

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

WRIT PETITION No.4521 of 2006

ORDER:

This writ petition, under Article 226 of the Constitution of India, is directed against the orders, dated 29.10.2004, of the learned Presiding Officer of the Central Government Industrial Tribunal-cum-Labour Court at Hyderabad ('the Tribunal', for short), passed in L.C.I.D.No.148 of 2003.

I have heard the submissions of *Sri Dr.P.B. Vijaya Kumar*, learned counsel appearing for the writ petitioners. Though the respondent-workman is served with notice, none appeared. I have perused the material record.

The facts, which are in narrow compass, in brief, are as follows:

The respondent-workman was charged with 'habitual absence without leave' or 'absence without leave for more than 21 days' or 'overstaying the sanctioned leave without sufficient grounds or proper and satisfactory explanation' and a charge sheet was duly issued to him, on 06.02.2001. He submitted a reply, dated 13.02.2001. As his submissions in reply are not satisfactory, a domestic enquiry was ordered against him. After due enquiry, the enquiry officer submitted a report, dated 12.11.2001, holding the respondent-workman guilty of the charges levelled against him. On forwarding the report to the respondent-workman, he gave a reply, dated 26.12.2001, and submitted that his unauthorised absence was due to the sudden demise of his brother and mother and his ill-health. However, he failed to produce any documentary evidence in support of his said submissions. He was issued charge sheet for remaining absent unauthorisedly for 618 days on various

occasions during the period from January, 1996 to December, 2000. The said unauthorised absenteeism was in addition to 259 days of various kinds of leave availed by him during the said period. He was also counselled and cautioned verbally as well as in writing on several occasions by his superiors in the past; yet there was no improvement in his attendance record. Therefore, the disciplinary authority having accepted the report of the enquiry officer considered that the extreme punishment of dismissal from the services of the Corporation would be fully justified; however, taking a lenient view, the disciplinary authority imposed the punishment of discharge from services of the Corporation in terms of Clause 32(1)(f) of the Standing Orders applicable to the respondent-workman. Aggrieved thereof, the respondent-workman preferred an appeal before the appellate authority. The appellate authority having considered the facts and circumstances eventually concurred with the view of the disciplinary authority and confirmed the punishment of discharge from the services of the Corporation. Aggrieved thereof, an industrial dispute was raised and reference was made to the Tribunal. The Presiding Officer of the said Tribunal having noted *inter alia* that the punishment imposed was dismissal from service modified the punishment and reduced it to compulsory retirement. Aggrieved thereby the management is before this Court.

Learned counsel appearing for the petitioners would submit that after taking a lenient view the disciplinary authority imposed a punishment of discharge from services and the said punishment was confirmed by the appellate authority and that the Tribunal erroneously modified the punishment to one of compulsory retirement, which is not one of the punishments as per the Standing Orders of the management

and that the Presiding Officer of the Tribunal did not exercise the discretion properly while modifying the sentence to one of compulsory retirement and that the punishment was modified on the assumption that the punishment imposed by the disciplinary authority and confirmed by the appellate authority is dismissal from service while in-fact the punishment imposed was discharge from service and that even the said punishment imposed would entitle the respondent-workman to all the terminal benefits. He, therefore, submitted that the order impugned is liable to be set aside and the punishment imposed by the disciplinary authority and confirmed by the appellate authority is to be restored.

I have given earnest consideration to the facts and submissions. The only question for consideration is as to whether the order impugned in this writ petition in so far as it related to modifying the punishment of discharge from service to one of compulsory retirement calls for interference.

To begin with, it is to be noted that in the order impugned, the Presiding Officer of the Tribunal proceeded on the assumption that the punishment imposed was dismissal from service though in the operative portion of the Award he again mentioned that the punishment of discharge from service is converted into one of compulsory retirement. It is to be noted that while modifying the punishment, no reasons much less valid reasons are assigned by the Presiding Officer of the Tribunal. In-fact, the Presiding Officer has noted in the order impugned that 'practically every month he was unauthorisedly absent except in June, 2001 and that his subsequent conduct also shows that he absented from duties for 93 days despite the fact that he was given counselling also'; yet, only taking into consideration the fact that he served the

organisation for 20 years, the punishment was modified thinking that compulsory retirement from service is one of the punishments as per the Standing Orders of the Corporation, while in-fact, there is no such punishment prescribed under the Standing Orders. It is to be noted that before exercising the discretion, the Presiding Officer must assess the gravity and magnitude of the misconduct found proved against the workman and his past conduct; further, such exercised discretion must depend upon the facts and circumstances of the case; and, reasons must be recorded to the effect that the punishment imposed by the disciplinary authority and confirmed by the appellate authority was not justified. In that view of the matter, this Court finds that the discretionary jurisdiction exercised by the Presiding Officer is not based on sound reasoning and was arrived at in a casual fashion though, in-fact, the disciplinary authority provided an opportunity to the workman before taking a lenient view and imposing the punishment of discharge from service. A plain perusal of the order impugned would show that the Presiding Officer did not examine the various aspects of the measure and nature of penalty, which were indeed properly considered by the disciplinary authority as well as the appellate authority in this case. It is to be remembered that any misplaced sympathy would cause more harm to the establishment, which provides source of livelihood for many number of employees, than any good for the employee concerned. Therefore, it is always necessary while dealing with the measure of punishment to consider the repercussions that would result, in the event of any misplaced sympathy shown to an employee who indulges in certain acts of misconduct. In the facts and circumstances of the case, the penalty of discharge imposed by the disciplinary authority and confirmed by the appellate authority admittedly is not going to affect

any monetary benefits to which the workman is entitled to on such discharge. Therefore, there was no necessity for the Presiding Officer of the Tribunal to interfere with the punishment and modify it to one of compulsory retirement, more particularly, when such punishment is not prescribed as one of the penalties by the Standing Orders of the management.

On the above analysis, this Court finds that the order impugned brooks interference.

In the result, the Writ Petition is allowed and the order impugned is accordingly set aside. As a sequel, the punishment imposed by the disciplinary authority and confirmed by the appellate authority is restored. It is needless to say that the respondent is entitled to receive from the management all the monetary benefits to which he is entitled to in view of the punishment of discharge from service imposed against him.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed. There shall be no order as to costs.

M. SEETHARAMA MURTI, J

30.01.2017
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