

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.2384 of 2007

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed by the petitioner, former employee of Singareni Collieries Company Limited (hereinafter, 'the Company') assailing the Award, dated 15.04.2004, passed by the learned Chairman, Industrial Tribunal-cum-labour Court, Godavarikhani, ('the Tribunal', for short) in ID.No.40 of 2003.

2. I have heard the submissions of *Sri G. Praveen Kumar*, learned counsel for the writ petitioner, and of *Sri Nandigam Krishna Rao*, learned Standing Counsel representing the respondents. I have perused the material record.

3. The case of the petitioner and the submissions made on his behalf, in brief, is as follows:

The petitioner was appointed in the respondents' Company as Badili Filler, on 12.02.1992, and worked for eight years. He was removed from service on the ground of absenteeism. He had applied for reappointment. The said request was not considered by the company. Therefore, he raised an industrial dispute and filed a claim petition. The same was resisted by the company. On merits, the claim petition was dismissed. Therefore, the present writ petition is filed.

4. Learned counsel for the petitioner would submit as follows:

The petitioner served the Company for eight years having joined as a Badili filler in the year 1992. On the ground of absenteeism he was removed from service. Therefore, he applied for re-appointment. There was a settlement between the management of the Company and workmen. As per settlement there is a provision for re-appointment on reviewing cases of the

workmen who are dismissed on the ground of absenteeism. Some workmen were re-appointed after they were called for interview. However, this petitioner was not reappointed. Since the date of removal from service on the ground of absenteeism, the petitioner is not working anywhere; and, he could not secure any job. He and his family members are suffering a lot. He is unable to eke out his livelihood. The Tribunal did not properly appreciate the facts and evidence and failed to grant any relief. Therefore, the Award is liable to be set aside.

5. Per contra, the case of the Company is this:

After the appointment of the petitioner on 20.02.1992 in the Company, the petitioner has put in only 36 musters in the year 1997. He was issued a charge sheet, dated 16/17.2.1998, as per the relevant provisions of the standing orders of the Company related to habitual late attendance and habitual absence without leave or without sufficient cause. The petitioner did not submit any explanation to the charge sheet. An enquiry was ordered fixing the date of enquiry on 31.7.1998. The petitioner attended before the enquiry officer and participated in the enquiry. He was given full and fair opportunity to defend himself. He admitted the charges levelled against him and did not choose to cross examine the witnesses of the management and stated that he has no defence witnesses to be examined on his behalf. The enquiry officer submitted a report holding that the charge is proved. After a show cause notice, dated 02.09.1998, was issued to him along with a copy of the enquiry report and proceedings, he submitted a representation, dated 25.09.1998. As his submissions in his reply are unsatisfactory the disciplinary authority decided to dismiss the petitioner from service. Accordingly, he was dismissed from service with effect from 11.10.1998 vide order, dated 05.10.1998. The petitioner's attendance was very poor from the beginning of his service. In the years 1994, 1995, 1996 and 1997 he attended for 125 days,

126 days, 68 days and 36 days respectively. During the year 1998 he worked for 8 days till the date of his dismissal from service by order dated 05.10.1998. The petitioner did not put in the mandatory musters of 190 days per year from the year 1994 onwards. He failed to improve his performance even after issuance of a charge sheet. During the enquiry he stated that due to ill health he could not attend to duties regularly. The Company carries on mining operations and is engaged in exploration, excavation, extraction and winning of coal in four districts of Andhra Pradesh. It has a well established chain of hospitals in all its areas to cater to the health requirements of employees. Such hospitals, as per regulations, are manned by qualified medical practitioners. Complicated cases will be referred to outside hospitals like Osmania general hospital, Ghandi Medical hospital and NIMS and charges for treatment of employees will be borne by the company. The petitioner is aware of the same but he did not avail any such facilities. If he was really sick he ought to have availed such medical facilities for treatment on sick leave. He did not do so. Unauthorised absence creates sudden void and it becomes difficult to fill up such void; and, the pre-planned work and work schedules will get disturbed if employees absent without prior notice. In the circumstances, the Company was justified in formulating charges and conducting an enquiry and in dismissing the petitioner from service after the enquiry officer submitted a report holding that the charges are proved in the duly conducted enquiry. In accordance with memorandum of settlement, dated 21.02.2000, review of cases of workmen dismissed on absenteeism grounds during the period from 01.01.1997 to 31.12.1999 was under taken and the workmen were called for interview. A High Power Committee reviewed the cases of ex-workmen and recommended for re-appointment of some of the workmen who deserved favourable consideration on merits for re-appointment as Badili Fillers for a period of one year on trial basis. The case of the petitioner was not recommended by the said committee for re-

appointment as his performance was poor during the periods from 1994 to 1996. The interview call letter does not confer any right for re-appointment on the petitioner. He is a habitual absentee. He absented without reasonable cause. Hence, the writ petition is devoid of merit and is liable to be dismissed.

6. Learned counsel for both the parties advanced arguments in line with the contentions of the parties.

7. The facts borne out by the record are as follows:

‘The petitioner, who joined in the service of the Company in the year 1992, was irregular in attending to his duties. He was charge sheeted for habitual absenteeism. However, he failed to submit his explanation to the charge formulated. An enquiry was ordered. The petitioner participated in the enquiry. During the course of enquiry he admitted the charges levelled against him and did not choose to cross examine witnesses examined on behalf of the management; he further stated that he has no defence witnesses to examine on his side. The enquiry officer submitted a report holding that the charge is proved. After issuing a show cause notice and following the procedure, an order of dismissal from service was passed, on 5.10.1998, and the petitioner was dismissed from service with effect from 11.10.1998. Admittedly, the petitioner worked for 125 days during the year 1994, 126 days in the year 1995, 68 days during the year 1996, 36 days during the year 1997 and for only eight days in the year 1998 till his dismissal in the month of October, 1998. The petitioner has put in only 36 musters in the year 1997. That is the reason for issuing the charge sheet dated 16/ 17.02.1998. Thus, the petitioner did not put up even the required number of mandatory musters of 190 days per year from 1994 onwards and did not improve his performance despite issuing a charge sheet. Even though the dismissal order was passed in the year 1998, he did not approach the Tribunal immediately

thereafter. Though his case is that he could not regularly attend to his duties due to illness, he did not produce any evidence in support of the said explanation.'

8. As rightly contended by the Company he did not avail medical facilities in any of the established hospitals of the Company. If really he was sick he ought to have availed sick leave and medical facilities being provided by the Company. He did not do so. On the other hand, he admitted the charges formulated against him at the time of enquiry. Be that as it may. There was a memorandum of settlement dated 21.02.2000 between the Company and the workmen providing for review of cases of workmen dismissed during the period from 01.01.1997 to 31.12.1999 on the grounds of absenteeism and their re-appointment if they deserved favourable consideration on merits. The petitioner had also made an application for his re-appointment. The scheme is applicable to the workman who was dismissed on absenteeism grounds. Along with others, the petitioner was also called for an interview. The high power committee which reviewed all such cases of ex-workmen, however, recommended cases of some of the workmen who deserved favourable consideration on merits for re-appointment as Badli fillers for a period of one year on trial basis. However, the case of the petitioner was not recommended due to his poor performance during the period from 1994 to 1996. Thereafter, the petitioner raised an industrial dispute and filed a claim petition in the year 2003. The learned Chairman of the Tribunal having considered the facts and the material on record, in detail, recorded a finding that the petitioner is not entitled to any relief. When once conclusions arrived at by the enquiry officer and the Chairman of the Tribunal are found to be sustainable on facts, this Court will not normally substitute its subjective opinion in the place of the one arrived at by the said officers.

9. In the result, the Writ Petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M. SEETHARAMA MURTI

25.04.2017
Vjl

