

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.15805 OF 2001

ORDER:

The petitioner, who worked as a Painter in the respondent-Corporation, filed this writ petition being aggrieved by the award dated 03.03.1994 passed in I.D.No.98 of 1992 by the Industrial Tribunal-cum-Labour Court, Hyderabad, insofar as not granting back wages and imposing punishment of deferment of three annual increments with cumulative effect, as illegal and arbitrary, and sought for consequential direction to grant back wages and annual increments.

2. The brief facts of the case are that the petitioner was appointed as a Cleaner on 09.01.1981 in the 3rd respondent-bus depot at Badrachalam and thereafter he was promoted as a Painter in the year 1986. While working as such, he was issued a Charge sheet dated 07.11.1989 with the following charges:

- “i) For having manhandled Sri M.R.L.Sharma, A.M.F. Bhadrachalam while he was on duty on 4-11-1989 at about 11.25 hrs near A.N.L. parcel Office, Bhadrachalam which is misconduct and violation of Reg.28(viii) and (xxi) of APSRTC Employees (Conduct) Reg. 1963.
- ii) For having entered into the depot in fully drunken condition on 4-11-1989 and abused the AMF/MF in vulgar language and challenged them,

which is mis-conduct and violation of Reg.28(xxxii) of APSRTC Employees (Conduct) Reg. 1963.”

The 3rd respondent-disciplinary authority, on not being satisfied with the explanation given by the petitioner to the charge sheet, appointed an Enquiry Officer. The Enquiry Officer conducted the enquiry as per the regulations of the Corporation and in strict adherence to the principles of natural justice and the petitioner was given full and fair opportunity in the enquiry. The Enquiry Officer submitted his report holding that the charges were proved. Basing on the Enquiry Officer's report, a show-cause notice of termination was given to the petitioner. The 3rd respondent-disciplinary authority, having not satisfied with the explanation submitted by the petitioner to the show-cause notice, on careful examination of the Enquiry Officer's report and basing on the evidence available on record, passed the order of removal removing the petitioner from service. The petitioner preferred an appeal and the same was rejected. Thereafter, the petitioner raised an industrial dispute in I.D.No.98 of 1992 before the Industrial Tribunal-cum-Labour Court at Hyderabad under Section 2-A(2) of the Industrial Disputes Act, 1947 (for short 'the Act'), seeking reinstatement into service with continuity of service, back wages and attendant benefits. The Labour Court, having found that the charges were proved in the enquiry against the petitioner, by exercising power under Section 11-A of the Act and having

regard to the 13 years of long length of service rendered by the petitioner in the respondent-Corporation, the petitioner committed misconduct for non-granting of leave in a drunken condition, suffered a lot for being out of service and also financially, passed award directing the respondents to reinstate the petitioner into service with continuity of service but without back wages and to impose the punishment of deferment of three annual increments with cumulative effect. Being aggrieved by the award insofar as not granting back wages and deferment of three annual increments with cumulative effect, this writ petition came to be filed.

3. Sri G.Ravi Mohan, learned counsel appearing for the petitioner, would contend that the petitioner was appointed as a Cleaner on 09.01.1981 in the respondent-bus depot at Badrachalam and thereafter he was promoted as Painter in the year 1986. While working as such, on 07.11.1989, a charge sheet was issued alleging that the petitioner had manhandled one M.R.L.Sharma and entered into a depot in drunken state on 04.11.1989. The petitioner was terminated from service by order dated 12.08.1991 basing on the biased report of the Enquiry Officer. The Enquiry Officer had not considered the deposition of the petitioner in its proper perspective while submitting his report. The disciplinary authority basing on the Enquiry Officer's report and without application of mind independently to the report of the Enquiry Officer, the evidence available on record and the statements

of the witnesses and their cross-examination, passed order of removal mechanically removing the petitioner from service. The appeal preferred by the petitioner against the termination order was also dismissed without assigning any valid reasons. The Labour Court failed to see that the Enquiry Officer had not given an opportunity to the petitioner to cross-examine the main witnesses. The Labour Court, on mere surmises and conjectures, held that the charges were proved in the enquiry against the petitioner, which is contrary to the evidence available on record. However, the Labour Court, while exercising the power under Section 11-A of the Act and on considering the petitioner's long length of service, ordered reinstatement into service with continuity of service but without back wages and imposed punishment of deferment of three annual increments with cumulative effect.

The learned counsel further contended that denying back wages and deferring three annual increments, is a serious punishment disproportionate to the proved misconduct.

4. Per contra, Sri B. Mayur Reddy, learned Standing Counsel for APSRTC, contended that the petitioner was terminated from service for the serious misconduct of manhandling the superior for not granting leave in a drunken state. After following due procedure contemplated under the regulations of the Corporation and conducting enquiry by

giving full and fair opportunity to the petitioner in the enquiry and basing on the Enquiry Officer's report, the 3rd respondent – disciplinary authority having carefully considered the explanation submitted to the show-cause and having come to a final conclusion that the charges are proved, terminated the petitioner from service and the appellate authority also dismissed the appeal of the petitioner. It is further contended that there is no illegality in removing the petitioner from service. However, the Labour Court on raising industrial dispute by the petitioner and having held that the charges were proved in the enquiry against the petitioner, by exercising the power under Section 11-A of the Act and by taking lenient view, ordered reinstatement of the petitioner into service with continuity of service but without back wages and deferment of three annual increments with cumulative effect. There is no illegality or irregularity in the award passed by the Labour Court warranting inference of this Court under Article 226 of the Constitution of India. It is further contended that this Court under Article 226 of the Constitution of India could not substitute lesser punishment than that of the punishment imposed by the disciplinary authority and the award passed by the Labour Court exercising the power under Section 11-A of the Act. It is further contended that in any event if this Court finds that the punishment is disproportionate to the proved misconduct,

the matter has to be remanded back to the disciplinary authority.

5. In the facts and circumstances of the case, having considered the rival contentions of both the counsel and in considered view of this Court, the Enquiry Officer, on appreciation of evidence available on record, found that the petitioner had committed the misconduct of manhandling the superior for not granting leave, in a drunken state. But the Enquiry Officer has not considered the statement of the petitioner and his cross-examination of witnesses and brushing aside the same, are found to be illegal. However, the Labour Court on mere surmises and conjectures found that the charges were proved in the enquiry against the petitioner. The Labour Court, having exercised the power under Section 11-A of the Act, considering the long length of service of the petitioner and his financial sufferings during the period which he was out of employment, granted reinstatement of the workman with continuity of service but without back wages and deferment of three annual increments with cumulative effect. But, insofar as imposing punishment of deferment of three annual increments is concerned, it is disproportionate to the proved misconduct and amounts to inflicting serious punishment on the petitioner, which has an affect on the future pay and retirement benefits.

6. This Court, by an order dated 16.08.1999 passed in Writ Petition No.4947 of 1999, granted notional increments to the petitioner and thereby the pay of the petitioner was fixed by giving notional increments. During the pendency of the writ petition, the petitioner has retired from service on attaining the age of superannuation. Having considered the same and to meet the ends of justice, the award to the extent of 'deferment of three annual increments with cumulative effect' is modified as 'deferment of three annual increments without cumulative effect', by upholding the award of the Labour Court in all other aspects. The respondents are also directed to settle the terminal benefits of the petitioner, if not already settled, within two (2) months from the date of receipt of a copy of this order.

7. Accordingly, the Writ Petition is partly allowed. No order as to costs.

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

JUSTICE M.GANGA RAO

26-07-2018
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