

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

WRIT PETITION No.18123 of 2008

ORDER:

This writ petition, under Article 226 of the Constitution of India, by the writ petitioners-unsuccessful respondents-Corporation (hereinafter, 'the Corporation') is directed against the Award, dated 13.07.2007, in I.D.No.55 of 2005 passed by the learned Presiding Officer, Labour Court-II, Hyderabad.

2. I have heard the submissions of *Sri N. Vasudeva Reddy*, learned standing counsel appearing for the petitioners-Corporation and of *Sri V. Narasimha Goud*, learned counsel appearing for the 1st respondent-workman. I have perused the material record.

3. The facts and chronological events borne out by the record and as per the submissions made before this Court, in brief, are as follows:

The 1st respondent was appointed, on 16.01.1993, as a casual driver. He was disengaged from service on 16.04.1994 for causing an accident. Pursuant to an order in revision, he was appointed as a fresh driver on 04.05.1995. He was again removed from service on 18.09.1996 for his unauthorised absence from duties. Once again he was appointed as fresher on 23.09.1998, on consideration of his revision petition. His services were regularised with effect from 01.01.2000. While so, the 1st respondent unauthorisedly absented from attending to duties from 23.04.2003 onwards. His absence was reported by the Traffic Inspector on 02.05.2003. Basing on the said report, the Divisional Manager, Sanga Reddy, issued a charge sheet on 24.05.2003. The charge formulated verbatim reads as follows: - 'For having your unauthorisedly absent to your chartered duty from 23.4.03 onwards which caused dislocation of services, cancellation of KMs, loss of average earnings of Rs... and inconvenience to the travelling public, which constitutes misconduct under REg.28 (xxvii) of APSRTC Employees (Conduct) Regulations, 1963.' The 1st

respondent failed to submit an explanation to the charge sheet. A domestic enquiry was ordered by appointing an enquiry officer. He reported before the enquiry officer along with a medical certificate given by a Doctor; According to the Corporation the said Doctor is not a competent medical officer. After duly conducting an enquiry, the enquiry officer gave a report holding that the charge is proved. The 1st respondent did not submit his explanation with comments and objections to the enquiry report. A show cause notice proposing punishment of removal from service was issued to the 1st respondent. As his explanation was found unsatisfactory and unconvincing he was removed from service by proceedings dated 10.05.2004. Appeal preferred by the 1st respondent was rejected. Therefore, the 1st respondent raised an industrial dispute and filed a claim petition. The same was resisted by the Corporation. On merits and by the Award impugned in this writ petition, the Labour Court partly allowed the claim petition; and, while setting aside the removal order issued by the 2nd respondent therein, the Corporation was directed to reinstate the petitioner with continuity of service but without back wages; and it was further directed to fix the salary of the workman by giving notional increments during the period when he was not in service. Aggrieved thereby the Corporation preferred this writ petition.

4. Learned standing counsel for the Corporation while bringing to the notice of the Court the chronological events and the past conduct of the 1st respondent would contend as follows:

The 1st respondent absented from attending to duties unauthorisedly from 23.04.2003. A charge sheet was issued on 02.05.2003. A detailed enquiry was conducted. The statement of traffic supervisor who has reported about the unauthorised absence of the 1st respondent was recorded during the course of enquiry in the presence of the 1st respondent. The 1st respondent declined to cross examine the said witness. In his statement, the 1st respondent admitted that he did not submit sick certificate. After conducting an enquiry

by duly following the principles of natural justice, the enquiry officer submitted a report that the charge is proved. After following the procedural requirements, the final order of removal from service was passed. The 1st respondent without availing the remedy of review straight away raised an industrial dispute. The Presiding Officer of the Labour Court without properly appreciating the facts and the evidence took an erroneous and perverse view in the matter and ordered reinstatement with continuity of service but without back wages and further directed that the salary should be fixed giving notional increments during the period the 1st respondent was not in service. As per regulations of the Corporation, it is mandatory to submit a sick certificate within 48 hours on admission into hospital in case of sickness and hospitalisation of an employee. The 1st respondent having remained absent from 23.04.2003 without any intimation about his sickness, admittedly, failed to submit any such sick certificate. There is no reasonable cause for such absenteeism from duties. After his reinstatement he was posted to Narayanakhed Depot by an order dated 30.10.2007; such reinstatement is subject to the result of the writ petition. When the charge is held proved, the learned Presiding Officer of the Labour Court ought not to have interfered with the measure of punishment. The Supreme Court time and again observed in various decisions that when once the charges are proved, the punishment imposed by the disciplinary authority or the Officer concerned of the Management shall have primacy and shall not be interfered with.

5. Learned counsel for the 1st respondent-workman would contend as follows:

The previous conduct of the workman is not the subject matter of the charge. The period of absenteeism is a very short period of about seven or eight days, that is, from 23.04.2003 till the date on which charge sheet was served on 02.05.2003. It is not uncommon for employees to abstain from duties without leave or to stay beyond leave period without extension of leave. For

such trivial acts of the workman, the punishment of removal from service is highly disproportionate and shocks ones conscience. The 1st respondent sent oral intimation to the 2nd respondent about his illness through another employee, who is a driver. He also produced a medical certificate given by a medical attendant. If the 2nd respondent doubted the correctness of the medical certificate, he ought to have verified the correctness or otherwise of said medical certificate and ought to have referred the 1st respondent along with the medical certificate to a competent authority as per regulations of the Corporation. The said course was not followed and simply the medical certificate was not taken into consideration. By mere absence for a period of less than ten days no inconvenience is caused to the Corporation and such absence did not result in dislocation of work or cancellation of services or loss of earnings to the Corporation. The learned Presiding Officer of the Labour Court appreciated the facts correctly and evidence properly and came to a correct conclusion that for a short period of absenteeism the punishment of removal from service is grossly disproportionate and rightly reduced the penalty. Even the penalty imposed by the Labour Court is high and excessive; however, the 1st respondent did not assail the Award insofar as the quantum of penalty. There is no merit in the writ petition. The writ petition being devoid of merit is liable for dismissal.

6. A careful perusal of the Award would lay bare that the learned Presiding Officer of the Labour Court after examining the facts and the explanation correctly and the evidence in proper perspective came to the conclusion that the 1st respondent having abstained from attending to duty without prior sanction of leave had not presented medical certificate within 48 hours and that the certificate produced by him was defective. Learned Presiding Officer of the Labour Court also noted that when a medical certificate is submitted by an employee, the authority concerned may either accept the same or refer the medical certificate to a competent medical officer for verification of its

correctness or otherwise, but the authority who was competent to sanction leave did not follow the said procedure and simply not accepted the medical certificate without investigation by the competent officer as to its correctness. Having held so, the learned Presiding Officer of the Labour Court held that the constituents of the charge are not completely proved and that the 1st respondent is not guilty of the charge as framed but is guilty of the constituents of the charge insofar as not submitting sick certificate within 48 hours as contemplated under the regulations. In view of that finding and the further finding that the punishment of removal from service is grossly disproportionate, the learned Presiding Officer of the Labour Court has set aside the punishment of removal from service and ordered reinstatement into service without back wages but with continuity of service and further directed that 1st respondent's salary should be fixed by giving notional increments during the period when he was not in service.

7. Thus, a careful perusal of the material record including the Award of the Labour Court would show that after careful and detailed examination of the facts, the relevant evidence and circumstances, the learned Presiding Officer of the Labour Court arrived at reasoned findings and partly confirmed the findings of the Enquiry Officer. This Court, in the facts and circumstances, does not find any grounds much less valid grounds calling for interference with the said concurrent findings of the Enquiry Officer and the learned Presiding Officer of the Labour Court. When once conclusions arrived at by the enquiry officer and the learned Presiding Officer of the Labour Court are found to be sustainable on facts and the evidence and when such findings are based on some legal evidence, this Court will not normally substitute its subjective opinion in the place of the one concurrently arrived at by the said officers.

8. In the decision in *Union of India v. P. Gunasekaran*¹, the Supreme Court dealt with the scope of interference of this Court under Articles 226 or 227 of the Constitution of India and held, *inter alia*, as under:

In disciplinary proceedings High Court is not and cannot act as a second court of first appeal and that the High Court, in exercise of its powers Under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence and that the High Court can only see whether:

- (a) the enquiry is held by a competent authority;
- (b) the enquiry is held according to the procedure prescribed in that behalf;
- (c) there is violation of the principles of natural justice in conducting the proceedings;
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
- (i) the finding of fact is based on no evidence.

Under Article 226/227 of the Constitution of India, the High Court shall not:

- (i). re-appreciate the evidence;
- (ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
- (iii). go into the adequacy of the evidence;
- (iv). go into the reliability of the evidence;
- (v). interfere, if there be some legal evidence on which findings can be based.
- (vi). correct the error of fact however grave it may appear to be;
- (vii). go into the proportionality of punishment unless it shocks its conscience.”

Therefore, having regard to the facts and the legal position, this Court holds that the contention of the Corporation that the charge formulated against 1st respondent is proved in its entirety and that the Labour Court ought not to have held to the contra is devoid of merit and hence, needs no countenance in the facts and circumstances of the case.

¹ (2015) 2 SCC 610

9. On the above analysis of evidence and keeping in view the legal position obtaining, this Court finds that there is sufficient material to accept the findings of the Labour Court and that there no grounds calling for interference with the finding in the award of the Labour Court.

10. Coming to the quantum of punishment, it is to be noted that the Labour Court partly allowed the claim petition; and, while setting aside the removal order issued by the 2nd respondent therein, directed the Corporation to reinstate the petitioner with continuity of service but without back wages; and to fix the salary of the workman by giving notional increments during the period when he was not in service. Having regard to the gravity of the misconduct held proved, this Court does not agree with the submission of the Corporation that the penalty imposed by the Labour Court needs upward revision. In the considered view of this Court the said penalty is sufficiently proportionate to the gravity of the charge proved.

11. Viewed thus, this Court finds that the Award does not call for interference and that the writ petition is liable to be dismissed.

12. The Writ Petition is, accordingly, dismissed.

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

26.04.2017
Vjl

M. SEETHARAMA MURTI, J