

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.18972 of 2002

ORDER:

Heard Sri V.Narasimha Goud, learned counsel for the petitioners and Sri A.Rama Rao, learned counsel for the respondents.

2. This Writ Petition is filed by the 1st petitioner assailing award dt.03-09-2001 in I.D.No.24 of 1998 of the Industrial Tribunal-cum-Labour Court, Anantapur.

3. The 1st petitioner was employed as a driver in the A.P. State Road Transport Corporation (APSRTC) in Allagadda Depot. A charge memo was issued to him framing the following charges:

“1) For having abstained for duty from 04-05-1990 to 19-06-1990 unauthorisedly without sanction of any leave or permission of the competent authority and caused much inconvenience to the traffic Supervisors in the conduct of operation of services and to the traveling public besides loss of revenue to the corporation which constitutes misconduct in terms of clause (xxvii) and (ix) (a) of Reg.28 of APSRTC Employees (Conduct) Reg. 1963.

2) For having been unavailable to duties due to frequent leave/sick/absence for 59 days in a period of 10 months which reveals his habitual absence to duties which constitutes misconduct in terms of clause (xxvii) of Reg.28 of APSRTC Employees (Conduct) Reg. 1963.”

4. The 1st petitioner denied the said charge and stated that he applied for sick leave and also sent telegram and leave letter seeking extension of leave.

5. The Corporation then appointed an Enquiry Officer. The petitioner was found guilty by the Enquiry Officer of the charges levelled. Thereupon the 2nd respondent imposed punishment of termination of the 1st petitioner's services on 02-03-1991.

6. 6 ½ years later, 1st petitioner filed an appeal against the said order to the appellate authority on 04-07-1997. But the appeal was rejected on 12-08-1997. He also filed a review before the competent authority but it was rejected on 05-01-1998.

7. He then filed an application under Section 2A (2) of the Industrial Disputes Act, 1947 assailing his termination from service by 2nd respondent and seeking relief of reinstatement with continuity of service, back wages and other attendant benefits.

8. Before the 1st respondent, neither party examined any witness or marked any documents.

9. By award dt.03-09-2001, 1st respondent dismissed the I.D. without granting any relief to 1st petitioner.

10. Assailing the same, this Writ Petition is filed by 1st petitioner.

11. Pending the Writ Petition, the 1st petitioner died and his legal representatives viz., petitioner Nos.2 to 4 were brought on record.

12. Sri V.Narasimha Goud, learned counsel for the petitioners contends *inter alia* that 1st petitioner has produced Medical Certificate from a private doctor in the enquiry and 2nd respondent did not accept it; that the 2nd respondent should have referred the Medical Certificate to the competent Medical Officer under Rule 11 (3) of the APSRTC Leave Rules; and since this was not done, there is violation of the said rule. He also contended that the second charge framed against 1st petitioner is a vague charge and he could not have been found guilty of the said charge. Lastly he contended that the punishment of removal from service is grossly disproportionate to the proved mis-conduct and so this Court ought to set aside the impugned award.

13. Sri A.Rama Rao, learned counsel for 2nd respondent, supported the impugned award.

14. I have noted the contentions of both sides.

15. I have perused the findings of the disciplinary authority i.e. Depot Manager, Allagadda. On the basis of which, punishment of removal was imposed on the petitioner on 02-03-1991.

16. Charge No.1 dealt with the unauthorized absence of the 1st petitioner from 04-05-1990 to 19-06-1990. The disciplinary authority considered the evidence of the 1st petitioner as well as the Traffic Inspector and concluded that telegram dt.07-05-1990 seeking grant of leave from 04-05-1990 to 07-05-1990, and telegram

dt.14-05-1990 seeking grant of leave from 08-05-1990 to 12-05-1990, were sent after the completion of the said period; that the requests for grant of leave were rejected; that Sick Certificate was sent by the 1st petitioner for the period from 14-05-1990 to 13-06-1990 from a private medical practitioner of Ieeja to the Depot Manager Office which was received on 15-05-1990; that these were submitted after the expiry of 48 hours; that these telegrams and sick extension certificates were produced only to cover his absence, that too after completion of 48 hours; that he did not even obtain permission to leave the headquarters; and this caused inconvenience in operating the service regularly and punctually.

17. As regards the Charge No.2 regarding absence of 59 days for the period from August 1989 to May 1990, the disciplinary authority held that this fact is confirmed from a perusal of the 1st petitioner's leave record and indicated that he was habituated to frequent absence, disrupting the operation of the service.

18. The contention of the learned counsel for the petitioners that the Sick Certificate produced by the 1st petitioner ought to have been accepted or in the alternative, referred to competent Medical Officer in terms of Rule 11 (3) of the APSRTC Leave Rules cannot be accepted for the reason that such Sick Certificate should be produced without delay. Though the 1st petitioner's absence commenced from 04-05-1990, it was submitted only on 15-05-1990. When no leave was granted in spite of submission of Sick Certificate from 4-05-1990

to 13-06-1990, nothing prevented the 1st petitioner from approaching the Depot Manager and subjecting himself to a medical examination to prove that he was actually sick. The 1st petitioner however turned up only on 19-06-1990 with the fitness certificate that he is fit to attend duties from that date. Thereby he deprived the disciplinary authority of an opportunity to have the 1st petitioner examined by competent Medical Officer to ascertain whether the 1st petitioner was actually sick or not. In view of the fact that the 1st petitioner sent telegrams after the completion of the period for which he requested the leave therein, and Medical Certificates were also submitted with considerable delay, he cannot blame the Corporation for not invoking Rule 11 (3).

19. As regards the 2nd charge of absence of 59 days for the period of 10 months from August 1989 to May 1990 is concerned, this charge was admitted by the 1st petitioner himself. Though he pleaded that he had health problem, the disciplinary authority rightly observed that if he had a health problem, he should have gone to the APSRTC Hospital, Tarnaka for treatment, but instead, he was resorting to absenting himself and had submitted only a private practitioner's Medical Certificates.

20. These findings arrived at by the disciplinary authority on appreciating the enquiry report as well as evidence on record as well as the contentions of the 1st petitioner, cannot be said to be perverse or based on no evidence.

21. Since this Court is not to act as an appellate authority while exercising power of judicial review of Article 226 of the Constitution of India, I am of the opinion that no case is made out for interference by this Court under Article 226 of the Constitution of India with the findings of the disciplinary authority.

22. As regards the contention about proportionality of punishment, learned counsel for the petitioners relied on the judgment in **Chairman-cum-Managing Director, Coal India Limited and Another Vs. Mukul Kumar Choudhuri and others**¹, that lenient view was taken in the case of unauthorized absence of six months in that case. In my opinion, that decision cannot be relied on because in the said case, the employee had admitted his guilt and the Court felt that there were circumstances beyond his control for which an order of removal could not be justified.

23. However, in the present case, the petitioner denied his guilt and by being absent for long period of time, deprived the Corporation of his services. The Supreme Court has time and again held that unless the punishment imposed is shockingly disproportionate to the proved mis-conduct, this Court ought not to interfere.

24. Applying the said principle, I am of the opinion that the punishment imposed on the petitioner by 2nd respondent cannot be

¹ (2009) 15 S.C.C. 620

said to be disproportionate to the mis-conduct warranting interference by this Court under Article 226 of the Constitution of India.

25. Accordingly, the Writ Petition is dismissed as devoid of any merit. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 13-09-2017

kvr

