

**THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

WRIT PETITION NO.37825 OF 2015

ORDER: (per Hon'ble Sri Justice T.Amarnath Goud)

This writ petition is filed by the APSRTC challenging the Award of the Lok Adalat at Hyderabad (organized by the High Court Legal Services Committee of this Court), first respondent herein, passed in proceedings Roc.No.106/HCLSC/2015, dated 12.01.2015.

2. The second respondent was appointed as a Conductor on daily wage basis on 05.12.1998 and later her services were regularized with effect from 01.01.2000. On 02.06.2010, while the second respondent was performing duties, the bus met with an accident and she sustained severe injuries. In view of the injuries sustained, the second respondent was granted sick leave from 03.06.2010 to 29.11.2010. Thereafter, she underwent treatment in NIMS Hospital, Hyderabad and joined the duty on 07.09.2011. As the second respondent was not in a position to perform her regular duties, the Competent Authority accorded permission to utilize the services of the second respondent on out of designation duties for a period of six months vide office order dated 16.02.2011. She was permitted to work on out of designation duties till 26.09.2012.

3. Thereafter, the second respondent submitted representations to the petitioners to continue her on out of designation duties. When the same were not considered, the second respondent filed W.P.No.17975 of 2012 seeking a direction to the petitioners to

provide her light duties. While the said writ petition was pending, she also filed W.P.No.11930 of 2013 seeking a direction to the petitioners to refer her to the Andhra Pradesh Medical Board at Gandhi Hospital or Osmania Hospital for final medical report and to provide alternative employment based on the said medical report.

4. While so, with the consent of parties, the aforesaid writ petitions were referred to the first respondent for settlement. The first respondent by its common Award dated 12.01.2015 settled the matter. The Award shows that as per the settlement, the APSRTC undertook to refer the second respondent to appropriate medical board for the purpose of finding out whether she is fit to attend to the duties of the conductor within a period of two months from that date and thereafter take appropriate action regarding the duties to be allotted to the second respondent basing on that report. Both the aforesaid writ petitions were closed by this Court on 23.04.2015 basing on the above common Award.

5. It is the case of the petitioners that when both the aforesaid writ petitions were pending and before the passing of Award by the Lok Adalat, the second respondent was removed from service vide proceedings No.P1/1(33)/14-DSNR, dated 25.08.2014, passed by the third respondent for her unauthorized absence.

6. The contention of the petitioners –Corporation now is that the order by which the second respondent was removed from service has become final and her removal from service was not taken to the

notice of the first respondent and the first respondent passed the Award without being aware of removal of the second respondent from service. Their further plea is that since the second respondent has been removed from service, it is no longer necessary to refer her to the medical board and the Award passed by the first respondent itself is now invalid and in any event it has become infructuous as not enforceable and redundant. Hence, the petitioners' prayer is that the said Award should be set aside.

7. The second respondent filed a counter raising various contentions. She has stated that she was not aware of the removal order dated 25.08.2014 and hence she could not inform the same before the first respondent while passing the Award. The counsel for the second respondent tried to sustain the Award of the first respondent.

8. The petitioners filed reply affidavit stating that despite providing sufficient opportunity, the second respondent did not choose to participate in the enquiry proceedings and remained ex parte. Thereafter, the petitioners sent termination order dated 25.08.2014 to the second respondent on 30.08.2014 and the same was returned with an endorsement 'unclaimed'. The petitioners also filed returned postal covers along with reply. It is settled law that when a notice which was returned with postal shara "unclaimed" to be deemed service of notice.

9. It may be noted that once the second respondent has been removed from service, and that order remained unchallenged, it is

not open for the second respondent to get the Award of the first respondent sustained, that too, when it was passed after her removal from service. Learned counsel for the petitioners, therefore, contends that this writ petition should be allowed and the Award of the first respondent should be set aside. The fact remains that the first respondent passed the Award without knowing about the removal of the second respondent from service even earlier to the passing of the Award. It is not necessary to go into those circumstances. It would be sufficient to note that when the second respondent is removed from service and that is not challenged, the Award of the first respondent cannot be enforced. The grievance of the petitioners is that if the Award is allowed to stand, that will create a conflicting situation for their administration. Further, the Award cannot be enforced as it was passed subsequent to the removal of the second respondent from service.

10. Accordingly, this writ petition is allowed. It will be open for the second respondent to challenge the order of her termination before the appropriate forum. No costs. Miscellaneous petitions pending, if any, shall stand closed.

C.PRAVEEN KUMAR, J

T.AMARNATH GOUD, J

Date: 11.04.2018
TJMR