

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.6005 of 2016

Date : 03.04.2017

Between :

K Sridhar S/o late Buchappa
R/o Shivaji Chowk
Tandur, R R District

.....Petitioner

And

Telangana State Road Transport Corporation
Rep by its Managing Director
Bus Bhavan, Musheerabad, Hyderabad and others.

.....Respondents

The Court made the following:



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ORAL ORDER:

Heard Sri V Narasimha Goud, learned counsel for petitioner and Sri N Vasudeva Reddy, learned standing counsel for respondent corporation.

2. The petitioner joined service of respondent-Corporation as Driver on 1.3.1993, regularised w.e.f. 1.3.1995. Petitioner was declared as unfit to work as Driver and he was provided alternative employment as Shramik. On the allegation of prolonged unauthorised absence from service, disciplinary action taken against petitioner resulted in removal from service by order dated 9.8.2014 of the disciplinary authority. The said punishment was confirmed by the appellate authority. On a review filed before the Regional Manager, the reviewing authority accepted the plea of petitioner to restore him to service by taking a lenient view on the delinquency. The order of Reviewing Authority would show that he considers the plea of the petitioner sympathetically and orders reinstatement. On reinstatement, the punishment imposed, in the order impugned, is appointment of petitioner as a fresh Shramik. The order of the Reviewing Authority is under challenge in this writ petition.

3. The order of Reviewing Authority was issued in continuation to the disciplinary action initiated against petitioner which resulted in imposing punishment of removal from service. Disciplinary action and imposing of punishment against an employee of the respondent corporation is governed by 'The Classification, Control and Appeal Regulations' (the Regulations). Regulation 8 prescribes various kinds of punishments, that can be imposed on an employee, ranging from

removal from service to minor punishment of censure. Regulation 8 vests discretion in the disciplinary/appellate/reviewing authority to impose any of the penalties specified depending on the nature of allegations established. Regulation-8 do not provide for punishment in the form of appointment as a fresh candidate. Whenever an authority considers plea of employee against whom disciplinary proceedings are initiated, the said authority has to act within the four corners of 'the Regulations' and cannot go beyond those 'regulations'. Therefore, imposing of punishment on reinstatement as 'afresh shramik' is illegal.

4. This issue is no more *res integra*. In **K.C. Narayana Vs. Managing Director, APSRTC and others**¹ the very issue has fallen for consideration. In the said case, the Reviewing Authority, modified the punishment of removal from service of Conductor and directed that he be appointed as Conductor afresh. Holding that punishment of appointment as afresh is not prescribed in the Discipline and Appeal Regulations and following the decision of the Supreme Court in **State Bank of India and Others Vs. T.J. Paul**², learned single Judge of this Court held that imposing punishment as afresh conductor is illegal. Following the said decision, in several writ petitions, similar orders passed by Reviewing Authority, were set aside.

5. Since the order of the 2nd respondent, dated 29.8.2015, is not sustainable, it is liable to be set aside. In the case on hand delinquency stands against petitioner. Matter has to be remitted to impose appropriate punishment that can be meted out to petitioner.

6. Learned counsel for petitioner submits that having regard to the long drawn disciplinary proceedings and what is required is only imposing appropriate punishment, instead of remitting the matter, the

¹ 2007 (5) ALD 416

² Manu/sc/0313/1999=(1999) II LLJ 514 SC

court may substitute the punishment and give quietus to the litigation. In support of his submissions, learned counsel for the petitioner has placed reliance on earlier orders of this Court in several Writ Petitions. The main case being W.P.No.12857 of 2011 disposed of on 28.04.2011. In the said case, similar order as impugned in this writ petition was passed. Having declared order of reviewing authority as illegal, instead of remitting the matter, this court modified the punishment by holding that the petitioner was entitled to continuity of service from the date of dismissal to reinstatement but not entitled to monetary or other benefits treating the removal period as not spent on duty. Following the said decision, similar course was adopted in W P No. 37079 of 2015. Learned counsel for the petitioner prays for similar relief in the present case also.

7. In support of the said submission, the petitioner has also filed affidavit stating that he is giving up the claim of monetary benefits for the period of out of service after his removal.

8. Imposing appropriate punishment is the prerogative of the employer. On setting aside an order made in exercise of disciplinary control, ordinarily, the matter should be remitted to the same authority for consideration of the issue. However, having regard to the long history of the litigation and the plea raised by the petitioner and in view of earlier orders of this Court, to give quietus to the litigation, I am inclined to impose appropriate punishment as warranted in the facts of this case instead of remanding the matter. Furthermore, setting aside punishment and remitting the matter for fresh consideration would impose financial burden on the respondent-Corporation.

9. The facts of this case would show that disciplinary action was initiated against petitioner on the allegation of unauthorised absence from 6.1.2013 till order of disciplinary authority dated 9.8.2014 removing

him from service. It appears from the reading of the order of reviewing authority, earlier he was removed twice on the very same allegation of unauthorised absence but was restored to service by taking sympathetic view. Once again 2nd respondent took lenient view and decided to induct him into service. Having regard to these facts, what punishment can be appropriate needs to be considered.

10. The main objective of establishing respondent –corporation is to provide proper, uninterrupted passenger transport service to citizens. This service is utilised by people who cannot afford to have their own private transportation facility. For people living in rural area, this service is the only means of travel. It is an essential public service. It is the responsibility of every employee to work and ensure smooth operation of essential service. Absence of employee for such a long period would have severely affected operation of its services, causing inconvenience to commuters and financial loss to the respondent corporation. Thus, absence from service for such a long period and indulging in frequent absenteeism has to be viewed as major misconduct.

11. However, learned counsel for petitioner submits that petitioner was unwell and was taking treatment; earlier on health grounds he was declared unfit to drive and was provided alternative employment. He, therefore, submits that imposing appropriate punishment has to be viewed in the above back ground. Learned standing counsel submits that reduction in time scale by few stages may be appropriate.

12. In the facts of this case, I am of the opinion that interests of justice would serve, if the petitioner is imposed with the punishment of reduction in time scale of pay of the post of Shramik by three stages effective from the date of removal. He is entitled to claim continuity of

service only for the purpose of receiving terminal benefits. He is also not entitled to claim monetary benefits or any other benefits for the period between removal from service to induction into service.

13. Accordingly, the impugned order is set aside and writ petition is disposed of. No costs. Having regard to the same, miscellaneous petitions, if any pending, are closed.

P NAVEEN RAO,J

DATE: 03-04-2017
tvk/kkm



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