

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 18179 OF 2007

ORDER :

Award dated 16.04.2007 in I.D. No. 156 of 2004 on the file of the Labour Court – I at Hyderabad is under challenge in this Writ Petition.

The brief facts are as follows:

The petitioner was appointed as a driver, on casual basis, in the respondent - erstwhile Andhra Pradesh State Road Transport Corporation (for short, 'the Corporation') on 27.03.1996 and thereafter, his services were regularized with effect from 31.08.1997. While so, he was served with a charge sheet with three charges, the sum and substance of which is mis-utilization of medical facilities as well as travel concession facilities, which are meant to be availed by the employees and their family members but not for the benefit of others. In the domestic enquiry, charges were held to be proved and a finding was recorded to the effect that the petitioner had utilized medical and travel concession facilities for his in-laws. Therefore, he was removed from service *vide* order dated 12.08.2004. Appeal preferred thereagainst was rejected on 05.04.2005. Thereafter, the petitioner approached the Labour Court by way of Industrial Dispute No. 156 of 2004, which also ended up in dismissal. Hence, this Writ Petition.

A counter-affidavit has been filed on behalf of the 2nd respondent denying the averments made by the petitioner. It has been stated that all the relevant statements including the preliminary inquiry report were furnished along with the charge

sheet, but the petitioner failed to submit explanation thereto. It has been further stated that the Inquiry Officer sent a notice to the petitioner requesting him to attend the inquiry to disprove the charges, but he did not turn up.

Sri S. Pradeep Kumar, learned counsel for the petitioner has made submissions three-fold; 1) the very initiation of domestic inquiry was on account of the complaint received from a third party and the respondent – Corporation had failed to furnish its copy to the petitioner, thereby depriving him of his opportunity to defend himself with respect to the charges; 2) even otherwise, the Labour Court ought to have exercised the powers conferred on it under Section 11-A of the Industrial Disputes Act, 1947 and reduced the punishment in the facts of the present case; and 3) in the alternative, the matter be remanded to the Labour Court for its consideration afresh.

The prayer of the writ petitioner is opposed by the learned Standing Counsel for the Corporation, both on merits and law.

Perused the record and considered the respective submissions. Insofar as the first contention is concerned, at the outset, it may be noted that in the case on hand, all-through, the petitioner failed to make an effort to defend himself. The petitioner, neither submitted any explanation to the charge sheet in spite of having an opportunity to do so, nor did he adduce evidence before the Inquiry Officer. As a result, an *ex parte* inquiry was conducted and even thereafter, when the notice was issued calling for his explanation why his services should not be terminated, the same was also not responded to by the petitioner.

In those circumstances, the disciplinary authority passed the order dated 12.08.2004 removing the petitioner from service. Hence, the same cannot be found fault with.

As regards the second submission, even before the Labour Court, the petitioner did not endeavour to adduce any evidence nor did he take a plea at least to the effect that the domestic inquiry was conducted *ex parte*. It is a well-settled principle that if the Labour Court finds that the punishment imposed on the workman is disproportionate to the gravity of the misconduct committed by him, it can interfere with the punishment under Section 11-A of the Act. In the absence of any material placed by the petitioner that the punishment of removal is disproportionate to the misconduct alleged against him, the Labour Court did not find any reason to interfere with the punishment. In those circumstances, this Court is in complete agreement with the Labour Court, both on facts and law.

Sofar as the alternative prayer of the petitioner is concerned, the same also cannot be accepted, as in the present case, the allegation against the petitioner squarely falls under Regulation 9 of the APSRTC Employees' (Classification, Control and Appeal) Regulations, 1967, under which removal from service as punishment is specified with respect to serious misconduct. In those circumstances, the allegation levelled against the petitioner would virtually amount to playing fraud and cheating in his capacity as an employee of the Corporation apart from intricate financial misappropriation. In those circumstances, there cannot be any consideration with respect to the punishment meted out to the petitioner. If the Labour Court finds the punishment imposed

on the workman as disproportionate to the gravity of the misconduct committed by him, it can interfere with the same under Section 11-A of the Act.

I see therefore, no reason to remand the matter to the Labour Court for its consideration afresh.

The Writ Petition accordingly, stands dismissed. No costs.

Consequently, the miscellaneous Applications, if any shall also stand dismissed.

06th January 2017

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CHALLA KODANDA RAM, J

