

THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

W.P.NO.20873 OF 2017

ORDER (ORAL) (Per the Hon'ble Sri Justice Suresh Kumar Kait)

Vide the present petition, petitioner – State challenges the order dated 8.2.2016 passed in O.A.No.8750 of 2011, whereby the learned Andhra Pradesh Administrative Tribunal, Hyderabad, while allowing and remanding the matter, directed the 1st petitioner to impose lesser punishment than that of dismissal from service, removal or compulsory retirement upon the respondent No.1 – deceased.

Here, it is to be noted that the 1st respondent herein filed the O.A. and during the pendency of O.A., he died and his legal heirs were brought on record as applicants 2 to 5.

By the impugned order, the Tribunal further directed that if the respondent No.1 had leave to his credit, his absence may be treated as eligible leave and in the absence of it, as EOL, while counting that period for increments and pensionary benefits, without actual monetary benefits. Consequently pensionary benefits were directed to be released to the respondents 2 to 5 herein, who are the legal heirs of the deceased, within one month from the date of receipt of a copy of the order.

The learned Government Pleader for Services (A.P.) appearing on behalf of the petitioners would submit that the 1st respondent was sanctioned six days casual leave with two days permission from 12.2.2009 p.m. to 20.02.2009 p.m. by the RI DAR Kurnool, with instructions not to extend the

leave. However respondent No.1 did not report for duty after completion of leave and did not inform to his higher officers i.e., RI and DSP AR Kurnool, about his absence. Accordingly, a memo No.6/RSI-VI Platoon/2009 dated 16.3.2009 was received from ARSI VI Platoon DAR Kurnool, against the unauthorized absence of the respondent No.1 from casual leave as he completed more than 21 days absence by 13.3.2009. As per order No.184 of APPM Part-I volume-I, he was declared as a deserter vide office Do.No.185/2009 dated 21.3.2009, with instructions that if he has any intention to join duty, he should appear before the Superintendent of Police, Kurnool, within one month from the date of his order or within two months from the date of desertion, whichever is later, for inquiry. But respondent No.1 appeared before the Superintendent of Police, Kurnool on 4.3.2011 along with a representation to take him to duty from desertion, as he was not feeling well, duly submitting copies of medical certificates, for his absence period. On his representation, he was taken to duty without any prejudice to the departmental inquiry to be ordered against him and he reported for duty in DAR Kurnool on 15.3.2011 a.m. vide office Do.No.261/2011 dated 9.3.2011 as per APPM order 184 Part-I, Volume-I.

The learned Government Pleader further submits that the respondent No.1 appeared before the Superintendent of Police, Kurnool only on 4.3.2011 i.e., after a lapse of more than two years. After reporting for duty in DAR Kurnool from 15.3.2011, he worked in DAR Kurnool up to 29.9.2011 a.m. As per the orders issued in G.O.Ms.No.260 G.A. (Services-C) Department dated 4.9.2003, the Government have directed that in all cases of unauthorized absence to duty for a continuous period exceeding one year, penalty of

removal from service shall be imposed on the Government employee after duly following the procedure laid down in the A. P. Civil Services (CC&A) Rules, 1991.

In view of the above rule position, the 1st respondent was dealt with on a charge involving oral inquiry under Rule 20 of 1991 Rules for the delinquency vide office letter PR.No.A6/29/2010 dated 9.3.2011 and the said memorandum of charge, was acknowledged by the charged officer on 12.03.2011.

The charge against the 1st respondent is as under:

“Exhibited gross neglect of duty in absenting himself from duty without leave or permission for more than 21 days from 20-02-2009 p.m. and thereby committed the offence of desertion and also he continued unauthorized absence to duty for a period exceeding one year.”

After complying with the rituals as per rules, departmental inquiry was conducted, whereby the charge against the delinquent was proved and consequently, he was removed from service vide proceedings dated 27.9.2011.

Learned Government Pleader further submits that the departmental inquiry was properly conducted and the charged officer was given opportunity to defend his case and, thereafter, he was removed from service. She submits that though law is well settled that Courts or Tribunals should not interfere in the departmental proceedings, however, the learned Tribunal directed the petitioners to pass fresh orders imposing lesser punishment than that of dismissal from service, removal or compulsory retirement on the respondent No.1, which is not proper in the eye of law.

The respondent No.1 (charged officer) submitted explanation denying the charge and submitting that due to ill-health and also premature death of his son-in-law and brother, he went into shock, due to which, he could not report to duty. He enclosed his medical treatment certificates to the explanation. The disciplinary authority having not satisfied with his explanation, entrusted the matter to DAR, Kurnool, who conducted inquiry and submitted report, holding the charge as proved. A copy of the inquiry report was furnished to charged officer and after receiving his reply, through the impugned proceedings dated 27.9.2011, petitioners have imposed the penalty of removal from services besides treating the absence period as 'not on duty'.

It is not in dispute that the son-in-law and the brother of the respondent No.1 expired. It is not in dispute that the respondent No.1 worked about 28 years. However, while removing the respondent No.1 from service, the disciplinary authority has not taken into consideration the said facts.

It is also not in dispute that normally the courts should not interfere in the departmental proceedings. However, if the penalty imposed is shockingly disproportionate to the misconduct attributed to the charged officer, court has power to interfere with the same.

The fact remains that respondent No.1 was removed from service ten months before his date of retirement. There is nothing on record to show that respondent No.1 has committed any similar misconduct in his 28 years of service, except the present unauthorized absence from duty from 28.2.2009 to 15.3.2010.

Initially respondent No.1 went on casual leave from 12.2.2009. He also field medical certificates before the Inquiry Officer. He admitted the factum of his absence and gave cogent reasons for his absence. From the reasons given by 1st respondent, it is clear that he went into mental shock due to death of his son-in-law as well as his brother in one and the same month. He took treatment from various doctors for his ailments, which is on record. In view of these circumstances, the disciplinary authority ought to have taken a lenient view and imposed a penalty lesser than the one imposed.

It is also pertinent to note that during the pendency of OA filed by the 1st respondent, he expired and thereafter respondents 2 to 5, who are his legal heirs, were brought on record. His pre-mature death proves that he went into mental shock.

In view of the facts recorded above, we find no discrepancy, illegality or perversity in the impugned order passed by the Tribunal. Finding no merit in the writ petition, the same is accordingly dismissed.

No order as to costs.

Miscellaneous petitions pending if any, shall stand closed.

SURESH KUMAR KAIT,J

DR. SHAMEEM AKTHER,J

DATE:28—06—2017
AVS