

HON'BLE SRI JUSTICE M.GANGA RAO

W.P.No.15533 OF 2001

ORDER

This writ petition is filed seeking to issue a Writ of Mandamus declaring the order of removal passed by the 3rd respondent *vide* proceedings dated 29.09.1998, as confirmed by the 2nd respondent *vide* proceedings dated 29.5.2000, as arbitrary, illegal and consequently, to direct the respondents to reinstate the petitioner into service with all attendant benefits.

The case of the petitioner is that he joined as Traffic Assistant on 19.8.1985 in the respondent-Corporation. His services were regularized as Traffic Inspector Grade-II on 19.09.1986, he was promoted as Senior Traffic Inspector in April, 1999, and was further promoted as Chief Inspector, and re-designated as Assistant Manager on 24.07.1997. While he was working under the control of the 4th respondent, the 4th respondent issued a charge sheet on 02.04.1998 alleging that the petitioner was un-authorizedly absent to his duty from 17.3.1998 to till date i.e., 02.04.1998, and asked him to submit his explanation. Pursuant to the same, the petitioner submitted his explanation on 20.04.1989 stating that he sent medical certificates informing the 4th respondent that he is still undergoing treatment and requested to drop further

action in the matter. Further, the 4th respondent is not the competent authority to issue the charge sheet. Based on the charge sheet issued by the 4th respondent, the 3rd respondent initiated disciplinary action against the petitioner. The petitioner had not received any enquiry notice. The Enquiry Officer conducted enquiry *ex parte* and submitted a report to the 3rd respondent stating that the charges levelled against the petitioner are proved. The 3rd respondent issued a show cause notice on 17.07.1998. The petitioner submitted his explanation to the show cause notice. Eventually, without considering his past meritorious record, imposed the maximum punishment of removal *vide* proceedings dated 29.09.1998, which is shockingly disproportionate to the proved misconduct. Aggrieved thereby, the petitioner preferred an appeal before the 2nd respondent. The 2nd respondent, without appreciating the appeal in its proper perspective, rejected the appeal mechanically. Questioning the removal order and rejection of the appeal, the present writ petition is filed.

Counter-affidavit has been filed on behalf of the respondent-Corporation, wherein it is stated that the petitioner while working as Assistant Manager (Traffic) was in-charge of a unit having staff strength of 800 to 1000, hence, he must set an example to his subordinate staff like

Conductors, Drivers, Assistant Depot Clerks. The petitioner remained absent un-authorizedly from his duty from 17.3.1998 till 02.04.1998, without obtaining any prior permission and sanctioned leave. As a result of his sudden absence from duty, operation of services were dislocated and travelling public were put to great inconvenience and the Corporation incurred loss of revenue for non-operation of services punctually. As per APSRTC Employees (Conduct) Regulations, 1967, the whole time employee shall be at the disposal of the Corporation. Under Regulation 4 (i) of the Regulations, every employee is required to furnish an explanation to the satisfaction of the authority competent to grant him leave and he shall not absent himself from duty without obtaining prior permission or over-stay of sanctioned leave unless it has been extended. Hence, charge sheet was issued to the petitioner, for which, he submitted his explanation on 20.04.1998 enclosing the medical certificate. If any employee could not attend to his duties by reason of illness, he must follow the procedure for obtaining leave on medical grounds as laid down under Regulation 11 of the Leave Regulations, 1963. Being a Traffic Supervisor, he did not submit his medical certificate till he was served with charge sheet. No injustice as alleged by the petitioner was caused to him in this regard.

Hence, there is no illegality in removing the petitioner. Further contention of the petitioner that the 4th respondent is not competent to issue charge sheet is unsustainable, as the 4th respondent being a Junior Scale Officer was delegated powers, *vide* item 16, Section 9 'service matters' of delegation of powers. The Depot Manager can exercise the power of initiation of disciplinary action on the staff working under his administrative control. According to the delegation of powers, the Junior Scale Officer can initiate disciplinary action against the Assistant Manager (Traffic). Further, the petitioner himself did not follow the procedure for obtaining leave on medical grounds. According to Regulation 11 of the Leave Regulations, 1963 the petitioner shall apply for leave to attend the hospital. If the employee submits his application with his present residential address, any communication from Management side should have been sent to that residential address. Since the petitioner did not furnish intimation of his sickness with latest residential address, the Enquiry Officer had sent notices to the residential address available on record. Though the petitioner had submitted his explanation to the show cause notice of removal dated 17.07.1998, it is not convincing. Hence, the 3rd respondent passed the impugned order of removal. As per Regulation 11 (6) of the Leave

Regulations, 1963, the petitioner shall submit to the competent Medical Officer an intermediate medical certificate from medical attendant at the end of each month of absence on account of sickness whenever the period under treatment exceeds one month. Since the action initiated by the Corporation was strictly in accordance with the Rules and Regulations of the Corporation, the appellate authority did not find any valid points in the appeal and rejected the same. The contention of the petitioner that he was not served with the notice and no opportunity was given to him, could not be countenanced as notices sent to his residential address were available on record and the petitioner has not availed the opportunity given to him to participate in the enquiry. Hence, there is no illegality in passing the removal order and rejection of appeal.

Sri A.K.Jaya Prakash Rao, learned counsel appearing for the petitioner, submits that no notice of enquiry was served on the petitioner as required under regulation 35-A (2) of the APSRTC Employees (CCA) Regulations, 1967. Hence, conduct of enquiry *ex parte* is illegal and against the principles of natural justice. Based on the *ex parte* enquiry report submitted by the enquiry officer, the 3rd respondent issued the show cause notice to the petitioner and passed the

removal order. The 2nd respondent-appellate authority, without appreciating the grounds raised in the appeal in its proper perspective, mechanically rejected the appeal. Learned counsel further contends that Regulation 12 (13) of the APSRTC Employees (CCA) Regulations, 1967, mandates in clear terms that the delinquent should be given opportunity to show cause why penalty should not be imposed. Hence, non-service of report of the enquiry officer on the petitioner and calling for his objections as required under Regulation 12 (13) of the APSRTC Employees (CCA) Regulations, 1967, is illegal and vitiates the order of termination. Learned counsel further submits that without serving any notice of enquiry and enquiry officer's report, removing the petitioner from service, is contrary to the Regulations of the Corporation and against the principles of natural justice, and the removal from service is shockingly disproportionate to the proved conduct. Hence, the same is liable to be set aside and the petitioner is entitled to be reinstated into service with continuity of service. In support of his contention, learned counsel placed reliance on the decisions of the Apex Court in *H.P. State Electricity Board Ltd. V. Mahesh Dahiya*¹, *Collector Singh vs. L.M.L. Limited*,

¹ 2017(2) ALD 166 (SC)

*Kanpur*² and also the decision of this Court in *Prameela and others v. APSRTC, Hyderabad and others*³. Ultimately, learned counsel submits that the removal from service is disproportionate to the proved misconduct alleged against the petitioner.

Per contra, learned Standing Counsel appearing for the respondents would contend that there is no illegality and procedural infirmity in passing the impugned order and rejection of the appeal. As the petitioner was un-authorizedly absent without submitting leave letters and the medical certificates as required under the Regulations, charge sheet was issued to him, for which, he submitted his explanation. Being not satisfied with the said explanation, the 3rd respondent conducted enquiry as per the regulations of the Corporation and notices were sent on the petitioner, and also displayed on the notice board as per Clause (2) of Regulation 35 (A) of the APSRTC Employees (CCA) Regulations, 1967. The punishment of removal from service is commensurate with the proved mis-conduct of the petitioner thereby the petitioner caused loss to the Corporation and inconvenience to the public. Learned counsel further contends that even if the dismissal of the petitioner from service is

² (2015) 2 SCC 410

³ 2011(3) /ALD 641

found to be disproportionate to the proved misconduct, this Court could only quash the same, but it could not exercise its certiorari jurisdiction under Article 226 of the Constitution and could not substitute lesser punishment to that of removal by modifying the Award, which is untenable as the petitioner was removed from service on 29.09.1998, illegally, this Writ Petition is pending before this Court since 2001, at this long length of time, the matter could not be remanded to the disciplinary authority for imposing the appropriate punishment other than removal from service, to permit the petitioner to retire on attaining the age of superannuation, to shorten the litigation, this Court is competent to pass appropriate reasoned order of reinstatement of the workman into service with full back wages. In support of his contention, he placed reliance on the judgment reported in *Managing Director, Uttar Pradesh Warehousing Corporation and another vs. Vijay Narayan Vajpayee*⁴. Learned counsel also placed reliance on the judgment reported in *State of Punjab vs. DR.P.L.Singla*⁵, wherein the Hon'ble Apex Court held as under:

“Unauthorised absence (or overstaying leave) is an act of indiscipline. Whenever there is an unauthorised absence by an employee, two courses are open to the employer. The first is to condone the unauthorised absence by accepting the explanation

⁴ (1980) 3 SCC 459

⁵ (2008) 8 SCC 469

and sanctioning leave for the period of the unauthorised absence in which event the misconduct stood condoned. The second is to treat the unauthorised absence as a misconduct, hold an enquiry and impose a punishment for the misconduct.”

The counsel for the petitioner would contend that the respondents ought to have considered the long length of unblemished service rendered by the petitioner in the Corporation while passing the impugned order of termination and sought for reinstatement with continuity of service, with full back wages.

As can be seen from the record, it appears that the reason given by the petitioner for his unauthorized absence from duty from 17.03.1998 to 02.04.1998 is that he was admitted for treatment at NIMS hospital, which is a referral hospital and referred by the respondent-Corporation.

In *Prameela and others vs. APSRTC, Hyd and others*⁶ it is held that when once the leave of absence from duty is sanctioned to an employee, the consequential absence from duty by such an employee becomes a legitimate one cannot constitute misconduct on his part. Similarly, if an individual workman has been reported sick by a competent medical

⁶ 2011 (3) ALD 641

officer the absence from duty of such a sick workman cannot constitute misconduct.

In the present case, when the petitioner was in the hospital, a charge sheet was issued to him for his unauthorized absence. He submitted his explanation along with the medical certificates stating that he is still in the hospital and undergoing treatment. Without considering the same, *ex parte* enquiry was conducted without serving notice of enquiry as per Rule 35-A of the Regulations, 1967. The enquiry officer's report was not served on the petitioner calling upon his objections before passing the removal order, thereby the removal order suffers from inherent defect of arbitrariness which amounts violation of Article 14 of the Constitution of India as held by the Apex Court in *H.P. State Electricity Board Ltd. V. Mahesh Dahiya* (referred to *supra* (1)).

This Court finds that punishment of removal is shockingly disproportionate to the proved misconduct and the order of removal as confirmed by the appellate authority, is in violation of Regulations and also the principles of natural justice. As the termination of the petitioner is illegal and he was put to severe financial difficulties, the petitioner is entitled for reinstatement into service with continuity of

service and all other attendant benefits and with 50% back wages.

In the facts and circumstances of the case, the impugned order of removal as confirmed by the appellate authority, is set aside and the respondents are directed to reinstate the petitioner into service with continuity of service and 50% back wages, along with all attendant benefits.

Accordingly, the Writ Petition is allowed. No costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

25th June, 2018
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JUSTICE M.GANGA RAO