

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

WRIT PETITION Nos.13881 and 20399 of 2006

COMMON ORDER:

These two writ petitions, one by the employer-Bank; and, the other by the workman are directed against the Award, dated 22.03.2006, in I.D.No.85 of 2005 (Old ID.No.151 of 2003 of LC-I, Hyd.), passed by the learned Chairman, Industrial Tribunal-II, Hyderabad, ('the Tribunal', for short).

2. I have heard the submissions of Sri U. Venkateswara Rao, learned counsel appearing for the writ petitioner-Bank in WP.No.13881 of 2006 (respondent in WP.no.20399 of 2006), and of Sri G.Ravi Mohan, learned counsel appearing for the 1<sup>st</sup> respondent in WP.No.13881 of 2006 (writ petitioner in WP.no.20399 of 2006). 2<sup>nd</sup> respondent in WPno.13881 of 2006 is the Tribunal. I have perused the material record.

3. The parties to these writ petitions shall hereinafter be referred to as the writ petitioner-Bank and the 1<sup>st</sup> respondent-workman as arraigned in WP.no.13881 of 2006 for convenience and clarity.

4. The introductory facts are as follows:

4.1 The 1<sup>st</sup> respondent-workman was appointed as sub-staff, on 24.02.1982, in the writ petitioner-Bank. He was promoted as Clerk on 20.02.2002. However, as he remained absent from 03.06.2002 to duties, that is, without any prior permission and sanction of leave and as he had later sent a leave application, dated 25.08.2002, seeking leave for a period of (67) days, he was referred to a Doctor for certifying his mental and physical health condition. The Doctor by his report, dated 30.09.2002, certified that the 1<sup>st</sup> respondent-workman was physically

and mentally healthy and his health did not require him to avail such leave. Thereafter the 1<sup>st</sup> respondent-workman reported to duty and discharged his duties on 25 & 26/ 08/ 2002 and again failed to attend to duties by sending a telegram and stating that he was not feeling well and that a letter follows. Therefore, by a letter, dated 09.09.2002, he was asked to appear before the panel Doctor of the writ petitioner-Bank. Again the Doctor gave a report that the 1<sup>st</sup> respondent-workman was physically and mentally healthy and his illness does not require grant of any sick leave. Therefore, a telegram, dated 12.10.2002, was issued directing the 1<sup>st</sup> respondent-workman to report to duty; and, the said telegram was followed up by a letter, dated 12.10.2002. Thereafter, the 1<sup>st</sup> respondent-workman reported to duty and worked till 22.10.2002. Thereafter, he again remained absent from duty, from 23.10.2002. Therefore, a charge sheet, dated 03.12.2002, was issued stating that he remained absent to duties unauthorisedly between 03.06.2002 and 30.11.2002 for a period of 168 days without prior permission or sanction of leave from the competent authority. As his explanation, dated 16.12.2002, was found unsatisfactory, an enquiry was duly conducted and the enquiry officer submitted a report, dated 10.03.2003, holding that the charge formulated against the 1<sup>st</sup> respondent-workman was proved. The explanation offered by the 1<sup>st</sup> respondent-workman was found unsatisfactory. Therefore, the writ petitioner-Bank imposed a penalty of removal from service by proceedings dated 08.05.2003. His appeal was rejected vide proceedings dated 26.08.2003. Thereafter, the workman/ 1<sup>st</sup> respondent raised an industrial dispute wherein he did not dispute the due procedure that was followed while conducting the domestic enquiry. The learned Chairman of the Tribunal having examined the matter, in

detail, found that the 1<sup>st</sup> respondent-workman is guilty of the charges formulated against him and further held that there are no reasons to interfere with the said finding of the enquiry officer.

4.2 However, while considering the aptness and proportionality of the punishment, the learned Chairman of the Tribunal having found that the charges were framed against the 1<sup>st</sup> respondent-workman under the old regulations, which were in force at the relevant time, held, that to the case of the 1<sup>st</sup> respondent-workman, the earlier regulations, dated 23.10.1994, are only applicable though they are superseded by subsequent disciplinary action procedures, which came into effect from 16.12.2002. He further held that the alleged act, which constituted misconduct, and the punishment to be imposed have to be adjudged as per the penal law prevailing at the time of the commission of such acts constituting the misconduct, as it is settled law that penal provisions cannot be retrospective. Therefore, as per the regulations applicable, the learned Chairman of the Tribunal found that the graveman of the charge, that is, unauthorised absence, is only a minor misconduct and, therefore, the punishment of removal from service imposed by the management of the petitioner-Bank is illegal and grossly disproportionate to the proved misconduct and accordingly set aside the said punishment and directed reinstatement of the 1<sup>st</sup> respondent-workman into service by imposing a penalty of stoppage of increment for a period of 12 months as mentioned in the said old regulations, which are applicable; but held that the 1<sup>st</sup> respondent-workman is not entitled to back wages.

5. In this setting of facts, the aggrieved writ petitioner-Bank filed the writ petition to quash the Award insofar as it related to modification

of the punishment and restore the punishment of removal from service imposed upon the 1<sup>st</sup> respondent-workman; whereas the 1<sup>st</sup> respondent-workman filed the other writ petition assailing the finding in respect of non granting of back wages and stoppage of increment for 12 months as illegal and arbitrary and sought for setting aside the modified punishment and consequential granting of back wages.

6. In the writ petition filed by the Bank, on 11.07.2006, this Court, in WPMP.No.17291 of 2006, directed that there shall be interim suspension of the Award until further orders. However, vide orders dated 14.09.2006, the interim suspension granted on 11.07.2006 was modified to the effect that there shall be interim suspension subject to compliance of Section 17-B of the I.D.Act. Thereafter, it appears that the writ petitioner bank decided in its Board meeting to reinstate the 1<sup>st</sup> respondent-workman into duty instead of paying 17-B wages and accordingly issued a letter, dated 14.07.2008, to him directing him to join duty at Machilipatnam Branch within 7 days from the date of receipt of a copy of the said letter. However, the 1<sup>st</sup> respondent having acknowledged the receipt of the said letter sent a reply, dated 22.07.2008, stating that he was recently hospitalised due to some ailment and that it is impossible for him to work at Machilipatnam, which is at a distance of 450 KMs from Hyderabad, and that he may be given the option of posting at Hyderabad. In the said circumstances, the writ petitioner-Bank filed WPMP.32724 of 2008 in WP.No.13881 of 2006 requesting to modify the order, dated 14.09.2006, by making absolute the order dated 11.07.2006. However, no orders came to be passed in the said petition. The modified interim orders, dated 14.09.2006, to the

effect that there shall be interim suspension subject to compliance of Section 17-B of the I.D.Act continued to be operative and in force.

7. In view of the facts, which are not in dispute, the short question that falls for consideration is as to whether the 1<sup>st</sup> respondent-workman is entitled to the relief claimed in his writ petition (WP.no.20399 of 2006). Be it noted that the Chairman of the Tribunal having examined the correctness of the enquiry and the findings of the enquiry officer recorded a factual finding that the charge formulated against the 1<sup>st</sup> respondent-workman is duly proved. In the considered view of this Court, the said factual finding calls for no interference.

8. Coming to the aspect of proportionality of punishment, as rightly held by the learned Chairman of the Tribunal, the graveman of the charge dealing with unauthorised absence from duty being a minor misconduct as per relevant old regulation applicable to the case on hand, the penalty of removal from service is grossly disproportionate. Hence, the Tribunal is justified in setting aside the said punishment of removal from service.

9. Now the next question is as to whether the 1<sup>st</sup> respondent-workman is entitled to back wages, which were denied to him in view of the modified punishment imposed by the Tribunal. Admittedly, when the punishment of removal from service is unwarranted and is imposed contrary to the regulations applicable to the case of the 1<sup>st</sup> respondent-workman and when he was kept out of employment for no fault of him, he is entitled, in the considered view of this Court, to back wages when once he is found to be entitled to reinstatement on the ground that the misconduct is a minor misconduct. However, learned counsel for the

writ petitioner-Bank would submit that since the Bank made a fair offer by sending a letter reinstating the 1<sup>st</sup> respondent-workman and asking him to report to duty at Machilipatnam and as the 1<sup>st</sup> respondent-workman failed to comply with the said request and gave a reply letter, the writ petition of the 1<sup>st</sup> respondent-workman is to be dismissed. In the considered view of this Court, though the writ petitioner-bank filed an application for modification of the order, dated 14.09.2006, the Bank did not follow up the matter and therefore the order, dated 14.09.2006, of this Court remained in force and operative. Therefore, the contention of the writ petitioner-Bank that its request ought to have been considered by the 1<sup>st</sup> respondent-workman cannot be countenanced, in the face of the orders of this Court.

10. On the above analysis, this Court finds that the 1<sup>st</sup> respondent-workman is entitled to back wages; however since the charge with regard to minor misconduct is held proved, the punishment of stoppage of increment for 12 months as per the regulations applicable would be adequate, in the facts and circumstances of the case.

11. Accordingly, the writ petition of the Bank, WP.No.13881 of 2006, is dismissed and the writ petition of the workman, W.P.No.20399 of 2006 is allowed in part and the punishment imposed by the Tribunal is modified holding, *inter alia*, that the 1<sup>st</sup> respondent-workman, whose reinstatement was already ordered, is entitled to back wages as well. Nonetheless, the punishment insofar as withholding of increment for 12 months is alone confirmed. Accordingly, the writ petitioner-bank shall forthwith duly issue suitable orders of posting to the 1<sup>st</sup> respondent-workman.

Miscellaneous petitions, if any, pending in these writ petitions shall stand closed.

There shall be no order as to costs.

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M. SEETHARAMA MURTI, J

14-02-2017  
Vjl

