

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.7662 of 2003

ORDER:

The petitioner, who worked as a Driver in the 2nd respondent Corporation, has filed this writ petition being aggrieved by the Award of the Industrial Tribunal-cum-Labour Court, Godavarikhani, passed in I.D.No.143/1999, dated 05.07.2001, wherein, his claim petition for reinstatement into service with continuity of service, attendant benefits and back wages was dismissed.

Brief facts of the case are that the petitioner was appointed as a Driver in the 2nd respondent Corporation in the year 1990 and his services were regularized in the year 1993. He fell sick in the month of September, 1997. It is alleged that he was irregular to his duties from September, 1997 to June, 1998. He was issued two charge sheets dated 17.12.1997 and 16.05.1998 with the following charges;

Charge sheet dated 17.12.1997:

- a) For having unauthorizedly absented for your duties from 12.12.1997 to till date without any intimation or prior sanction of leave, which constitutes misconduct in terms of Regulation 28 (xxvii) of APSRTC Employees (Conduct) Reg.1963.
- b) For having irregular attendance from Sep.97 to Nov.97 causing inconvenience in the traffic section, dislocation in operation of services besides inconvenience to the traveling public, which constitutes misconduct in terms of Regulation 28 (xxxii) of APSRTC Employees (Conduct) Reg.1963.

Charge Sheet dated 16.05.1998:

- a) For having unauthorized absent to duties from 01.05.1998 to till date, without any intimation or prior sanction of leave, which constitutes

misconduct in terms of Reg.28 (xxvii) of APSRTC Employees (Conduct) Reg.1963.

- b) For having not available for duties for 62 days including availment of 16 days leave from 01.01.1998 to 12.05.1998, which constitutes misconduct in terms of Reg.28 (xxxii) of APSRTC Employees (Conduct) Reg.1963.

The petitioner submitted his explanation to the charge sheets denying the charges. The 2nd respondent appointed an Enquiry Officer, who conducted enquiry and found the petitioner guilty of the charges leveled against him. Based on the Enquiry Officer's report, the 2nd respondent issued a show cause notice of removal to the petitioner. The petitioner submitted his explanation to the show cause notice. The petitioner was terminated from service, vide proceedings, dated 14.10.1998. The appeal preferred by the petitioner was rejected, vide proceedings dated 23.08.1999. Being aggrieved by the same, the petitioner raised an industrial dispute in I.D.No.143/1999 before the 1st respondent Labour Court. The Labour Court dismissed the I.D by passing 'Nil' Award, dated 05.07.2001 and the same was published on the notice board on 03.09.2001. Being aggrieved by the Award of the Labour Court, the present writ petition came to be filed.

Sri G.Ravimohan, learned counsel for the petitioner, submits that the petitioner worked as a Driver in the 2nd respondent Corporation since 1990. Due to ill-health, he was irregular to his duties from September, 1997 to June, 1998. The 2nd respondent without properly considering the explanation to the charge sheets and the show cause notice of removal, terminated the petitioner from service. The appellate authority not considered the appeal in proper perspective and rejected the same on

23.08.1999. The petitioner has submitted medical certificates for his absence period. The same were not considered by the Enquiry Officer. The 2nd respondent has not disputed the genuineness of the medical certificates. The 1st respondent-Labour Court also without considering the evidence available on record, enquiry officer's report and documentary evidence in Exs.M1 to M21, on mere surmises and conjunctures held that the charges are proved against the petitioner. The learned counsel further contended that the findings of the 1st respondent-Labour Court without properly considering the evidence on record and non-consideration of the relevant evidence amount to perverse findings and hence the award of the Labour Court is liable to be set aside and the matter needs to be remanded to the Labour Court for fresh consideration of evidence on record and to pass appropriate reasoned order in the I.D. The learned counsel for the petitioner has further submitted that the 1st respondent-Labour Court has not properly exercised its powers conferred on it under Section 11-A of the Industrial Disputes Act.

Per contra, Sri A.Ravibabu, learned counsel, appearing for the respondents, would contend that the petitioner was removed from service as a Driver for the proved misconduct of unauthorized absence to duties. The petitioner submitted his explanations stating that he suffered from jaundice and thereafter, his elder brother died and his father had bedridden. The petitioner furnished medical certificates dated 02.05.1998, 16.05.1998 and 25.06.1998. He applied leave for 16 days and thereafter overstayed. The learned counsel further submitted that the Enquiry Officer and also the Disciplinary Authority has considered the explanations submitted by the petitioner and rightly removed the petitioner from

service vide proceedings, dated 14.10.1998. The petitioner was unsuccessful in appeal. The learned counsel further contended that the Labour Court having found that the charges are proved against the petitioner, held that imposing punishment of removal of the petitioner from service is justified, and rightly dismissed the claim petition of the petitioner, which does not warrant any interference of this court.

In the facts and circumstances of the case and in considered view of this court, having perused the award of the Labour Court, which runs in three pages, the Labour Court has not discussed the evidence available before it and the pleadings of the petitioner in right perspective, and based on surmises and conjunctures and on perverse findings, dismissed the claim petition of the petitioner. The petitioner has submitted medical certificates for his unauthorized absence and he applied leave for the overstayed period. The Enquiry Officer and the Disciplinary Authority have not disputed the genuineness of the medical certificates. As seen from the charge sheets, the charges are minor in nature, whereas punishment of dismissal from service was disproportionate to the proved misconduct. The Labour Court have not considered the evidence available before it in right perspective and simply based on the perverse findings, dismissed the claim petition filed by the petitioner. Hence, this court felt that it is just and proper to remand the matter to the Labour Court for fresh disposal, as per law.

Accordingly, the writ petition is disposed of. The impugned award, dated 05.07.2001, is set aside and the matter is remitted back to the Labour Court for fresh disposal after considering the evidence on record in right perspective, in accordance with law. The petitioner is out of

employment from 2001, since then he is in pursuit of justice. As the petitioner is reaching the age of superannuation, the Labour Court shall dispose of the I.D.No.143/1999 afresh, in accordance with law, as expeditiously as possible, preferably, within a period of 3 (three) months from the date of receipt of a copy of this order. No order as to costs.

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

M.GANGA RAO,J

Date: 23.07.2018
Dsr

