

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.523 OF 2003

ORDER :

The case of the petitioner is that the respondent while working as a driver in the petitioner-corporation was absented from duties from 06.05.1996 onwards and committed misconduct as contemplated under clause 28 (xxvii) of the A.P.S.R.T.C Employees (conduct) Regulations, 1963 (for short 'the Regulations). Therefore, the petitioner was issued charge memo on 28.05.1996 for his unauthorized absence and thereafter an enquiry officer was appointed. The Enquiry Officer after conducting enquiry filed a detailed report on 10.08.1996 finding the charge leveled against the petitioner was proved. Subsequently, the petitioner was issued show cause notice dated 07.12.1996 enclosing the copy of the enquiry report, proposing the removal from service and was removed from service on 20.02.1997. Against the said order, the respondent raised Industrial Dispute in I.D.No.267/98 before the Labour Court, Guntur and the Labour Court passed Award dated 22.10.2001 directing the petitioner Corporation to reinstate the respondent with backwages and continuity of service. Aggrieved by the said Award, the present writ petition is filed.

Learned counsel for the petitioner submits that though respondent was issued notice before removal from service, the respondent did not choose to attend the enquiry. As such, the enquiry was conducted and the charge leveled against the

respondent was proved. But the Labour Court without going into the said aspect passed the impugned order setting aside the removal order, holding that there is no specific charge against the respondent regarding unauthorized absence, which is erroneous. He also submits that respondent was removed from service vide proceedings dated 01.08.2006 for his absence for 213 days from 01.01.2006 to 31.07.2006 and that the respondent did not chose to challenge the same. Earlier respondent was removed from service on 22.06.1993 for his unauthorized absence from duty from 07.07.1992 to 16.09.1992 vide proceedings dated 22.06.1993, which goes to show that respondent is a habitual absentee for his duties.

Though notice is served on the respondent, there is no representation for the respondent.

Charge framed against the respondent vide charge sheet (Ex.M2) dated 28.05.1996 reads as follows:

“For having absented for your duties unauthorisedly from 06.05.1996 to till date and produced sick certificate of the Civil Surgeon, University General Hospital, Vijayawada to cover up your absence, which resulted in dislocation of work, which constitutes misconduct under Reg.No.28 (XXVII) of A.P.S.R.T.C. Employees (Conduct) Regulation 1963.

The Regulation 28(XXVII) of the A.P.S.R.T.C Employees (conduct) Regulations, 1963 reads as follows:

28. Without prejudice to generality of the following regulations, the following Acts omissions shall be treated as misconduct.

Habitual late attendance, irregular attendance, absence without leave and without reasonable cause and absence without permission and wasting time or loitering while on duty.”

which clearly goes to show that respondent was unauthorisedly absent from duty and committed misconduct. But the Labour Court without properly appreciating the same passed the impugned Award holding that there is no allegation that the respondent was unauthorizedly absented from duty. The case of the petitioner is that though charge memo was issued before conducting enquiry and though show cause notice was issued before removal from service, the respondent failed to attend enquiry. In the writ affidavit it is clearly stated that though notice sent to the respondent's house address giving date of enquiry as 08.07.1996 was acknowledged by the respondent on 06.07.1996, he failed to attend the same. Another call letter dated 09.07.1996 sent by the Enquiry Officer asking the respondent to attend the enquiry on 18.07.1996 was also returned by the postal authorities with an endorsement that the party is out of station and hence returned to the sender. Third call letter sent through Registered Post Acknowledgment due asking the respondent to attend enquiry finally on 05.08.1996 was also returned on 10.08.1996 stating the party is not being available at home inspite of visiting several times. Therefore, enquiry officer conducted exparte enquiry and submitted report. The respondent filed explanation only on 17.12.1996 after show cause notice for removal from service was issued, which goes to

show that petitioner evaded to receive earlier notices. The Labour Court without any basis held that notices were not served on the respondent. When once the notices are sent to the address provided by the respondent in the service book, the same amounts to service of notice as per Section 27 of General Clauses Act read with Regulation 11 of the APSRTC Employees (Conduct) Regulation 1963. The said aspects which are affirmed in the writ affidavit were not denied by the respondent. As such, the same have to be accepted. More so, respondent was removed from service vide proceedings dated 22.06.1993 for unauthorized absence from duty and also subsequently vide proceedings dated 01.08.2006 which were placed before this Court vide letter dated 09.02.2017 and it is stated that the same has become final.

In view of the above facts and circumstances, Award passed by the Labour Court is set aside. However, since it is stated that respondent was reinstated into service on 29.06.2002, wages paid to him till 01.08.2016 shall not be recovered.

Accordingly, writ petition is allowed to the extent indicated above. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, shall stand closed.

A.RAJASHEKER REDDY, J

21.06.2017
dv

