

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.Nos. 32152 of 2013, 14863 of 2014 and 7976 of 2016

COMMON ORDER:

Since these three cases relate to the same employee i.e. one T.Malla Reddy employed in the Telangana State Road Transport Corporation (for short 'the Corporation') and the cases are filed by him against the said Corporation. So these three cases are being disposed of by this common order.

2. The said individual was employed as driver in the said Corporation in 1985. He was attached to the Falaknuma Depot of the said Corporation.

3. According to the Corporation, the said employee was declared medically unfit due to defective distance vision by a medical certificate issued on 13-05-2009. At his request, he was again directed to the hospital run by the Corporation at Tarnaka, Hyderabad for re-medical examination through a letter dt.10-06-2009. The employee attended at the said hospital on 07-09-2009 (nearly after three months), took his health book and did not report to the doctors for re-medical examination and left the hospital along with his health book. Thereafter he did not attend to the said hospital for re-medical examination nor did he report to the Falaknuma Depot, to which he was attached, and remained absent. According to the Corporation, he was advised to attend the said hospital for medical examination by the Depot Manager through a

letter dt.18-05-2010, which was acknowledged by the employee, but he failed to attend for re-medical examination.

4. Therefore a charge memo dt.27-09-2010 was issued alleging that the employee did not report at the hospital for re-medical examination and remained absent from 08-09-2009 till the date of issuance of the charge sheet and this constitutes misconduct under Reg.28(xxvii) of the APSRTC Employees (Conduct) Regulation, 1963.

5. The Corporation alleges that the said charge memo was sent to his permanent residential address available in the official records by Registered Post with Acknowledgment Due, but the cover was returned undelivered by the Postal Department stating “such person was not available in the village”. Thereafter copy of the charge memo issued to the employee was exhibited in the notice board of the Depot and witnesses’ signatures were obtained.

6. An Inquiry Officer was appointed and he submitted a report holding that the charge leveled against the employee stood proved.

7. Copy of the inquiry report was sent to the employee for his comments/objections thereon on 27-12-2010. His father received it and acknowledged it, but the employee did not offer any comments or objections to it.

8. Therefore the Depot Manager, after perusing the Inquiry Report and other evidence available on record, came to the provisional conclusion that the charge leveled against the employee stood proved and proposed to impose punishment of removal from service on the employee.

9. Accordingly, he issued show cause notice of removal on 10-02-2011 to the employee. This was also sent by Registered Post with Acknowledgment Due to the employee's residential address, but the cover was returned undelivered by the Postal Department stating "there is no such person". Thereafter the said show cause notice was exhibited in the notice board of the Depot for 7 days and witnesses' signatures were obtained. Then final orders were passed removing him from service on 05-12-2011. This was also sent to his residential address, but it was again returned with postal endorsement "door locked". It was then exhibited in the notice board of the Depot for 7 days and witnesses' signatures were obtained. Thereafter the employee approached the Depot on 18-04-2012 and took the order of removal.

10. The employee thereafter filed an application under Section 2-A(2) of the Industrial Disputes Act, 1947 (for short "the Act") challenging the order dt.05-12-2011 removing him from service and seeking reinstatement into service with continuity of service, all attendant benefits including full back wages. This came to be

numbered as I.D.No.41 of 2012 before the Labour Court-I, A.P., Hyderabad.

11. In the Claim Petition filed in the said case, the employee contended that without any *prima facie* investigation, on the basis of the letter dt.20-09-2010 of the Senior Medical Officer (A), charge memo was issued to him; that it was sent to his old residential address even though he had furnished his new residential address; due to ill-health, he shifted from village to the city and gave his address to the Corporation, but it kept issuing letters to the old address. He stated that when he recovered from ill-health and reported to the Corporation, he was served with a letter dt.27-12-2010, that he received it on 28-01-2011, and then reported to the duty on the said date. He contended that the Corporation suppressed these facts and did not inform him that any disciplinary proceedings were pending against him. He contended that the entire inquiry proceedings are *ex parte* and are liable to be quashed.

12. The Corporation filed a counter opposing his claim. It stated that the Senior Medical Officer (A), Tarnaka dt.20-09-2010 informed that in the medical examination, the employee was found medically unfit due to defective distance vision, that he was sent to the Tarnaka hospital for re-medical examination on 10-06-2009, he attended the hospital on 07-09-2009, took his health book and did not report to the concerned doctors for re-medical examination and left the hospital. It was contended that the employee neither

attended to the Tarnaka hospital nor reported to duty and remained absent even though he was advised to attend the hospital. It was stated that notices were sent to the address available, that the employee did not receive them and they were returned undelivered and thereafter punishment of removal was passed. It mentioned about the attempts of sending various notices to him by Registered Post with Acknowledgment Due to the address given by him and return of the said postal covers without being delivered to the employee.

13. No witnesses were examined by either party before the Labour Court-I, Hyderabad nor any documents were marked.

14. Before the said Court, a memo was filed by the Corporation stating that it was ready and willing to provide alternative appointment to the employee and an order was also passed by it to provide appointment to the employee. The counsel for the employee also stated that the employee was willing to take alternative employment provided if he was given pay protection. This was also assured by the Corporation.

15. However, there was a dispute regarding grant of continuity of service to the employee since Corporation contended that since he did not appear as per the directions of the Corporation before the medical authorities, he is not entitled to the same. It contended that the employee did not turn up for more than 4 months for

examination by the Medical Board and having neglected to obey the directions of the medical authorities and avoided Medical Board examination, he cannot claim continuity of service.

16. The Labour Court, however, agreed with the Corporation and held that since the employee did not turn up for Medical Board examination even though he himself sought such examination, he had acted with negligence and did not obey the directions of the Corporation. It therefore held that he is entitled to continuity of service till the date the direction was given by the medical authorities and the Corporation should provide alternative employment protecting the last pay drawn by him prior to the medical examination. It held that he is not entitled to get back wages, notional increments and attendant benefits for the period he was not on duty.

17. Challenging the same, the Corporation filed W.P.No.32152 of 2013.

18. The employee filed W.P.No.14863 of 2014 questioning the inaction of the Corporation in providing alternative job by protecting his pay with continuity of service on par with drivers' pay scale. He also sought a direction to the Corporation to follow Sec.17-B of the Industrial Disputes Act, 1947.

19. The employee also filed another W.P.No.7976 of 2016 seeking a Writ of Mandamus to provide alternative job by

implementing the award of the Labour Court and also seeking a direction that wages under Section 17-B of the Act be paid during pendency of the proceedings in higher Courts from the date of passing of order.

20. Sri N.Vasudeva Reddy, learned Standing Counsel for the Corporation fairly stated that the Corporation is willing to provide alternative employment to the employee. Admittedly, the Corporation had filed a memo before the Labour Court agreeing that it would provide alternative employment to the employee.

21. On 21-09-2016, when the case was listed for hearing, it was brought to the notice of the Court that the employee had been given alternative employment by order dt.20-07-2016. In this view of the matter, W.P.No.32152 of 2013 is dismissed as infructuous. No costs.

22. Coming to W.P.No.14863 of 2014, in that case, the employee had sought a direction for implementation of the award by providing alternative job to him by protecting his pay with continuity of service on par with driver's pay scale. He also sought last drawn wages under Section 17-B of the Act. The Labour Court had granted continuity of service till the date direction was given by the Medical authorities only and also protection of pay.

23. Since W.P.No.32152 of 2013 filed by the Corporation is dismissed and since alternative employment has already been given

to the employee, the Corporation is directed to protect his pay and grant him continuity of service till the date of direction given by the medical authorities as directed by the Labour Court.

24. However, coming to the claim of the employee for wages under Section 17-B of the Act and payment of salary till the date of providing alternative job with arrears from the date of award is concerned, the said provision itself states that wages under the said provision would be paid if he had not been employed in any establishment during the said period and an affidavit is filed by him to that effect in the Court. It is not the case of the employee that he had filed any such affidavit before this Court. Therefore he is not entitled to wages under Section 17-B of the Act.

25. However, he is not entitled to wages for the gap period between the date of his termination and date of re-employment since he had himself absconded without appearing for re-medical examination in spite of the direction by the Corporation.

26. Accordingly, W.P.No.14863 of 2014 is allowed to the extent of directing the Corporation to protect the pay of the employee with continuity of service till the date when direction was given by the medical authorities to the employee to attend the Medical Board examination. No costs.

27. Coming to W.P.No.7976 of 2016, the prayer in the said Writ Petition is substantially same as the prayer in W.P.No.14863 of

2014. Therefore no further orders are required in W.P.No.7976 of 2016. It is accordingly dismissed. No costs.

28. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 01-08-2017

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