

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

WRIT PETITION No. 6639 OF 2007

ORDER:

This writ petition, under Article 226 of the Constitution of India, by the petitioner/Depot Manager, APSRTC, is directed against the Award, dated 17.05.2006, passed in I.D.No.16 of 2003 by the learned Chairman-cum-Presiding Officer of the Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad, ('the Tribunal', for short).

2. I have heard the submissions of Sri V.T.M.Prasad, learned Standing Counsel appearing for the writ petitioner, and of Sri N.Vasudeva Reddy, learned counsel appearing for the first respondent-Workman. The 2nd respondent is the Tribunal. I have perused the material record.

3. The facts and the case of the workman, which are necessary to be stated as a prelude to this order, in brief, are as follows:

"The first respondent was appointed, on 01.10.1991, as a casual Driver in the petitioner-Corporation. According to him, he suffered severe back pain on and from 20.02.2002 and, therefore, he was admitted into Tarnaka Hospital of the Corporation on the same day; he was issued a sick certificate on the same day; he sent the said Certificate through his colleague to the Depot Manager; he underwent treatment till

12.04.2002; and, during that time he was bed ridden and was confined to the hospital bed; on 12.04.2002, he was discharged from the hospital; and, the hospital authorities issued a fitness certificate stating that he was fit to join duty from 13.04.2002; he produced the said medical certificate and fitness certificate on the same day and requested the petitioner-Depot Manager to admit him to duty; but, the said Depot Manager refused to take him to duty and failed to allot any duties to be performed by the petitioner; therefore, the petitioner went and met the Chief Inspector; yet, no duty was allotted to him to be performed; ultimately, the first respondent-Workman sent letter, dated 22.06.2002, to the petitioner-Depot Manager requesting him to allow him to duty and allot work; but, the said request was not considered; thereafter, a notice, dated 05.07.2002, was issued to the 1st respondent-workman to attend an enquiry, on 01.07.2002; but, the said notice was received by the respondent on 06.07.2002; therefore he sent a letter to the Depot Manager and also to the Enquiry Officer i.e., Chief Inspector of Ranigunj-II Depot, to furnish the documents and also requested to conduct an enquiry after furnishing the documents; without furnishing any documents, the Management removed him from service *vide* proceedings, dated 21.10.2002; hence, he raised an Industrial Dispute and sought to set aside the proceedings, dated 21.10.2002, and direct the Management to take him into service with

continuity of service with all attendant benefits and full back wages.”

4. Per contra, the case of the writ petitioner/Depot Manager is this:

“The allegations leveled by the first respondent-Workman are incorrect. The first respondent was appointed as Casual Driver and his services were regularized with effect from 17.05.1993; punishments were imposed against him, a number of times; he was earlier subjected to censure; and, his annual increments were deferred three times; the Traffic Inspector, Ranigunj-II Depot, in his report, dated 08.04.2002, informed that the first respondent was unauthorisedly absent from duty from 20.02.2002 to 08.04.2002 without intimation or prior sanction of leave and that the unauthorized absenteeism resulted in cancellation of services and inconvenience to travelling public besides loss of legitimate revenues to the Corporation; as such, charges were framed and charge sheet was issued; when it was caused to be served at his house, the same was returned undelivered; thereafter the copy of the charge sheet was displayed for seven days on the notice board; on failure of the first respondent-workman to submit his explanation, the Chief Inspector was nominated to conduct a detailed enquiry; the said Enquiry Officer sent a notice, dated 12.06.2002, to the first respondent-workman to attend enquiry, on 27.06.2002 and the said notice was also

returned undelivered; the subsequent notices also could not be served; and, there was no response from the first respondent; after giving all reasonable opportunities to the first respondent, an *ex parte* enquiry was conducted by the enquiry officer and he submitted a report holding that the charges leveled against the workman are proved; based on the report and material available on record, the penalty of removal from service was imposed after issuing show cause notice and as the first respondent-workman failed to submit any explanation to the show cause notice.”

5. The learned counsel for the parties advanced arguments in line with the respective contentions of the parties, which are stated supra, in detail.

6. To begin with, it is to be noted that the charge sheet and the notice of enquiry were not served on the first respondent-workman and ultimately an *ex parte* enquiry was conducted and enquiry officer held that the charges are proved. The learned Chairman of the Tribunal after detailed examination held that in the facts and circumstances of the case the Domestic Enquiry is invalid. Both parties adduced evidence before the Tribunal. The workman and the witness of the Management were examined as WW1 and MW1 and exhibits M1 to M8 were marked.

7. The charge reads as follows:

“You have unauthorisedly absented to your duties from 20.02.2002 to till date and failed to submit sick certificate within 48 hours as a result of which cancellation of service much inconvenience to the travelling public besides loss of revenue to the Corporation which constitutes misconduct in terms of Reg.28(xxvii) of APSRTC Employees’ (Conduct) Regulations, 1963.”

8. Though it is the case of the petitioner-Corporation that the petitioner unauthorisedly absented from duty, it is borne out by the record that the first respondent-workman produced exhibit M5 Certificate during the course of enquiry. His oral evidence coupled with the documentary evidence reflects that he was hospitalized during the period from 20.02.2002 to 12.04.2002 and that, after discharge from the hospital, he was given a fitness certificate, on 13.04.2002. The authenticity of the said documentary evidence is not doubted by the Tribunal as the same was issued by the Civil Surgeon of the hospital of the Corporation. Therefore, the Tribunal held that there is no wilful default or negligence on the part of the first respondent-workman in not attending to duty as he has fallen sick during that period from 20.02.2002 to 08.04.2002, the date of the charge sheet. The workman also addressed a letter to the Depot Manager, on 22.06.2002; and he also affirmed in his evidence that he sent intimation to the writ petitioner Corporation about his sickness and that he

had also addressed a letter to the Depot Manager. The oral evidence of the first respondent-workman was sufficiently corroborated by documentary evidence i.e., exhibit M5-Sick Report evidencing his sickness from 20.02.2002 to 12.04.2002. To his said letter a Certificate was also annexed and it reflects that he was fit to join duty from 13.04.2002.

9. On a careful examination of the evidence, the Tribunal believed the version of the first respondent that he fell sick during the period mentioned in the gravaman of the charge and that, therefore, there are no grounds to hold that the charge is proved. On such analysis, this court finds that the Tribunal is justified in holding that the first respondent is entitled to the relief claimed in the claim statement and in accordingly ordering reinstatement of the first respondent into service with continuity of service and with all benefits with full back wages except for the period from 12.02.2002 to 12.04.2002, which was considered as sick leave without pay.

10. Though the learned counsel for the petitioner-Corporation contended that exhibit M5-Certificate sent along with the report of the workman discloses that the date 12.04.2002 is over written as 13.04.2002 and such Certificate cannot be believed, this court is not inclined to accept the said submission, as such a contention was not raised before the Tribunal and no cross examination of the workman was done on the said aspect. In the decision in **Union of India v.**

P. Gunasekaran¹ the Supreme Court dealt with the scope of interference of this Court under Articles 226 or 227 of the Constitution of India and held, *inter alia*, as under:

“In disciplinary proceedings High Court is not and cannot act as a second court of first appeal and that the High Court, in exercise of its powers Under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence and that the High Court can only see whether:

- (a) the enquiry is held by a competent authority;**
- (b) the enquiry is held according to the procedure prescribed in that behalf;**
- (c) there is violation of the principles of natural justice in conducting the proceedings;**
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;**
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;**
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;**
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;**
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;**
- (i) the finding of fact is based on no evidence.”**

When once the conclusion arrived at by the Chairman of the Tribunal is 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 Chairman of the Tribunal

11. Viewed thus, this Court finds that there is no merit in the writ petition and the writ petition is liable to be dismissed.

¹ (2015) 2 SCC 610

12. Accordingly, the Writ Petition is dismissed.

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

JUSTICE M. SEETHARAMA MURTI

February 1, 2017
LMV

