

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.24825 OF 2010

Date: 20.12.2017

Between:

The Depot Manager,
APSRTC, Falaknuma Depot,
Hyderabad.

.....Petitioner

and

Sri B.Kishan S/o. Purushottam,
C/o. I.P.Joel, 11-4-288, Chilakalguda,
Secunderabad and another.

.....Respondents



The Court made the following:

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ORDER:

Heard learned counsel for petitioner and learned counsel for first respondent.

2. This writ petition is filed by the petitioner-Corporation challenging the award of Labour Court setting aside the order of removal from service of first respondent and directing the petitioner-Corporation to reinstate the first respondent into service with continuity of service. However, Labour Court denied 50% of the back-wages.

3. Facts to the extent relevant are as under:-

First respondent was appointed as Driver on temporary basis in November, 1996 and his services were regularized w.e.f. 01.08.1998. On the allegation that he was unauthorizedly absent from duties from 15.06.2006 to 20.06.2006, disciplinary proceedings were initiated. He was served with charge sheet, dated 24.06.2006. Holding that the charge of unauthorized absence and causing inconvenience to the petitioner-Corporation is proved, Enquiry Officer submitted his report on 05.09.2006. Based on the findings of the Enquiry Officer, disciplinary authority imposed punishment of removal from service by order dated 19.10.2006. The appeal preferred against the said decision was rejected by the appellate authority by his order dated 25.06.2008 on the ground that appeal was not preferred within the time prescribed. However, the review preferred by the first respondent was considered on merits and rejected by order dated 19.02.2009.

Challenging the order of removal, as affirmed by the reviewing authority, the first respondent raised Industrial Dispute in the Labour Court-I at Hyderabad, which was registered as I.D.No.26 of 2009. First respondent raised plea that he was absent only for six days on health grounds and his absence was not deliberate and willful and, therefore, punishment of removal from service was illegal. In support of contention that his absence was on medical grounds, he placed reliance on medical certificates.

4. The contention of first respondent was opposed holding that on account of absence of first respondent for six days, there was dislocation of services of petitioner-Corporation and grave inconvenience was caused to traveling public and the Corporation also suffered loss and, therefore, the absence amounts to grave misconduct warranting severe disciplinary action and justified the punishment of removal from service.

5. Labour Court considered three points for adjudication:

i) Whether the domestic enquiry officer and the respondent were justified in holding that the petitioner was guilty under the charge leveled against him ?

ii) Whether the punishment of removal imposed against the petitioner from service was justified ?

iii) To what relief ?

6. On assessment of evidence on record, Labour Court found that no proof was produced before the Labour Court that petitioner-Corporation suffered loss of revenue and there was dislocation of services of petitioner-Corporation. Therefore, Labour

Court rejected the stand of petitioner-Corporation that on account of absence of first respondent, it has suffered loss and services dislocated. This finding of fact arrived at by the Labour Court cannot be interfered in exercise of power of judicial review under Article 226 of the Constitution of India.

7. The only issue for consideration is, whether the absence of first respondent from service for six days would amount to grave misconduct?

8. Absence from service *per se* does not amount to grave misconduct unless such absence is willful and deliberate and without any reason or cause. Further, if an employee is indulging in frequent absenteeism, the absence of even short period can be viewed as grave misconduct. In the case on hand, absence was for a period of six days and the said absence, as recorded by the Labour Court, was supported by Medical Certificates evidencing that absence was not willful or deliberate, but on health grounds. Therefore, absence of first respondent for six days cannot be held as deliberate and willful absence warranting disciplinary action.

9. As fairly submitted by learned counsel for petitioner-Corporation, first respondent was not indulging in such absenteeism earlier after his services were regularized. It appears, he was not subjected to any disciplinary action. Thus, absence of first respondent for six days cannot be attributed as amounting to grave misconduct warranting imposing of punishment of removal from service. Thus, I do not see any error in the findings arrived at by the Labour Court. Further, the award cannot be termed as

perverse nor is it a case of not appreciating the evidence on record properly.

10. As rightly contended by learned counsel for first respondent, once order of removal is held to be illegal and absence of first respondent for six days was on medical grounds, Labour Court could have allowed Industrial Dispute in all respects. However, Labour Court exercised its discretion, having regard to the fact that there was delay in disposal of the matter, Labour Court restricted the back-wages to 50%.

11. One of the grounds urged on behalf of petitioner is on the payment of back-wages. According to the learned counsel for petitioner, decision of Labour Court is not supported by any assessment of evidence on record and that there was no proof that first respondent was not gainfully employed during period of out of employment.

12. It is necessary to note that removal from service was on 19.10.2006. He took almost more than 1½ years to prefer appeal, whereas, appeal has to be preferred within two months and, thereafter, preferred revision. Labour Court observed that first respondent contributed for causing delay in disposal of the matter. Furthermore, no material is brought on record to show that petitioner was not gainfully employed during the period of out of employment. Further, admittedly petitioner absconded from duties without prior permission or leave application. Having regard to these facts, learned counsel for first respondent fairly submits that if the Court is inclined to modify the back-wages portion of the award and reduce the back-wages, to ensure quietus to the

litigation, it is agreeable to the petitioner. It is also relevant to note that for absence from duty for six days, punishment of removal is excessive.

13. Having regard to the fair submission of learned counsel for petitioner and in the facts of this case, to give quietus to litigation, Court is inclined to modify the back-wages awarded by the Labour Court, to that of 25%. It is accordingly ordered. Except this modification, the entire award of Labour Court is sustained and first respondent is entitled to all other benefits as applicable to him in terms of the award. 25% back-wages shall be paid within two months from the date of receipt of the order of this Court.

14. The writ petition is disposed of according. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 20.12.2017
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