

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.721 OF 2009

ORDER:

Heard learned counsel for petitioner and learned standing counsel for the Andhra Pradesh State Road Transport Corporation ('the Corporation', for brevity).

The petitioner was initially appointed as a Cleaner on 21.05.1975 and was promoted as D.C., Electrician on 01.10.1980. When he was working at Avanigadda Depot, he was suffering from ill-health and was taking treatment in Vijayawada. It is his allegation that though he reported to duty on 05.06.2005, he was not allowed to do the duty. He was asked to submit his explanation for his unauthorized absence from 02.06.2005 to 04.06.2005. He further submits that he applied for leave for those three days and the alleged letters sent by the respondents were not served on him. An *ex parte* enquiry was conducted and an order of removal from service was passed on 23.10.2006 removing the petitioner from service. The petitioner raised I.D.No.99 of 2007 before the Labour Court, Guntur and the said I.D., was dismissed by taking into consideration the subsequent unauthorized absence. Challenging the said Award, the present writ petition was filed.

Learned counsel for the petitioner submits that when the charge was for unauthorized absence from duty during the period 02.06.2005 to 04.06.2005, the Labour Court erred in taking into consideration the subsequent unauthorized absence shown by the respondents in support of the ground for removal.

The record before the Labour Court revealed that a charge sheet was issued to the petitioner on 08.06.2005 based on the report of the Assistant Engineer and his whereabouts were not known. Later on, he sent another report on 31.10.2005 stating that the petitioner was not attending to the Office from 02.06.2005 onwards till the date he gave statement before the Enquiry Officer i.e., 13.10.2006. The Enquiry Officer took into consideration not only

the unauthorized absence from 02.06.2005 to 04.06.2005, but also the absence till 13.10.2006 and accordingly submitted his report on 13.10.2006 itself. Then, a show cause notice of removal was issued on 18.10.2006, but the said show cause notice was returned with an endorsement 'the addressee is not in the village and returned to sender'. In those circumstances, the show cause notice was exhibited on the notice board in the presence of two witnesses. But, the petitioner failed to submit his explanation. Accordingly, an order of removal was passed on 23.10.2006. The said order was confirmed by the Labour Court with the following observations.

"The above facts go to show that the petitioner/delinquent did not submit any intimation nor obtained leave for the period from 02.06.2005 till 13.10.2006. The Department was not in a position to know his whereabouts. If really, the petitioner/delinquent has suffered from ill-health for such a long period, he would have submitted medical prescriptions, Medical bills, lab report, Test reports etc., to show that he was prevented from attending the office by sufficient cause. He did not produce any material before this Court to come to conclusion that he was really prevented from attending to his duties by sufficient cause. No doubt, it is true that the charge is for 3 days only. But the absence of the petitioner/delinquent has been continued for a long period i.e., nearly for 1 year 4 months.

... ..

The punishment imposed against the petitioner/delinquent is removal from service for unauthorized absenteeism. If the absence of the petitioner/delinquent was for the first time, and for short time, it will be considered that the punishment of removal was disproportionate to the gravity of the misconduct. But it appears that earlier, he was removed once on the same ground. Further, he was absent for duties for about 1 year 4 months without any intimation or permission or on any sufficient ground. The conduct of the petitioner/delinquent, thus, shows that he was not interested in performing his duties in the management corporation. His absence no doubt would have caused over much inconvenience to the respondent management. If the absence of the petitioner was for the charge period only, the management also would have taken a lenient view of the matter. But the circumstances show that he was absent for more than 1 year 4 months. Thus, the unauthorized absence of the petitioner/delinquent for charge period cannot be considered as a minor misconduct. Thus, the circumstances discussed above would have prompted the management to remove the petitioner from service. Under Section 11-A of the I.D.Act, this Court also feels that there are no grounds to reduce the punishment by interference. Thus, this Court observes that the punishment of

removal imposed by the management against the petitioner/delinquent is proper to the misconduct. For the above reasons, it is held that the punishment of removal is proportionate.

This petition is liable to be dismissed in view of the findings on the above points.”

Though the argument of the learned counsel for the petitioner is that the petitioner was unauthorizedly absent and a charge was leveled against him for his absence from 02.06.2005 to 04.06.2005, in view of the unavailability of the petitioner thereafter till the date of submission of the enquiry report, is a circumstance which goes against the case of the petitioner. The technicalities in a case like this do not outweigh the conduct of the petitioner. The petitioner was aged 55 years when he filed the writ petition and in the normal course of events, he would have retired by now. No useful purpose would be served by remanding the case to the disciplinary authority for taking appropriate proceedings for the subsequent unauthorized absence of the petitioner and putting the petitioner to face the enquiry further. In the circumstances, this Court thinks that the Award passed by the Labour Court is proper and needs no interference.

The writ petition is accordingly dismissed. Consequently, miscellaneous petitions pending, if any, shall also stand closed.

A.RAMALINGESWARA RAO, J

19.07.2017
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