into service instead of directing his appointment as a fresh conductor. The Labour Court ought not to have, *inter alia*, observed in its Award that in the facts and circumstances of the case it must be taken that all these years the petitioner absconded from duty and that he did not give reasons for the same. Such observation ought not to have been made by the learned Presiding Officer of the Labour court merely because the Corporation did not produce any record and as there was long silence on the part of the petitioner in approaching the Labour Court. For non production of the service record of the petitioner by the Corporation, an adverse inference ought to have been drawn against the Corporation and the reliefs as prayed for ought to have been granted to the petitioner instead of ordering his appointment afresh as a conductor.”

6. Per contra, learned Standing Counsel for the Corporation would contend as follows: “The petitioner joined in the service of the Corporation, on 09.06.1980, as a Conductor. He unauthorisedly absented from attending to duties. Therefore, he was removed from service with effect from 16.02.1982; however, he was reinstated as per the orders of this Court by passing revocation orders, dated 22.04.1982; and, he was directed to report to duty before Kamareddy Depot; accordingly, he reported to duty at Kamareddy Depot, on 12.05.1982. Thereafter he did not report to duty and had absconded from service. In-fact, there was no record available with the Corporation. In a case of this nature, record need not be preserved, as per rules, beyond a reasonable period of three years. Merely because the record was not produced, the Labour Court ought not to have observed that the Corporation having not produced the record failed to prove that the service of the petitioner was legally terminated for any misconduct and that therefore the petitioner is entitled to reinstatement. The long silence on the part of the petitioner since May, 1982, till the year 2001 in which year the claim petition was filed before the Labour Court would show that he voluntarily absconded from duties and abandoned the services. In a case of abandonment of service, no enquiry is contemplated under the regulations of the Corporation. Indeed, no enquiry is also possible in the petitioner’s case. The whereabouts of the petitioner were not known for more than two decades and till he reappeared in the scene. The petitioner suddenly re-appeared like a bolt from the blue and filed the claim petition before the Labour Court only to make an illegal gain. The petitioner is not entitled to even the relief granted by the Labour Court. Even though the Labour Court out of generosity and mercy directed the petitioner to be appointed as a fresh conductor without any benefits of back wages and attendant benefits, the Corporation did not challenge the said Award. The petitioner filed the writ petition in the year 2006; by that time, he was aged 54 years; as on today he is not in service having been superannuated

from service about 5 or 6 years back. Therefore, there is no merit in the writ petition.”

7. From the facts and submissions, it emerges that the petitioner having joined the service of the Corporation as a Conductor in the year 1980 was once removed from service in February, 1982 and was reinstated pursuant to the orders of this Court by a revocation order passed in April, 1982 and reported to duty as directed by the Corporation at Kamareddy Depot, on 12.05.1982. Subsequently what had happened is not borne out by any record and the pleadings of the parties are also silent on the said aspect. The petitioner did not plead as to till what date he served as a conductor of the Corporation. The Corporation also did not plead as to till what date he served and from what date he absconded from service. As the Corporation failed to produce any record, the Labour Court took a view that the Corporation failed to prove that the service of the petitioner was legally terminated for any misconduct. At the same time, the Labour Court did not take into consideration the distance of time at which the petitioner approached the labour Court and also the fact that the petitioner also could not either plead or produce any record like his salary slips, privilege passes or any other record to show that he discharged duties and received salary during any month subsequent to May, 1982, and that he did not examine any one of his colleagues in the department to substantiate his case. Nevertheless, the petitioner sought to contend that he was under the impression that he was orally terminated from service by the Corporation. He did not plead the date or month or year of such termination, if any. Further, he did not specifically state as to when he has drawn such an inference and on what basis. He did not approach either the Corporation or the Labour Court within a reasonable time after May, 1982. Be that as it may, despite the fact that the petitioner approached the Labour Court after lapse of more than two decades, the Labour Court having found that the Corporation could not produce

any record to show that the services of the petitioner were legally terminated for any misconduct took a lenient view and granted the relief out of generosity and mercy by directing his re-appointment as a fresh conductor, however, without back wages, continuity of service and attendant benefits.

8. Learned counsel for the petitioner placed reliance on the following decisions: (i) P. Ramesh Babu v. Andhra Pradesh State Road Transport Corporation, represented by its Divisional manager<sup>1</sup>; and, (ii) Steel Authority of India Ltd., v. Presiding Officer and another<sup>2</sup>. In the decision in P. Ramesh Babu (1 supra), the facts disclose that reinstatement of a driver of the RTC, who was removed from service, was ordered by this Court despite the fact that he approached the Labour Court for redressal after a long delay of 7 ½ years from the date of removal from service. In the case on hand, on the ground of delay relief was not denied to the petitioner by the Labour Court, but, considering the fact that the delay is more than two decades, back wages and consequential benefits were denied while granting the relief of fresh appointment. In the decision in Steel Authority (2 supra), the facts disclose that to avoid apprehension by the police, the workman absented from duties without leave and, therefore, his services were terminated in the year 1980. The workman did not do anything in the matter till he moved for conciliation in the year 1991. As the termination was *ab initio* void, the Supreme Court, having referred to the facts and circumstances of the case therein, set aside the order directing payment of full back wages and substituted it by ordering 25% of back wages.

8.1 Placing reliance on the above two decisions, learned counsel for the petitioner-workman alternatively contended that some percentage of back wages may be awarded. However, learned standing counsel for the Corporation contended that the delay in those cases was condonable delay

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<sup>1</sup> 1994(1) ALT 111

<sup>2</sup> 1995 Supp (4) SCC 109

whereas in the case on hand the delay is an abnormal delay of more than two decades and that in the case on hand the petitioner has already retired from service and that if any back wages or any other benefits are awarded, the Corporation would suffer financial loss and that the acts and conduct such as those of the petitioner, if encouraged would set a bad precedent and push other employees to indulge in acts of similar misconduct and sharp practices.

9. On the analysis of all the circumstances of the case and keeping in view the following facts viz., that the learned Presiding Officer of the Labour Court exercised the discretion generously in favour of the petitioner; that the Corporation did not challenge the award of the Labour Court directing appointment of the petitioner as a fresh conductor; that the delay on the part of the petitioner in seeking redressal is abnormal; and that the petitioner worked without any complaints after his fresh appointment and retired from service, this Court does not find any reason much less valid reason to grant any further reliefs or benefits to the petitioner as the petitioner is not entitled to any such benefits/ reliefs.

10. As a sequel, this Court holds that there is no merit in any one of the contentions of the writ petitioner and that the writ petition, which is devoid of merit, is liable to be dismissed.

11. Accordingly, the Writ Petition is dismissed.

Pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

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JUSTICE M. SEETHARAMA MURTI

13.03.2017  
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