

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.22346 OF 2007

ORDER:

The petitioner, who was a driver in the respondent-APSRTC, filed this writ petition being aggrieved by the award passed in I.D.No.175 of 2003 dated 17.12.2004 of the Industrial Tribunal-cum-Labour Court, Godavarikhani, whereby the Labour Court passed nil award, as being illegal, arbitrary and contrary to the provisions of the Industrial Disputes Act, 1947 (for short 'the Act').

2. The case of the petitioner is that he was appointed as a driver on daily wage basis on 02.12.1987. His services were regularized on 01.07.1988. While he was working at Utnoor Depot, he availed off on 26.01.2000 and went to his residence at Jannaram, and suffered with heavy fever and bronchitis asthma, resulting in an unbearable cough. The petitioner took treatment at Government Civil Hospital, Jannaram. He sent the sick certificate by post to the Senior Traffic Inspector of Utnoor Depot as nobody available to handover the same. The Senior Traffic Inspector of Utnoor Depot has received the sick certificate, but treated the sick period as absent and accordingly reported to the respondent. Based on the report of the Traffic Inspector, the respondent had issued Charge sheet dated 13.03.2000 to the petitioner framing the following charges:

“1. For having absent to your duties unauthorisedly without prior permission from 26-1-2000 to till date i.e., 22-2-2000 and submitted sick certificate from Jannaram, due to your absence the punctual operations of Utnoor are effected badly yet times it leads to cancellation of scheduled services also, which caused much inconvenience to the travelling public and loss of revenue to the Corporation, amounts to misconduct under Reg. No.28(xxvii) of APSRTC Employees (Conduct) Regulations, 1963.

2. For having maintained irregular attendance i.e., not available for duty for (169) days, leave: (16): Sick: (86) and absent (67) days, due to your irregular attendance the traffic supervisors of Utnoor depot have suffered a lot in arranging crew to schedule services, leads to last operation of services and yet times cancellations also, caused much inconvenience to the traveling public and defaced the image of the Utnoor depot, amounts to mis-conduct in terms of Reg.28(xxxi) of APSRTC Employees (Conduct) Reg.1963.”

The petitioner took treatment at Government Hospital, Jannaram upto April, 2000 and requested the respondent to direct him to the APSRTC, Tarnaka Hospital for treatment. But, the respondent had denied the petitioner's request. The respondent got conducted *ex parte* enquiry into the charges. The respondent, basing on the Enquiry Officer's report and without issuing any show-cause notice and calling for the explanation, passed order vide proceedings dated 03.08.2000 removing the petitioner from service. The petitioner preferred appeal and revision to the authorities, but of no avail. The petitioner being aggrieved by the removal order, raised

dispute in I.D.No.175 of 2003 under Section 2-A(2) of the Act before the Industrial Tribunal-cum-Labour Court, Godavarikhani.

3. The Labour Court, on considering the evidence before it, Exs.W1 to W8 and Exs.M1 to M26, erroneously held that the petitioner is a chronic absentee, due to which the operations of the scheduled services were cancelled and his behaviour affected the functioning of the Corporation itself and influenced the co-workers towards irresponsible activities. The Labour Court also held that the plea of the petitioner that the punishment of removal is disproportionate to the proved misconduct, is untenable. The Labour Court, on considering the evidence on record, came to a conclusion that there is no illegality in removing the petitioner from service and the Labour Court dismissed the petition by award dated 17.12.2004. Against which, the present writ petition is came to be filed.

4. The respondent in this writ petition filed counter denying all the averments made in the affidavit filed in support of the petition, contending that the petitioner is bereft of clean record and several punishments were inflicted on him prior to his removal from service. The petitioner was issued charge sheet for unauthorised absence of his duties from 26.01.2000 to 22.02.2000 without prior permission and sanction of leave and also without producing valid medical

certificate, resulting the cancellation of services and thereby causing inconvenience to the public and loss of revenue to the Corporation. The respondent, having not convinced with the petitioner's reply to the charge sheet dated 13.03.2000, ordered for domestic enquiry. When the respondent addressed a letter dated 27.04.2000 to the Medical Officer, PHC, Jannaram with a request to direct the petitioner to his office, but the same was returned undelivered. Likewise, the letters sent by the Enquiry Officer dated 05.05.2000 and 29.05.2000 to the residential address of the petitioner, were returned undelivered. Therefore, the Enquiry Officer conducted *ex parte* enquiry. The respondent, on receipt of the Enquiry Officer's report, addressed a letter dated 05.07.2000 to the petitioner calling for his remarks, but the same was returned undelivered. The respondent, on considering the evidence available on record, came to a conclusion that the petitioner does not deserve any sympathetic consideration and the proposed penalty of removal from service is just and proper and thereby the petitioner was removed from service vide proceedings dated 05.08.2000. It is further contended that the petitioner attended the office on 11.03.2003 and received the copy of removal proceedings from the respondent. The petitioner filed an appeal before the Divisional Manager, Adilabad and the same was considered and rejected on merits vide proceedings dated 30.06.2003. The petitioner has not availed review jurisdiction. But, he

raised an industrial dispute before the Labour Court, Godavarikhani in I.D.No.175 of 2003, which was dismissed by award dated 17.12.2004. He finally contended that the punishment of removal from service is not disproportionate to the proved charges, which constitute grave misconduct, and prayed to dismiss the petition.

5. Sri K.Lakshmi Manohar, learned counsel for the petitioner would contend that the Labour Court has failed to consider the fact that the petitioner was removed from service for the unauthorized absence from duties from 26.01.2000 to 22.02.2000, even though the petitioner sent sick certificates along with medical certificates through registered post with acknowledgement due to the Assistant Traffic Inspector. The Assistant Traffic Inspector, having received the said certificates, submitted a report of unauthorized absence to the respondent. The respondent appointed the Enquiry Officer. The Enquiry Officer had not sent any proper notice of enquiry to the petitioner as required under Rule 35-A of the APSRTC Employees (Classification, Control and Appeal) Regulations, 1967 (for short 'Regulations, 1967'). But, the Enquiry Officer conducted enquiry and submitted report holding that the charges were proved. The Disciplinary Authority, without forwarding the copy of the Enquiry Report to the petitioner for the petitioner's comments on the Enquiry Officer's report and without sending show-cause notice of removal to the petitioner as required under Rule 12(13) of the

Regulations, 1967, passed the order of removal, removing the petitioner from service. He further contended that the Labour Court failed to address itself to the validity of the departmental enquiry conducted against the petitioner. The Labour Court has not exercised the power vested under Section 11-A of the Act. The Labour Court, on mere surmises and conjectures, without properly appreciating the fact and law and contrary to the evidence on record, came to the conclusion that the charges were proved in the enquiry and punishment of removal from service was imposed on the petitioner, is commensurate with proved misconduct. The learned counsel finally contended that the award of the Labour Court is bereft of any valid and legal reasoning. The award of Labour Court suffers from perversity of finding. Hence, the award of Labour Court is liable to set aside and the writ petition may be allowed granting some reasonable amount, as the petitioner was expired during pendency of this writ petition before this Court on 07.11.2007 and his legal heirs – respondents 2 to 4 were brought on record, in lieu of reinstatement, continuity of service and back wages.

6. Sri A.Ravi Babu, learned Standing Counsel for TSRTC, would contend that there is no error of law and fact in the impugned award of the Labour Court which calls for interference of this Court under Article 226 of the Constitution of India as the enquiry was conducted giving due opportunity to the petitioner, but the petitioner failed to

utilise the opportunity by participating in the enquiry. An enquiry was conducted after sending the notices to the petitioners, but they were returned unserved. Hence, the contention of the learned counsel for the petitioner that an *ex parte* enquiry was conducted contrary to the regulations of the Corporation, are untenable. The learned Standing Counsel further submits that even if this Court finds that quantum of punishment is disproportionate, the matter is required to be sent it back to the Labour Court.

7. However, with regard to the argument of the learned Standing Counsel with regard to sending the matter back to the Labour Court if the quantum of punishment is disproportionate, the same could not be countenanced as the petitioner was removed from service vide proceedings dated 03.08.2000, the petitioner raised I.D.No.175 of 2003 and the Labour Court dismissed the same by award dated 17.12.2004, and the petitioner approached this Court by filing the present Writ Petition No.22346 of 2007 and the same is pending before this Court since then. In the meanwhile, the petitioner-workman has died and his legal heirs are brought on record. Therefore, no useful purpose could be served on remanding the matter to the disciplinary authority to impose lesser punishment, at this length of time and in the circumstances of the case as the petitioner has expired.

8. In the facts and circumstances of the case and in considered view of this Court, it is found that the Labour Court has not appreciated the facts in its true perspective and it has lead to perverse finding, whereas the *ex parte* departmental enquiry was conducted in utter disregard to the Regulations, 1967. The Disciplinary Authority has not furnished the copy of the enquiry report to the petitioner asking his objections to the enquiry report as Regulation 12(13) of the Regulations, 1967 mandates that the delinquent should be given an opportunity to show-cause why the penalty should not imposed.

9. There is no evidence before the Labour Court to show that the Enquiry Officer's report was furnished to the petitioner to submit his explanation and comments as required under Rule 12(13) of the Regulations, 1967. The removal order reveals that no show-cause notice was served on the petitioner before passing the removal order. The Labour Court has not exercised its power vested under Section 11-A of the Act, properly. The removal order is for absenteesm, but the absenteesm of the workman is due to sickness. The petitioner had sent medical certificates. The genuineness of the medical certificates is not disputed by the respondents on evidence. The punishment of removal from service is disproportionate to the proved misconduct, as held by the Hon'ble Apex Court in the decisions reported in

1) *H.P. State Electricity Board Ltd. Vs. Mahesh Dahiya*¹, 2) *Collector Singh Vs. L.M.L. Limited, Kanpur*² and 3) *Prameela and others Vs. APSRTC, Hyderabad and others*³.

10. This Court, for the reasons stated above and considering the length of service put in by the petitioner, came to a conclusion that the ends of justice would be subserved if some lump sum amount is awarded in lieu of his reinstatement into service with back wages as his removal is illegal and further the petitioner was expired during the pendency of this writ petition.

11. Accordingly, the Writ Petition is allowed, setting aside the removal order dated 03.08.2000 passed by the respondent as well the impugned award dated 17.12.2004 passed by the Industrial Tribunal-cum-Labour Court, Godavarikhani in I.D.No.175 of 2003. However, considering the circumstances that the workman was not gainfully employed after his termination on 03.08.2000 and thereafter expired, this Court is of the view that granting of 50% of the back wages would be appropriate to meet the ends of justice, as the termination is declared as illegal. The respondent is directed to pay the said amount to the petitioners 2 to 4 within a period of two (2) months from the date of receipt of a copy of this order, failing which the same shall carry interest @ 9% per annum. No order as to costs.

¹ 2017(2) ALD 166 (SC)

² (2015) 2 SCC 410

³ 2011(3) ALD 641

12. Miscellaneous Petitions, if any, pending in this Writ
Petition shall stand closed.

JUSTICE M.GANGA RAO

13-07-2018
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THE HON'BLE SRI JUSTICE M.GANGA RAO



WRIT PETITION No. 22346 OF 2007

13-07-2018

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