

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No. 1919 of 2009

ORDER:

Heard learned Standing Counsel for the petitioner. None appeared for respondent No.1 in spite of service of notice.

Respondent No.1 was appointed as a Cleaner by the petitioner-Corporation on 07.03.1977 and subsequently, he was selected as Ty.Heavy Vehicle Driver on 24.11.1984. It was reported by the Senior Medical Officer, Tarnaka Hospital that respondent No.1 was absent for treatment from 20.09.1997 onwards. As he was absent from duties from that date, a charge sheet was issued to him on 28.02.1998. The charge sheet sent to the available address of respondent No.1 was returned undelivered by the postal authority. Since there was no explanation submitted by respondent No.1, a regular enquiry was ordered into the charge framed against him. The enquiry notice sent on 20.03.1998 was also returned. Another notice sent on 17.04.1998 was also returned un-served. An *ex parte* enquiry was conducted and on the basis of the statement of the Traffic Inspector-III, the Enquiry Officer submitted a report holding that the charge framed against respondent No.1 was proved. A show cause notice of removal was issued on 22.06.1998, but respondent No.1 failed to submit his explanation. Accordingly, final order of removal was passed on 10.09.1998. Respondent

No.1 without availing the remedy of appeal or review, raised an industrial dispute, being I.D.No.67 of 2006 before the Presiding Officer, Labour Court-I Andhra Pradesh, Hyderabad (for short 'the Labour Court'). By its Award, dated 23.08.2007, the Labour Court allowed the I.D. by directing the petitioner to reinstate respondent No.1 into service with continuity of service and all other attendant benefits, but without back wages. Challenging the same, the present writ petition was filed.

This Court by order, dated 05.02.2009, granted interim stay of operation of the award in respect of continuity of service and attendant benefits.

Learned Standing Counsel for the petitioner submitted that respondent No.1 was reinstated into service pursuant to the Award passed by the Labour Court in 2008, and he retired from service in 2016.

Before the Labour Court, no oral evidence was adduced by the parties. Respondent No.1 filed Ex.W1-medical certificate. In support of its case, the petitioner filed Exs.M1 to M14.

The charge framed against respondent No.1 reads as follows:

“ For having absented for duties and treatment at TNK Hospital w.e.f. 20.09.1997 on MC No.266625 thus causing inconvenience to the traveling public and loss revenue to the

Corporation, which constitute misconduct in term of Reg.28 (xxxii) of APSRTC Employees (conduct) Reg.1963.”

Respondent No.1 filed a Memo before the Labour Court stating that he is not disputing the procedural aspects of the domestic enquiry, but is disputing its findings. The Labour Court noticed that respondent No.1 did not remain absent unauthorisedly without intimating the petitioner. It held that there is sufficient evidence to show that respondent No.1 reported sickness to the APSRTC Hospital, Tarnaka on 01.09.1997 and Ex.M1 is the letter, dated 24.12.1998, addressed by the Depot Manager, Ibrahimpatan, to the Executive Director (Medical) APSRTC Hospital, Tarnaka, informing that respondent No.1 reported sick at Tarnaka Hospital on 01.09.1997, but he did not submit the intermediate sick certificate thereafter. However, the petitioner remained absent even at Tarnaka Hospital from taking treatment with effect from 20.09.1997. The Labour Court further held that respondent No.1 was seriously ill and his relatives have taken him to Osmania General Hospital, where he took treatment from 20.09.1997 to 08.03.2006. He filed Ex.W1 Medical Certificate showing that he was found fit from that day onwards. While setting aside the order of removal, the Labour Court gave the following reasoning:

“But, in this case a charge sheet was issued against the petitioner that he did not submit a intermediate certificate

and the enquiry was ordered. The Enquiry Officer proceeded *ex parte* against the petitioner and submitted his report. The petitioner is not given sufficient opportunity to defend his case. The learned counsel for petitioner vehemently emphasized that the petitioner had reported sick before the APSRTC Hospital, Tarnaka on 01.09.1997 and thereafter due to his seriousness of his ailment, he was further shifted to the MNJ Hospital for taking further treatment as it is evident from Ex.W.1 certificate. Therefore, it cannot be said that it is an unauthorized absence. Submission of intermediate certificate does not arise as there is no procedure to issue such certificate without having been made fit of the petitioner to report to the duties. It is true that it is primary duty of the petitioner employee to intimate about his absence and apply for suitable medical certificate as he was under going treatment for certain kind of diseases etc., as he was suffering. Since the petitioner was found to be bed ridden and he was unable to move and walk, he did not make his efforts to intimate the same to the respondent in right time. Respondent also failed to inform the petitioner conductor by taking further steps to serve the enquiry notice. In the said circumstances, I am of the view that it is apparent on the face of the record that sufficient opportunity is not given to the petitioner to defend his case and the petitioner was also not in a position to attend before the Enquiry Officer as he fell sick. I am therefore of the view that the absence of the petitioner though not authorized, it is not intentional one. It is only purely on account of his prolonged illness/sickness. Therefore, in my considered view, removal of the petitioner from service is not justified.”

A perusal of the above reasoning shows that the Labour Court found fault with the conduct of respondent No.1 and also of the petitioner. It rightly set aside the order of removal directing the petitioner to reinstate respondent No.1 with continuity of service, but the award of attendant benefits cannot be

appreciated as respondent No.1 was not in service. Respondent No.1 was not in service right from his reporting sickness on 01.09.1997 till he produced a fitness certificate on 08.03.2006. Though an order of removal was passed on 10.09.1998, it is not his case that he was fit to resume duty.

In the circumstances, this Court feels that the Award of the Labour Court requires modification and the same is modified to the effect that respondent No.1 is not entitled to the attendant benefits, but he is entitled for reinstatement with continuity of service only for the purpose of calculating gratuity payable at the time of retirement. Since the back wages were already denied by the Labour Court, the Award to that extent is upheld.

Accordingly, the writ petition is partly allowed.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed. There shall be no order as to cost

A.RAMALINGESWARA RAO,J

Dt:14.06.2017

kdl

