

*IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH*

W.P.No.26037 of 2003

Between:

Gunta Sugunamma

... Petitioner

and

***The Hon'ble Labour Court—III,
Hyderabad rep. by its President Officer
and another***

.... Respondents

DATE OF JUDGMENT PRONOUNCED: 06.06.2018

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

***1. Whether Reporters of Local Newspapers
may be allowed to see the judgments?***

Yes / No

***2. Whether the copies of judgment may be
marked to Law Reporters / Journals?***

Yes / No

***3. Whether His Lordship wish to
see the fair copy of the Judgment?***

Yes / No

*** THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

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! Counsel for petitioner : Sri V.Narasimha Goud

^ Counsel for Respondent No.2 : A.Ravi Babu, Standing Counsel
for TSRTC

< Gist:

> Head Note:

? Cases referred:

- 1 (2011) 4 SCC 584
- 2 (2005) 7 SCC 338
- 3 (2015) 2 SCC 610
- 4 (2014) 13 SCC 166
- 5 (2009) 15 SCC 620



HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Writ Petition No.26037 of 2003

ORDER:

This Writ Petition is filed by the petitioner challenging the Award dated 06.08.2003 in I.D.No.48 of 2001 passed by the Presiding Officer, Labour Court—III, Hyderabad, whereunder the petitioner was reinstated into service as 'Fresh Record Tracer' but without back wages and attendant benefits.

2) The factual matrix of the case is thus:

a) The petitioner was appointed as Sweeper in 2nd respondent—Corporation in the year 1978 and thereafter she was promoted to the post of Record Tracer in the year 1991. While so, she fell sick in the month of September, 1999 and underwent treatment at Tarnaka Hospital from 25.09.1999 to 12.10.1999. The doctors diagnosed that she was attacked with jaundice. Therefore she went to her native place—Mahabubnagar for taking Unani treatment and from there she sent leave letter along with Medical Certificate to the respondent authorities. After recovering from Jaundice when she reported to duty on 13.10.2000 along with Fitness Certificate, she came to know that she was removed from service and she was issued with charge sheet dated 02.11.1999 with the following charge:

“For having absent to your duties from 13.10.1999 to till date in continuation to RTC sick from 25.09.1999 to 12.10.1999 and latter submitted private sick certificate issued by the private clinic, Nalgonda for the above period to cover your absence, causing much inconvenience in attending day-to-day work and important

documents to be sent to other departments were held up for want of postal stamps, further you have not handed over the keys of record room to anybody before reporting sick thereby caused dislocation of work in dispatching section, which constitutes misconduct under Regulation 28(xxii) of APSRTC Employees (Conduct) Regulation, 1963.”

b) The petitioner did not receive the charge sheet and could not submit her explanation denying the charges. Therefore, the respondent authorities appointed an Enquiry Officer to conduct enquiry into the charges, who in turn conducted enquiry and submitted his report. Basing on the said report the respondent authorities removed the petitioner from service on 29.04.2000. Aggrieved, the petitioner carried the matter in appeal and the appellate authority rejected the appeal confirming the order of removal. Questioning the same, petitioner filed I.D.No.48 of 2001 wherein the Labour Court after hearing and perusing the material on record observed that punishment of removal from service is shockingly disproportionate and does not commensurate with the gravity of misconduct and directed the respondent authorities to appoint the petitioner as Fresh Record Tracer but without back wages and attendant benefits.

Hence the instant writ petition.

3) Respondent No.2/APSRTC filed counter and opposed the petition contending that petitioner being in responsible post of Record Tracer did not handover the imprest and record room keys due to which there was dislocation of dispatch work. The charge sheet was sent to her residential address calling her explanation. The son of the petitioner on her behalf

requested to grant three months leave for taking treatment for jaundice. Thereafter, enquiry was conducted and she was removed from service on 02.11.1999. Aggrieved, the petitioner preferred appeal to Regional Manager, Nalgonda which was rejected. Against which petitioner filed I.D.No.48 of 2001 before the Labour Court which in turn after considering the entire material on record passed an award directing the 2nd respondent management to reinstate the petitioner afresh as Record Tracer. In obedience of the award the petitioner was reinstated into service. Thus the 2nd respondent prayed to dismiss the Writ Petition.

4) Heard arguments of Sri V.Narasimha Goud, learned counsel for petitioner and Sri A.Ravi Babu, learned standing counsel for APSRTC/2nd respondent.

5) The point for determination is:

“Whether the award passed by the Labour Court is factually and legally sustainable?”

6) **POINT**: The petitioner filed I.D.No.48 of 2001 on the file of Labour Court—III, Hyderabad challenging the departmental proceedings and consequent removal from service. The Labour Court though confirmed the departmental proceedings and held the petitioner was guilty for absenting duty from 13.10.1999 to 13.10.2000, however, considering that the punishment imposed by the management was disproportionate to the gravity of the charge, directed the respondent authorities to appoint the petitioner as Record Tracer afresh and the petitioner shall forego the back

wages and attendant benefits. The cardinal principle is that unless departmental enquiry suffers the vice of perversity, arbitrariness and capriciousness and the punishment imposed by the disciplinary authority is shockingly disproportionate to the charges proved, the Courts and Tribunals, shall not interfere with the same in the judicial review. Vide:

1) *State Bank of Bikaner and Jaipur vs. Nemi Chand Nalwaya*¹

2) *V. Ramana vs. A.P.S.R.T.C. and others*²

3) *Union of India vs. P.Gunasekaran*³

7) In *Gunasekaran*'s case (3 supra) the Apex Court observed that the High Court can only see whether:

“Para-12:

(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;

¹ (2011) 4 SCC 584

² (2005) 7 SCC 338

³ (2015) 2 SCC 610

(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.”

8) In the light of above precedential jurisprudence, it has now to be seen whether the Tribunal was right in approving the departmental proceedings holding the petitioner guilty of absenting to duty. It is also required to be seen whether the award passed by the Tribunal directing reinstatement without back wages and attendant benefits is legally valid.

9) On a careful scrutiny of entire material on record, it is found that both parties were at fault within their respective spheres. The charge against the petitioner as per charge memo dated 02.11.1999 is that the petitioner was on RTC sick from 25.09.1999 to 12.10.1999 and from 13.10.1999 she absented to the duties and later submitted a private certificate, issued by a Private Clinic at Nalgonda, for the above period to cover here absence causing much inconvenience to the day-to-day work and important documents to be sent to other departments were held up for want of postal stamps and further she has not handed over the keys of record room to anybody before reporting sick, thereby caused dislocation of work in dispatching section, which constituted misconduct under regulation 28(xxvii) of APSRTC Employees (Conduct) Regulations, 1963.

10) Therefore, as per respondent authorities, the petitioner was on sick leave from 25.09.1999 to 12.10.1999, which was not in issue. From 13.10.1999 onwards, it is alleged, she was unauthorisedly absent and later she submitted a private sick certificate issued by a Private Clinic at Nalgonda, to cover her laches and she did not hand over keys and imprest of her post and thereby caused much dislocation of the work.

a) Rule 28 of APSRTC Employees (Conduct) Regulations, 1963 explains certain acts or omissions as misconduct. Regulation 28 (xxvii) is germane for our case, which reads thus:

“Habitual late attendance, irregular attendance, absence without leave and without reasonable cause and absence without permission and wasting time or loitering while on duty.”

The authorities imputed misconduct to the petitioner for her absence without leave and without reasonable cause and absence without permission. However, the charge memo is only partially correct. Admittedly, the petitioner submitted Ex.M.1(A)—medical certificate dated 13.10.1999 issued by Dr.B.K.Subba Rao, Sai Ram Clinic, Narketpally, Nalgonda District, which was received by the Depot Manager on 20.10.1999 (vide office stamp). In Ex.M.1(A), it is certified that the petitioner was examined by the aforesaid Doctor on 13.10.1999 and found she was suffering from severe anaemia and polyneuritis, for which she was advised treatment and rest for one month from 13.10.1999. Then under Ex.M.1—letter dt.01.11.1999, the Deputy Superintendent of Narketpally Depot, addressed letter to Depot Manager, stating that the petitioner submitted RTC sick form from 25.09.1999 to 12.10.1999 and subsequently,

she sent a letter through her son stating that she was taking private treatment and requested to sanction three(3) months leave from 13.09.1999. Later she has submitted a private sick certificate (Ex.M.1(A)). He further stated that being a Record Tracer, she has not handed over the stamps account and key of the record room as the office was receiving reminders from the head office in that context. So from Ex.M.1 and Ex.M.1(A), it is evident that it is not as if subsequent to 13.10.1999 there was total lack of communication from the petitioner. On the other hand, on 20.10.1999, the petitioner sent the medical certificate dt.13.10.1999 issued by Dr.B.K.Subba Rao, advising her to take treatment and bed rest for one month. Further, through her son, the petitioner informed that she was taking private treatment and requested to sanction three (3) months leave from 13.10.1999. In this backdrop, it cannot be stated that her absence was without applying for leave and without sufficient cause, though her absence might be without permission. It is not the case of the authorities that Ex.M.1(A) was a fake or a fabricated certificate. In similar circumstances, in 2014 13 SCC 166 *Chhel Singh v. MGB Gramin Bank Pali and others*⁴, the Apex Court held thus:

“Para 12: xx xx... The medical reports were submitted after about 24 days. There was no allegation that the appellant's unauthorised absence from duty was wilful and deliberate. The inquiry officer has also not held that the appellant's absence from duty was wilful and deliberate. It is neither a case of the disciplinary authority nor the inquiry officer that the medical reports submitted by the appellant were forged or fabricated or obtained for any consideration though he was not ill during the said period. In absence of such evidence and

⁴ (2014) 13 SCC 166

finding, it was not open to the inquiry officer or the disciplinary authority to disbelieve the medical certificates issued by the doctors without any valid reason and on the ground of 24 days delay.

11) So in the considered opinion of this Court, the respondent—authorities should have granted leave atleast for the period of one month covered by Ex.M.1(A), if not for three months as requested by the petitioner through her son. This is the mistake on the part of respondent.

However, that is not the end of the matter. The petitioner also to some extent contributed for her present situation. She did not report to duty even after one month period of rest as advised by the Doctor in Ex.M.1(A), or after three months from 13.10.1999 as requested by her through her son. On the other hand, she remained absent till October, 2000 without applying for leave or without any intimation to the office. Added to it, she did not hand over the keys and imprest to the office and thereby the office work such as dispatch of the inter and intra departmental registers was severely hampered. When enquiry notice was sent to her regular residential address, it was returned unserved and therefore, the department had to conduct enquiry *ex parte*. Even the termination order was also could not be served on her. The submission of the petitioner that she went to her native place to take private treatment does not come to her aid because duty is cast on her to apply for continuity of leave and promptly handover the keys and imprest of the office and also intimate her leave address to the authorities. Therefore, it cannot but be said that the petitioner was responsible for unauthorised absence after the expiry of leave period requested by her. Therefore, the misconduct is evident to some extent.

12) In the above backdrop, the crucial aspect is whether the punishment imposed by the authorities removing the petitioner from service, which is set aside by the Tribunal with a direction to appoint the petitioner as fresher in the post of Record Tracer without the entitlement of back wages and attendant benefits, is judicious and fulfils the object of doctrine of proportionality.

13) In similar circumstances, when the delinquent was held guilty of misconduct for his unauthorised absence from duty for about 6 months and while admitting his guilt the delinquent explained reasons for his absence, the Apex Court in *Chairman-cum-Managing Director, Coal India Limited and another v. Mukul Kumar Choudhuri and others*⁵, testing the case on the touchstone of doctrine of proportionality, has held that the removal cannot be held to be justified because no reasonable employer would have imposed extreme punishment of removal in like circumstances and hence the punishment was not only unduly harsh but grossly in excess to the allegations. Consequently, the Apex Court directed reinstatement of the employee but denying him the back wages from the date of removal until reinstatement.

14) In the considered view of this Court, the above ratio applies with its full force, since in the instant case also the period of unauthorised absence of the petitioner excluding the period of leave she requested for, comes around 9 months. In that view, her reinstatement without back wages and

⁵ (2009) 15 SCC 620

attendant benefits for the period of her removal till reinstatement would meet the ends of justice.

15) In the result, this Writ Petition is partly allowed setting aside the Award passed by the 1st respondent in I.D.No.48 of 2001 and consequently, the 2nd respondent is directed to reinstate the petitioner into service with effect from the date of Award with continuity of service but without back wages and attendant benefits between the date of removal of service and reinstatement. No costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

Date: 06.06.2018

Note:

L.R Copy to be marked: YES/NO

Murthy/scs

U. DURGA PRASAD RAO, J

