

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.17022 OF 2011

Dated:25.07.2017

Between:

G. Venkateshwarlu, S/o. Late G. Balaiah,
Aged 52 years, Occ: Shramik,
E.No.86005, R/o.2-8-44, Weekly
Bazazr, Nizamabad

.. Petitioner

AND

The Regional Manager,
APSRTC, Nizamabad, and another

.. Respondents



The Court made the following:

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

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ORDER:

At the relevant point of time, petitioner was working as Shramik. Disciplinary proceedings were initiated against him vide charge memo dated 13.11.2001 alleging unauthorized absence from duty from 01.04.2001 to 13.11.2001 without obtaining prior permission or sanction of leave from the competent authority. Disciplinary proceedings resulted in imposing punishment of removal from service by order dated 15.12.2003. The order of removal from service was challenged in I.D.No.107 of 2005 on the file of Labour Court – II, Hyderabad. On the question of absence from duty from 01.04.2001 to 13.11.2001, the Labour Court held as under:

“... Admittedly the petitioner was away from other official duty fro a period of 7 months. Being an employee it is bounden duty to inform the corporation about his absence from his official duty due to ill-health by a personal messenger or telegram but he did not do so. He did not examine the doctor who treated him in the said period. It is not known whether he really suffered ill-health or not.

He did not produce any medical certificate or by any cogent evidence in the said period. As per the records the petitioner has not produced any reliable information or medical certificate for his absent period. Since the petitioner has not produced any documentary evidence to prove his contention that the charge framed against him is stand proved.”

2. However, while taking due note of the fact that prior to the period for which disciplinary action was initiated, petitioner was sick and certain certificates were placed on record in support of sickness prior to the date from which his unauthorized absence is

alleged, the Labour Court found that the punishment of removal is not justified and that the petitioner is entitled to reinstatement. Accordingly, the I.D. was partly allowed and the removal order was set aside and directed reinstatement of the petitioner as 'fresh'. Challenging the award of the Labour Court to the extent of granting appointment as fresh candidate and denying the consequential benefits, this Writ Petition is filed.

3. Heard V. Narsimha Goud, learned counsel for the petitioner, and Sri N. Praveen Reddy, learned counsel representing Sri N. Vasudeva Reddy, learned Standing Counsel for the respondent - Corporation.

4. Learned counsel for the petitioner contends that the Labour Court, having recorded the finding that punishment of removal is not justified and set aside the punishment, erred in not granting consequential benefits and to the extent of treating appointment as fresh and thereby depriving the past service of the petitioner, the award of the Labour Court is liable to be set aside. He further submits that the fact that petitioner was sick having taken note by the Labour Court his further absence from 01.04.2001 was in continuation of his sickness he was suffering from and therefore a direction to treat the petitioner as fresh candidate was erroneous.

5. Sri N. Praveen Reddy, learned counsel, submits that the Labour Court has recorded clear finding of establishment of charge on unauthorized absence from 01.04.2001 to 13.11.2001. Thus, the very direction of the Labour Court in setting aside the removal itself was erroneous and since the charge was proved, petitioner is not entitled to any other relief than the relief already granted.

He also raised an objection on the maintainability of the Writ Petition on the ground that the Writ Petition is filed after more than three years after the award was passed and after he was reinstated into service and there is no explanation as to why petitioner took three years to challenge the award. He further submits that petitioner was subsequently removed on 01.02.2010 and by which time, petitioner was reinstated and he was out of service for more than two years. Having regard to the history of the petitioner's conduct, he is not entitled to any relief than the relief already granted by the Labour Court.

6. The basic facts are not in dispute. Petitioner was unauthorisedly absent from 01.04.2001 to 13.11.2001. The said period of unauthorized absence was proved in the departmental proceedings and the same was also established before the Labour Court. When a categorical finding is recorded by the Labour Court that charge of unauthorized absence is proved, it is for the disciplinary authority to impose appropriate punishment as warranted by law. In the instant case, absence was very long and it cannot be said that absence for about eight months cannot be viewed seriously, more particularly when absence was not supported by any material on record. The Labour Court took note of his absence prior to 01.04.2001 on the ground of sickness to grant limited relief of inducting the petitioner into service. Learned counsel for the petitioner sought to place heavy reliance on the terms used by the Labour Court 'removal from service is not justified, removal order dated 15.12.2003 be set aside' to contend that when order of removal is set aside and reinstatement is ordered, the employee is entitled to all the benefits. This Court

cannot appreciate the said contention, having regard to the facts of the case as recorded by the Labour Court. It was categorical stand of the employer that petitioner was visited with punishments on several occasions and was habituated to absent from work. It was also categorical stand that due opportunity was afforded to the petitioner, even after the absence period for which disciplinary action was taken gave a long rope only to see whether petitioner would mend his habits and in the meantime, petitioner again absented from duty, compelling to pass the order of removal.

7. In the counter affidavit, the respondent – Corporation narrated various instances in which disciplinary action was taken against the petitioner and though he was reinstated, in pursuance of the award dated 05.01.2008 passed by the Labour Court, he was again removed within less than two years after his reinstatement. The Labour Court exercised its discretionary jurisdiction in modulating the punishment and directing reinstatement of the petitioner into service only to give some kind of succor to him, but petitioner has not availed the opportunity provided by the Labour Court and again absented from duty.

8. Having regard to the jurisdiction of the writ Court under Article 226 of the Constitution of India vis-à-vis the jurisdiction exercised by the Labour Court under Section 11-A of the Industrial Disputes Act, 1947 and in the peculiar facts of this case, this Court is not persuaded to exercise its equity jurisdiction to upset the directions issued by the Labour Court. I therefore do not see any error in the directions issued by the Labour Court to treat the petitioner as 'fresh' candidate. The said direction has to be

understood in the background of the case facts, more particularly in view of the fact that the Labour Court upheld the charge of absence from duty from 01.04.2001 to 13.11.2001 and therefore the relief was granted only to the limited extent of taking him as a fresh candidate and nothing more. The claim of the petitioner that he is entitled to all the benefits including back wages, continuity of service and attendant benefits would only mean nullifying the disciplinary action taken against the petitioner for long absence, which action is upheld by the Labour Court. Thus, the direction to appoint the petitioner as a fresh candidate, in the facts of this case, is justified and warrants no interference by this Court.

9. The Writ Petition is accordingly dismissed. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

Date:25.07.2017

KH

P. NAVEEN RAO, J