

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P. No.174 OF 2009

ORDER :

This Writ Petition is filed by the petitioners challenging the award dt.06.06.2008 passed in ID.No.129 of 2005 by the Industrial Tribunal-cum-Labour Court, Warangal.

2. The respondent was employed in the petitioners' organization. Initially, he was appointed as Apprentice Sales Assistant in 1980 by the 1st petitioner and worked under the control of the 2nd petitioner. His services were regularized after one year and he was posted as Assistant Salesman at Hindupur Sales Emporium. He worked at Hindupur from 01.07.2002 to 07.07.2002. He was then transferred to Jaipur Handloom House in Rajasthan, 2000 kilometers away from Hindupur. As the respondent was fell ill and was advised bed rest, he applied for casual leaves for five days from 08.07.2002 to 12.07.2002 and came back to Hindupur for taking medical treatment.

3. A notice was issued by the petitioners on 18.06.2003 calling for respondent's explanation for unauthorized absence from May, 2002.

4. Respondent submitted explanation to 1st petitioner on 09.07.2003 stating that his health condition was not good,

that he cannot shift his family as his children are studying in Telugu medium and that he had already applied for retirement under Voluntary Retirement Scheme(VRS) on 27.06.2002. He requested the petitioners to post him either to his native district or to grant him VRS.

5. Thereafter, a final notice was issued by the 1st petitioner on 13.10.2003 asking the respondent to attend for enquiry on or before 31.10.2003.

6. Petitioner appeared before the enquiry officer, but his services were terminated on 31.01.2004.

7. Challenging the same, respondent filed appeal before the appellate authority, but the appeal was also rejected on the ground that it was time barred.

8. The respondent then filed an application under Section 2-A(2) of Industrial Disputes Act, 1947 (for short 'the Act') challenging the order of termination stating that he was entitled to grant of leave as per byelaw 27, that the petitioners never refused to revoke or recall any leave till his termination as per byelaw 28(a)(iii), that no charge sheet was issued as per byelaw 47, and that the procedure prescribed under byelaw 48 was not followed.

9. Petitioners filed counter referring to alleged disobedience by the respondent relating to taking charge of stock on 30.07.1981, respondent's absence from duties for 54 days in 1981, further absence of the respondent for 18 days in 1984 and his suspension for misappropriation of Rs.2,08,217-50 ps. It was also stated that an amount of Rs.17,786-25 ps was recovered from the respondent and he was directed to report to duty on 28.06.2002. It is stated that he absented from duty from 08.07.2002 without any prior intimation or sanction of leave and also left Head quarters. It is stated that the 2nd petitioner informed the 1st petitioner about the respondent's absence on 28.04.2003, that a notice was issued on 18.06.2003, to which, respondent gave a reply on 09.07.2003, and that the respondent was instructed to appear before the enquiry officer vide letter dt.13.10.2003. It is stated that on the basis of the Enquiry Officer's report, respondent's services were terminated w.e.f. 31.01.2004.

10. Before the Industrial Tribunal, respondent examined WW1 & WW2 and marked EXs.W1 to W70. Petitioners examined MW1 and marked Exs.M1 to M10.

11. By award dt.06.06.2008, the Tribunal held that the termination of services of the petitioner by order

dt.31.01.2004 was bad in law and set aside the same. It however directed the petitioners to consider the VRS application of the petitioner and pay all VRS benefits he was entitled as per Notification within three (03) months from the date of enforcement of the award. It was also held that respondent was not entitled to reinstatement. The Tribunal observed that MW1 admitted that no charge was framed against the respondent as per byelaw 47 and no show cause notice was also issued to the respondent as per byelaw 49 and the report submitted by the Enquiry Officer was also not filed before the Industrial Tribunal, though termination of services of the respondent under Ex.M9 was based on such enquiry report. The Tribunal held that the respondent had applied for VRS on 28.06.2002 and on that date, there were no disciplinary proceedings pending against him and for reasons best known, the petitioners have not considered the application of the respondent for grant of VRS. It also held that several applications made for grant of leave on medical grounds submitted by the respondent were not rejected and the respondent was allowed to continue in service till 13.10.2003. It held that the petitioner had instructed the respondent to appear before the Enquiry Officer, and though he made a representation before the Enquiry Officer, without considering the same, the services of the respondent were

terminated. The Tribunal observed that the respondent had not addressed leave application to the Managing Director of the Petitioner-Society as per byelaws, that he had also availed more than 180 days against byelaws, but in view of household conditions and other relevant factors, the Tribunal felt that the respondent is not entitled for reinstatement into service and directed the petitioners to consider for his VRS application and to pay VRS benefits.

12. Assailing the same, this Writ Petition is filed.

13. The principle contention of the petitioners is that they had rejected application of the respondent for voluntary retirement due to pendency of disciplinary charges against him with regard to misappropriation of funds of Rs.2,08,000/-. It is also stated that even before the introduction of VRS scheme, the respondent had been issued charge memo dt.05.07.2000 by the petitioner and on account of pendency of disciplinary proceedings on the date of respondent's VRS application, the said application was rejected.

14. Counsel appearing for the respondent on the other hand contended that before the Industrial Tribunal the petitioners have not filed charge memo dt.05.07.2000 allegedly issued to

the respondent and they have also not raised any contention that on account of pendency of disciplinary proceedings against the respondent, they had rejected the application of the respondent under VRS scheme.

15. A scrutiny of the papers filed before the Industrial Tribunal by the petitioners does not disclose that the petitioners have placed on record the charge memo dt.05.07.2000 issued to the respondent. Also no contention was raised before the Tribunal that disciplinary proceedings were pending against the respondent on the date of submission of his VRS application. That was why, the Tribunal categorically gave a finding that as on the date of submission of VRS application by the respondent i.e., on 27.06.2002, no disciplinary proceedings were pending against the respondent. Without placing the charge memo dt.05.07.2000 on record before the Industrial Tribunal, and without raising a contention about the pendency of disciplinary proceedings against the respondent on the date, when he submitted application under VRS scheme, it is not open to the petitioners to canvas the said point for the first time before this Court in this Writ Petition.

16. Admittedly no charge memo had been issued to the respondent on the charge of unauthorized absence and no

disciplinary enquiry as contemplated under the byelaws was conducted against him. Without doing so, the petitioners could not have terminated the services of the respondent on 31.01.2004.

17. Therefore, the termination order dt.31.01.2004 passed by the petitioners was rightly set aside by the Industrial Tribunal and it rightly directed the petitioners to consider the VRS application of the respondent and pay all the VRS benefits payable to the respondent as per the Notification issued by it within three (03) months from the date of enforcement of the award. There is no error apparent on the face of the record, warranting interference by this Court in the award passed by the Tribunal under Article 226 of the Constitution of India. Accordingly, the Writ Petition accordingly dismissed. There shall be no order as to costs.

18. Consequently, miscellaneous petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

09th February, 2017
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