

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.21497 of 2001

ORDER:

The petitioner is the Management of the Singareni Collieries Company Limited and it filed this writ petition questioning the award of the 1st respondent-Industrial Tribunal-cum-Labour Court, Warangal (for short "the Labour Court") passed in I.D(C).No.3/1997, dated 02.12.1999, wherein the Labour Court directed reinstatement of the 3rd respondent-workman into service with continuity of service and back wages.

Brief facts of the case are that the 3rd respondent-workman, who worked as General Mazdoor in the petitioner's company was issued a charge sheet, as per the standing orders of the Company, stating that he remained absent from duty without any sanctioned leave from 20.08.1994 to 11.01.1995. The Enquiry Officer was appointed. The Enquiry Officer, after conducting enquiry as per the Rules and after giving full opportunity to the 3rd respondent-workman, submitted his report on 25.11.1995. The Disciplinary Authority, after considering the Enquiry Officer's Report and the explanation submitted by the 3rd respondent-workman, vide orders, dated 26.12.1995, removed the 3rd respondent-workman from service with effect from 28.12.1995. Initially, the Union of the petitioner company raised conciliation before the Asst.Labour Commissioner (Central), Vijayawada and the same was ended in failure. The Government referred the matter for adjudication to the 2nd respondent-Industrial Tribunal (Central), Hyderabad to decide the issue as to whether the action of the Management of SCCL (petitioner's company) Yellandu, in dismissing Sri Gudisela Rajalingu, General Mazdoor (3rd respondent-workman) from service is legal and justified? If not, to what relief, is the

workman entitled and from which date?. The same was numbered as I.D.No.55/1997 on the file of the Industrial Tribunal-I, Hyderabad. It appears that pending the reference, the 3rd respondent-workman raised an industrial dispute under Section 2-A(2) of the Industrial Disputes Act before the Labour Court in I.D(C).No.3 of 1997. It seems that the dispute referred by the Central Government under Sec.10(1)(d) of the Industrial Disputes Act, which is numbered as I.D.No.55/1997, was closed. The 3rd respondent-workman prosecuted I.D.No.3/1997. The Labour Court, on appreciation of the oral and documentary evidence before it, viz., WW 1 and Exs.W1 to W6, came to the conclusion that I.D.No.3/1997 is maintainable before it as it conferred jurisdiction to entertain the same. The Labour Court further held that the 3rd respondent-workman remained absent for duties from 20.08.1994 to 11.01.1995 since he became sick suddenly in Warangal and underwent medical treatment for the above period. However, the 3rd respondent-workman was permitted to join duty after thorough medical check up in the hospital of the petitioner company and accordingly, the workman joined duty on 18.01.1995. Thereafter, a charge sheet was issued for his unauthorized absence and a domestic enquiry was conducted, and in the domestic enquiry, the statement of the 3rd respondent-workman was obtained and no witness was examined on behalf of the Management contrary to the statement of the workman. Before the enquiry officer, the 3rd respondent-workman gave statement explaining the reasons for his absence. The reasons given by the 3rd respondent-workman were not challenged or denied by the Managing by producing any evidence. Considering the evidence and facts of the case, the Labour Court held that the petitioner company grossly erred in treating the absence of the 3rd respondent-workman without sanctioned

leave and removing him from service for that reason is illegal. The Labour Court having held that the removal of the 3rd respondent-workman is unwarranted and the same is disproportionate to the irregularity committed by the workman and felt that it is just and reasonable to set aside the order of removal passed against the 3rd respondent-workman and accordingly, set aside the order of removal passed against the 3rd respondent-workman and directed his reinstatement with continuity of service, with back wages and other benefits, and further directed that the period of absence of the workman from 20.08.1994 to 11.01.1995 shall be treated as extraordinary leave. Challenging the same, the Management of the petitioner company filed the present writ petition.

Sri J.Sreenivasarao, learned Standing Counsel for the petitioner company, would contend that the 3rd respondent-workman was unauthorizedly absented from duties from 20.08.1994 to 11.01.1995 without availing any leave and without any intimation, for which, a charge sheet was issued and a domestic enquiry was conducted against the workman, and in the domestic enquiry, charges leveled against the workman are proved and the workman was removed from service by the Disciplinary Authority after considering his explanation to the charge sheet. He would further contend that the Labour Court committed gross error in holding that the Management of the petitioner company has to prove that the 3rd respondent-workman was unauthorizedly absent without any leave, and shifting the burden on the Management is illegal. He would further contend that I.D.No.3/1997 filed by the 3rd respondent-workman before the Labour Court under Section 2-A(2) of the Industrial Disputes Act is hit by the principles of *res judicata* under Section 11 of the CPC, as the I.D.No.55/1997, taken upon on reference under Section 10 of

the Industrial Disputes Act before the Industrial Tribunal-I, Hyderabad was closed and hence the 3rd respondent-workman is not entitled to file another industrial dispute. The learned counsel would further contend that there is no irregularity or illegality in removing the 3rd respondent-workman for his unauthorized absence and the Labour Court erred in directing reinstatement of the 3rd respondent-workman into service with continuity of service and back wages and the same is liable to be set aside.

Sri P.Prabhakar Rao, learned counsel, appearing for the 3rd respondent, would contend that the petitioner was remained absent from 20.08.1994 to 11.01.1995 due to ill-health only and the same was explained before the Enquiry Officer and he accepted the same. He would further contend that the management allowed the workman to join duty on producing fitness certificate, the workman joined on 18.01.1995 and worked till 26.12.1995. He would further contend that after joining duty, the management issued removal order dated 26.12.1995, removing him from service with effect from 28.12.1995, which is illegal. The learned counsel would further contend that the Labour Court, on appreciation of oral and documentary evidence, produced by the workman, rightly set aside the removal order and directed reinstatement of the workman with continuity of service and with back wages, which does not warrant any interference.

Before the Enquiry Officer, the 3rd respondent-workman explained the reasons for his absence from 20.08.1994 to 11.01.1995 and the management also allowed the workman to join duty subject to medical check up in the hospital of the petitioner company and accordingly, the workman joined duty on 18.01.1995 and thereafter, the order of removal,

dated 26.12.1995 was served on the workman. The Labour Court, based on the principle that “mere absence of employee without leave at his credit is not a misconduct”, considered the case of the workman and directed his reinstatement into service with continuity of service and back wages. The management of the petitioner company has contended that the Labour Court, without properly appreciating the evidence on record and facts and circumstances of the case, granted back wages for the period not on duty, which is illegal. The Labour Court ought to have granted continuity of service without granting back wages. Admittedly, according to the learned standing counsel, appearing for the petitioner company, the 3rd respondent-workman is not in service as of now and he has already attained the age of superannuation.

Considering the fact that the 3rd respondent has already attained the age of superannuation, this court felt that the 3rd respondent has illegally terminated the petitioner from service based on the enquiry officer's report, without independent application of mind to the evidence available on record. The petitioner was put to severe financial problem. This court felt that, in the interests of both the parties, modification of the award of the Labour Court to the extent of granting of continuity of service and 50% of back wages, would meet the ends of justice. Accordingly, the Award of the Labour Court, Warangal, dated 02.12.1999, passed in ID (C) No.3 of 1997, in so far as granting of continuity of service and back wages, is modified to that of continuity of service with 50% back wages.

The Writ Petition is partly allowed to the extent indicated above.
No order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.GANGA RAO,J

Date: 06.07.2018
Dsr

