

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.16284 OF 2003

ORDER:

Petitioner, who worked as a Cleaner in the first respondent- Andhra Pradesh State Road Transport Corporation, filed this writ petition being aggrieved by the Award dated 21.02.2002 passed in I.D.No.274/2000 whereby the claim of the petitioner for reinstatement with continuity of service and back wages was dismissed, as being illegal and arbitrary.

The case of the petitioner is that he joined in the Corporation as a Cleaner in the year 1991. Based on the complaint of the Assistant Mechanical Foreman of the first respondent-Depot, a charge memo was issued to the petitioner alleging that he approached the Assistant Mechanical Foreman on 06.02.1997 along with two outsiders and demanded to allot night shifts to the petitioner. It is further alleged that the petitioner threatened the Assistant Mechanical Foreman with dire consequences, if he was not allotted with night shifts. Petitioner was removed from service after conducting departmental enquiry. Being aggrieved by the same, petitioner preferred appeal and revision, unsuccessfully. Thereafter, the petitioner raised an industrial dispute and the same was numbered as I.D.No.83/1999 before the Labour Court-III, subsequently the case was transferred to Labour Court-I in I.D.No.533/2000 and finally the case was transferred to Labour Court-II and numbered as I.D.No.274/2000. The Labour Court, on considering the evidence available on record, dismissed the claim vide impugned award dated 21.02.2002 published through G.O.Rt.No.843 dated 02.04.2002 holding that the petitioner had

committed serious misconduct of insubordination and there is no perversity in Enquiry Officer holding that the charge is proved. Being aggrieved by the same, the present writ petition came to be filed.

Sri G.Ravi Mohan, learned counsel for the petitioner, would contend that the petitioner was appointed as a Cleaner in the year 1991 in the first respondent-Corporation. He worked without any complaint all through. On 06.02.1997, a charge sheet was issued to the petitioner based on the complaint given by the Assistant Mechanical Foreman of the first respondent, framing the following charges:

- (1) For having attended depot in an inebriated condition on 6-2-97 and misbehaved with the Supervisor (AMF-HYT Depot) while he was on duty and threatened him by uttering the words, which constitutes misconduct under Reg.28 (xxi) of APSRTC., Employees (Conduct) Reg-1963.
- (2) For having threatened the Supervisor (AMF-HYT Depot) with dire consequences if you are not taken in night shift which constitutes misconduct in terms of Reg.28 (xxi) of APSRTC Employees (Conduct) Reg.1963.

Petitioner submitted his explanation denying the charges. The Disciplinary Authority being not satisfied with the explanation, appointed an Enquiry Officer, who conducted a farce of enquiry contrary to the Regulations of the Corporation and principles of natural justice. The Enquiry Officer without considering the evidence before him and deposition of the petitioner and even not considering the evidence of the Manager and brushing aside the evidence of the petitioner, submitted Enquiry Report holding that the charges are proved. The Disciplinary Authority based on Enquiry Officer's report, issued a show cause notice of removal to

the petitioner asking his explanation as to why he should not be removed from service. The Disciplinary Authority without independent application of mind to the Enquiry Officer's report and explanation of the petitioner submitted to the charge memo and charge sheet and show cause notice, passed the removal order. Petitioner preferred appeal and revision and the same were dismissed without considering the grounds of appeal and revision in proper perspective. Being aggrieved by the same, petitioner raised an Industrial Dispute before the Labour Court. The Labour Court, duly considering the evidence before it, held that the domestic enquiry is valid. The Labour Court on re-appreciation of the evidence on record before it, carried away by the findings of the Enquiry Officer, without properly considering the contentions in the claim petition filed under Section 2-A (2) of the I.D.Act that the petitioner applied for leave from 02.02.1997 to 08.02.1997 on the ground that his mother was sick owing to paralytic stroke and busy to attend her and taking her to hospital. Hence, the question of going to Depot on 06.02.1997 at 11.30 a.m. and approaching the Assistant Mechanical Foreman along with two others and demanding him to allot night shift duty and threatening him with dire consequences if night shifts are not allotted to the petitioner, does not arise. The evidence of the Assistant Mechanical Foreman is not supported and corroborated by the evidence of witnesses, who were examined on behalf of the Management. Even the evidence of Assistant Depot Clerks and Security Guard is to the effect that the petitioner only scolded the Assistant Mechanical Foreman G.Ramulu and insisted him to allot night shift duties and when the Assistant Mechanical Foreman refused to allot night shift

duties, the petitioner Srinivasulu got annoyed and uttered the following words “GOTITO POIDANI GODDALU VARAKU TESTUNNARU” and threatened to see him outside, as stated by A.Linga Reddy, ADC. Learned counsel would further contends that B.Sammaiah, Security Guard, stated during the enquiry that when the petitioner T.Srinivas did not convince with the reply of the Assistant Mechanical Foreman, he got annoyed and uttered the words “GOTITO POIDANI GODDALU VARAKU TESTUNNARU”. Thus, they have not supported the version of the Assistant Mechanical Foreman G.Ramulu. The finding of the Enquiry Officer is biased and the conclusions are not based on any legal evidence and the report of the Enquiry Officer that the charge is proved, is illegal. Dismissal of the petitioner from service is disproportionate to the proved misconduct. But, the Labour Court without addressing itself by framing the issue ‘whether dismissal of the petitioner from service is based on proved misconduct and dismissal of the petitioner from service is disproportionate to the proved misconduct’, concluded that the Disciplinary Authority has rightly imposed punishment of removal from service on the petitioner for the proved charges. The Labour Court on mere surmises and conjectures, held that the charges are proved in the enquiry and thereby held that the petitioner committed grave misconduct and the punishment of dismissal from service is proportionate to the proved misconduct, which is illegal. The Labour Court had not properly exercised its power vested under Section 11-A of the I.D.Act. Hence, the impugned award is illegal and arbitrary and liable to be set aside and the petitioner is entitled to be reinstated with continuity of service with attendant benefits and back wages.

Per contra, Sri N.Vasudeva Reddy, learned standing counsel for APSRTC, would contend that the petitioner entered the garage on 06.02.1997 in drunken condition and demanded the Assistant Mechanical Foreman G.Ramulu and demanded to allot permanent night shift duties. When the same was not acceded to, he threatened and scolded the Assistant Mechanical Foreman by uttering the words *“NEEKU DAMMU VUNTE POSITION LEDANI RAASI EEVU NEE SANGATI NENU BAITA CHUSTANU”*, *“GOTITO POEDANI GODDALADAKA TESSKONI VASTUNNAVU”*, *“NEENNU MURDER CHESI AARU NELALU JAILKI POTA”* and *“AARU NELALU TARVATA BAIL MEEDA BAITAKI VASTANU”*, for which, a charge sheet was issued to the petitioner. The Disciplinary Authority having considered the explanation of the petitioner to the charge sheet and show cause notice, based on the Enquiry Officer’s Report, on independent application of mind to the same, having come to the conclusion that the petitioner has committed grave misconduct as proved in the enquiry and dismissed the petitioner from service. The Appellate as well as Revisional authorities having considered the appeal and revision in proper perspective, dismissed the same. There is no illegality or arbitrariness in dismissing the appeal and revision. The Labour Court on considering the evidence on record, dismissed the I.D.No.274/2000 on 21.02.2002 holding that the charges are proved in the enquiry and there is no perversity in the finding of the Enquiry Officer and also holding that the enquiry is validly conducted. The Labour Court upheld the findings of the Enquiry Officer that the charges are proved. For the proved charge of grave misconduct, the petitioner was dismissed from service.

Punishment of dismissal from service commensurate with the proved misconduct and there is no illegality in the same. His appeal and revision petitions were rejected. This Court has no power or authority to review the entire evidence like an Appellate Court and come to a different conclusion or impose a lesser punishment and thereby prayed to dismiss the writ petition.

Having considered the rival contentions of counsel and perused the material on record, it is found that the petitioner was sanctioned leave from 02.02.1997 to 08.02.1997 to attend his ailing mother, owing to paralytic stroke, to take her to hospital. But, the complaint of the Assistant Mechanical Foreman given on 06.02.1997 stating that 2 outsiders entered into the Depot and threatened him to allot night shifts to the petitioner, could not be believed as the same was not proved in the enquiry by adducing legal and corroborative evidence and also for the reason that the entrance to the Depot is fully secured and the Corporation will maintain registers of ingress and egress of the employees and no outsider would be allowed inside. The said Register was not produced before the Enquiry Officer, in support of the charge framed against the petitioner that he entered the Depot on 06.02.1997 at 11.00 a.m. in drunken condition along with two others and threatened the Assistant Mechanical Foreman. The evidence of the Assistant Mechanical Foreman-G.Ramulu, is not fully supported by the evidence of A.S.R.Murthy-Assistant Depot Clerk, A.Linga Reddy-Assistant Depot Clerk and B.Somaiah-Security Guard. The Enquiry Officer brushed aside the evidence of the petitioner and only relying on the evidence on the Management witnesses, on mere surmises and conjectures, submitted the report

holding that the charges are proved. The Labour Court also not properly considered the evidence before it and only on hixy dixy consideration of the evidence, without proper discussion, concluded that the charges are proved in the enquiry by merely stating that the same is sustained, without considering the evidence in the light of the plea taken by the petitioner in the claim petition and without addressing itself to the issues “Whether the finding of the Enquiry Officer is supported by any legal evidence and is there any perversity in the finding of the Enquiry officer” and without proper exercise of power vested under Section 11-A of the I.D.Act held that the petitioner has committed grave misconduct and the punishment is proportionate to the proved misconduct and dismissed the claim of the petitioner. This Court found that the Labour Court dismissed the claim of the petitioner for reinstatement with continuity of service and back wages, without proper appreciation of the evidence before it. In the absence of any legal evidence in support of the charges, the finding of the Labour Court that the charges are proved is held to be perverse and Labour Court has not properly exercised power under Section 11-A of the I.D.Act in upholding the punishment of removal from service. Hence, the dismissal order and award of the Labour Court are liable to be set aside.

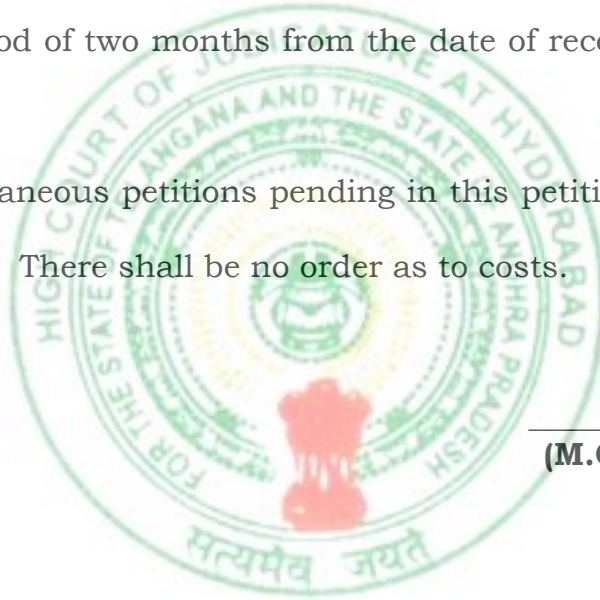
Accordingly, the Writ Petition is allowed by setting aside the dismissal order passed by the Disciplinary Authority and award passed by the Labour Court.

Considering the circumstances under which the petitioner was dismissed from service on 17.11.1997, his appeal and revisions were rejected on 11.11.1998 and 19.02.1999 respectively,

he raised industrial dispute and thereafter filed the present Writ Petition in the year 2003, this Court feels that remanding the matter to the Disciplinary Authority to impose lesser punishment serves no useful purpose as the workman had already underwent financial problems and also mental agony as he was out of service for a long period. To meet the ends of justice, in modification of the impugned award, the respondents are directed to reinstate the petitioner into service with continuity of service and without back wages and attendant benefits. The respondents are directed to complete the exercise of reinstating the petitioner into service within a period of two months from the date of receipt of a copy of this order.

Miscellaneous petitions pending in this petition, if any, shall stand closed. There shall be no order as to costs.

24.08.2018
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(M.GANGA RAO, J)