

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.24120 OF 2000

ORDER:

1. In this Writ Petition, petitioner has assailed the Award dt.29.08.2000 in I.D.No.20 of 1998 of the Industrial Tribunal-cum-Labour Court at Visakhapatnam (for short 'the Tribunal').

2. The 1st respondent was selected by the petitioner Company as a Special Trainee and was issued an offer of appointment on 23.01.1990 pursuant to which 1st respondent executed a service bond dt.25.04.1990.

3. The 1st respondent joined on 05.05.1990 as Special Trainee in the petitioner's undertaking. After completion of six months training, he was posted to SMS department by order dt.19.02.1991 for further training. Subsequently, he remained unauthorizedly absent for a period of 206 days out of 630 days during March, 1991 to 19.11.1992.

4. Petitioner contends that during this period, 1st respondent was issued warning letters on 02.04.1991, 01.06.1991, 14.08.1991, 23.08.1991, 26.11.1991, 28.10.1992, and 19.11.1992 and also informed the 1st respondent that disciplinary action would be initiated.

5. 1st respondent submitted explanation dt.19.11.1991 explaining his unauthorized absence for three months stating *inter alia* that due to fever and jaundice he could not attend to

duties. He also submitted medical certificates dt.16.07.1991 and 14.09.1991 stating that he was undergoing treatment for lower back pain from 08.08.1991 to 14.09.1991.

6. Petitioner contends that though 1st respondent was advised to appear before the petitioner's Health Centre for medical examination, he did not subject himself to such examination initially, but later when he was examined on 09.11.1991, the petitioner's Medical Officer opined that there was no evidence of disease and he found the petitioner fit to resume duty.

7. Petitioner contends that 1st respondent did not make any timely application for leave on medical grounds and he also violated Certified Standing Orders for being unauthorizedly absent for such a long period during training period, and that a charge memo dt.01.12.1992 was issued to the petitioner stating that he had been absent for 206 days out of 630 days during the period from March, 1991 to 19.11.1992, in spite of having been executed a bond dt.25.11.1990 and this constitutes the following misconduct:

- “a) willful and habitual absence from duty*
- b) insubordination or disobedience to any lawful and reasonable orders of the superiors*
- c) violation of standing order 22.2 read with clause 27.6 of the Certified Standing Order*
- d) and violation of provisions of the bond dt.22.08.1989 executed by him at the time of his joining.”*

8. Petitioner gave an explanation thereto on 12.12.1992 allegedly admitting the misconduct mentioned in the charge memo and requesting condonation.

9. It is alleged that though the petitioner offered to 1st respondent the right to take the assistance of a coworker, but 1st respondent did not accept it, voluntarily accepted the charge and on the basis of said admission, the Enquiry Officer submitted a report on 22.04.1993.

10. On the basis of said report, the Competent Authority passed order dt.29.05.1993 removing the 1st respondent from service.

11. Though, the 1st respondent preferred appeal, the same was rejected on 25.08.1993.

12. The 1st respondent then filed W.P.No.17692 of 1996 assailing the same, but it was dismissed giving liberty to the 1st respondent to avail alternative remedy.

13. The 1st respondent then filed application on 11.11.1997 for Review invoking clause 33 of the Certified Standing Orders.

14. The said Review was rejected on 06.03.1993.

15. The 1st respondent then filed application before the Tribunal under Section 2-A(2) of the Industrial Disputes Act, 1947 to declare his removal from employment by the petitioner as illegal, that it is against the appointment order

and service bond obtained by the petitioner, and he should be held entitled to continue in the employment of the petitioner with all benefits.

16. This was numbered as ID.No.20 of 1998 by the Tribunal.

17. Before the Tribunal, the 1st respondent contended that his removal from service was contrary to Certified Standing Orders since he was given 3 month extension of training by order dt.4.2.1993 by petitioner and therefore punishment of removal deserves to be set aside. He also contended that the alleged period of absence was from March, 1991 to 19.11.1992 but Ex.W1 was issued to him extending his training period for three months with effect from 15.01.1993 to give him a chance to improve upon his performance. According to him, this amounts to condonation by the petitioner of his misconduct and thereafter the petitioner could not have continued the disciplinary action initiated on 01.12.1992.

18. Petitioner filed a counter reiterating its stand that 1st respondent was unauthorizedly absent without obtaining any permission from the petitioner and without prior intimation for 206 days out of 630 days between March, 1991 and 19.11.1992 and in spite of being given warning letters, he did not resume duty. It is also stated that the Medical Officer of the petitioner examined the 1st respondent and stated that he

was physically fit on 09.11.1991 to undergo normal duties and the 1st respondent stated in his explanation to the charge memo dt.01.12.1992 to condone his misconduct by admitting that he was rightly imposed punishment of removal on 25.09.1993.

19. Before the Tribunal, neither party examined any witnesses, but the petitioner marked Ex.M1 to M34 while the 1st respondent marked Ex.W1.

20. The Tribunal then passed an award on 29.08.2000 allowing the ID and setting aside the removal of the petitioner and its confirmation in appeal and review, and directed the petitioner to continue the 1st respondent in its employment with all benefits as a Junior Trainee.

21. Assailing the same, this Writ Petition is filed.

22. While admitting the Writ Petition, on 08.12.2000 in WP.MP.No.30811 of 2000, this Court granted stay of the execution of the award on condition that the petitioner should comply with Section 17B of Industrial Disputes Act, 1947.

23. Thereafter, the 1st respondent was asked to issue an undertaking that he was not gainfully employed in any other organization. He then filed said affidavit and then the petitioner was directed to comply with 17B on 02.04.2002.

24. Counsel for petitioner contended that the Tribunal erred in granting the relief of reinstatement to the 1st respondent

without appreciating the evidence on record. In particular, he pointed out that in para 21 of the Award, the Tribunal had stated that the explanation dt.12.12.1992 is not filed nor any statement made by the 1st respondent accepting the charges voluntarily in writing was marked. He also pointed that Ex.M25 dt.22.04.1993 clearly reflected that the 1st respondent had accepted the charges voluntarily without being prompted by anyone and that he did not need the assistance of a co-worker. He contended that the Tribunal therefore erred in holding that there is no evidence of voluntary acceptance of guilt by the 1st respondent and its finding on that count is vitiated.

25. Counsel for 1st respondent however contended that the very continuation of the disciplinary proceedings by the petitioner against the 1st respondent is impermissible in law having regard to the tenor of Ex.W1. He pointed out that the Tribunal not only relied upon the absence of evidence in relation to voluntary acceptance of guilt by the 1st respondent but also relied upon Ex.W1 to grant the relief to the 1st respondent.

26. Counsel for the petitioner however did not address any arguments in relation to Ex.W1.

27. The contents of Ex.W1 are as under:

“During the training completion interviews conducted recently, your performance during the entire training period was reviewed. It is reported that you remain unauthorized absent

*very frequently and in fact you have taken 345 days EOL/UAB so far. It shows that you are not serious about your training. **It has been decided to extend your training for a period of 3(Three) months w.e.f. 15.01.1993 to give you a chance to improve upon your performance.***

Place note that after completion of the above extended period, your performance will be assessed again. You will have to show improvement in your overall performance and should qualify in the assessment.

This issues with the approval of competent authority”

28. It is pertinent to note that this proceeding Ex.W1 was issued on 04.02.1993 extending petitioner's training for three months with effect from 15.01.1993, after taking note of 1st respondent's alleged unauthorized absence, and a chance was given to the 1st respondent to improve his performance. It is categorically stated that after completion of above extended period, his performance would be assessed again and he needed to show improvement in his overall performance and qualify in the assessment.

29. Admittedly, this proceeding was issued after the charge memo dt.01.12.1992 was issued to the petitioner and after considering petitioner's explanation dt.12.12.1992. After issuing the charge memo to the petitioner on 01.12.1992 and after receiving the 1st respondent's explanation dt.12.12.1992, it cannot be said that the petitioner extending the period of training to the 1st respondent for three months with effect from 15.01.1993 and giving the 1st respondent an opportunity to improve his performance does not amount to condonation of misconduct, if any, committed by the 1st respondent.

30. Adverting to this document, the Tribunal held that the 1st respondent completed six months period of training because his jointing report Ex.M3 is 05.05.1990 and this is admitted in the affidavit filed in support of this Writ Petition in para 4 by the petitioner by stating that on completion of six months training, 1st respondent was posted to SMS Department on 19.02.1991 for further training.

31. The Tribunal also noted that Enquiry Report Ex.M24 made no reference of Ex.W1 or subsequent conduct or improvement in performance of the 1st respondent and neither did the removal order Ex.M27. It concluded that the Ex.W1 indicated that a chance was given to the 1st respondent to improve his performance and since the petitioner was silent about the performance of the 1st respondent, it cannot continue disciplinary action and remove the 1st respondent on the ground that he accepted the charges leveled against him.

32. The Tribunal agreed with the contention of the 1st respondent that the decision to extend the 1st respondent's period of training by another three months with effect from 15.01.1993 in Ex.W1, was taken after taking into account the 1st respondent's unauthorized absence, and so the continuation of disciplinary action was unwarranted.

33. The Tribunal held that when the period of training was extended, the 1st respondent would normally under

impression that no disciplinary action would be taken and therefore the action of the petitioner in removing the 1st respondent under Ex.M27 on 29.05.1993 is illegal and cannot be sustained.

34. I am in complete agreement with the reasoning of the Tribunal.

35. Surprisingly, there is no rebuttal by Sri K.Sarva Bhouma Rao, Standing Counsel for petitioner, to the contention advanced by the counsel for 1st respondent. In fact, no submissions in reply to the 1st respondent's contention in regard to Ex.W1 were advanced by the Standing Counsel.

36. Therefore, though the Tribunal may have erred in stating that there is no evidence in support of voluntary acceptance of guilt by the 1st respondent in the light of Ex.M25, yet, it rightly relied on Ex.W1 in holding that there is condonation of misconduct by the petitioner after being fully conscious of the alleged unauthorized absence of the 1st respondent.

37. In this view of the matter, it cannot be said that the Tribunal committed any error of jurisdiction warranting interference by this Court under Article 226 of the Constitution of India.

38. Accordingly, the Writ Petition is dismissed with costs of Rs.2,000/- to be paid by the petitioner to the 1st respondent.

39. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

28th March, 2018.

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