

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

WRIT PETITION No.4168 of 2009

ORDER :

The petitioner was appointed as cleaner on 07.05.1991 in the respondent depot and his services were regularized. It is his case that after completion of his duty on 05.06.1991, he fell sick and admitted in a private hospital and the same was informed to the higher authorities and submitted the sick-certificate. But, the petitioner was not allowed to join duty till 18.08.1991. A charge sheet was issued on 27.08.1991 alleging unauthorized absence from 06.06.1991 to 12.07.1991. An enquiry was conducted and the charge was proved. Thereupon a show-cause notice for removal was issued on 12.03.1992 and the petitioner has not submitted any explanation. Accordingly, the order of removal was passed on 17.03.1992 and the appeal was rejected on 30.06.1992. A review also filed and it was dismissed on 09.03.1993. Challenging the order of removal, the petitioner raised I.D.No.103 of 1993 before the Labour Court, Godavarikhani. The Labour Court, by award, dated 13.03.1996, held that the punishment imposed was disproportionate and ordered reinstatement with continuity of service and attendant benefits in respect of increments only, but without any back-wages and substituted the punishment to that of penalty and treated the period of absence as sick leave or leave which he is eligible. The present writ petition is filed as against denial of back-wages.

Learned counsel for the petitioner submitted that since the petitioner submitted medical certificate issued by a private Doctor, the absence covered by certificate cannot be treated as unauthorized absence.

On the other hand, learned counsel for the respondent submitted that the Labour Court came to the conclusion that the charge was proved and substituted the punishment to that of penalty.

I have carefully gone through the award of the Labour Court and in the award the Labour Court made the following observations:

“The Petitioner admits about his absence. He also admits about non-production of medical certificate through the RTC clinic. Obviously, he has not produced sick-certificates as contemplated under regulations 11(1), 11(2), 11(6). The above regulations contemplate of producing sick certificates within 48 hours, is well intermediating certificates. It is not disputed that the petitioner produced sick certificate later. Technically speaking the absence amounts to un authorized absence when he fails to produce the sick certificate as per the RTC regulations 11(1), 11(2), 11(6).

Production of private medical certificate is not sufficient as per the regulations. Hence, technically the charge is proved on the strength of the statement of the petitioner. It is contended by the respondent that he was not sick and sick-certificate are all false. Much comment also is made for mentioning that he would joint duty on 01.08.1991. The question is whether he was sick or not? The petitioner spoke about undergoing treatment at Karimnagar and produced the sick-certificate. He could not have produced three false sick-certificates. In any of the manner, he has produced private certificates. I believe his version since it is reliable regarding

his sickness. I disagree with the contentions of the respondent that he was not sick and he produced false sick-certificates.

Coming to the aspect of penalty, imposing a penalty of dismissal for unauthorized absence due to sickness is highly excessive and that too it is also not commensurate with the gravity of the charge. There is a reasonable cause for his absence. Imposing a penalty of censure while withholding of back-wages will meet the ends of justice in this case. I answer point No.1 against the petitioner and point No.2 in favour of the petitioner.”

A perusal of the above observations make it clear that the charge was held proved. But, in view of the submission of sick-certificates, the Labour Court opined that it cannot be concluded as unauthorized absence. In those circumstances, only the punishment was substituted. But, the present writ petition is filed with regard to back-wages. Admittedly, the petitioner did not work during that period for which he was denied back-wages. Moreover, award was passed on 13.03.1996 and the present writ petition was filed in 2009 i.e., after 13 years. Therefore, this Court is not inclined to interfere with the award passed by the Labour Court.

4. Accordingly, the Writ Petition is dismissed.

5. Miscellaneous Petitions pending, if any, shall stand closed. No costs.

A. RAMALINGESWARA RAO, J

28th June 2017.

mar