

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 2744 OF 2010

Dated: 19.01.2018

Between:

T Padmavathamma W/o late T Gurappa
36 years
Ex.Sweeper, Hussainipuram village
Oravakal mandal, Kurnool district

.. Petitioner

And

APSRTC, rep., by its Depot Manager
Banaganapalli depot, Kurnool district and others

.. Respondents



The Court made the following:

THE HON'BLE SRI JUSTICE P. NAVEEN RAO**WRIT PETITION No. 2744 OF 2010****ORDER:**

Consequent to the death of husband of the petitioner while in service, petitioner was appointed as sweeper on compassionate grounds with effect from 15.5.1993. While working in the said capacity, disciplinary proceedings were initiated against her on the allegation that while she was going out after the duty hours, on physical verification of her belongings at the security gate found aluminum scrap pieces weighing ½ Kg in her lunch box and the same amounted to theft of property belonging to respondent corporation. In the domestic enquiry, charge held proved. Based on the same, she was removed from service by order of the Disciplinary Authority dated 11.7.2003, affirmed by the Appellate Authority and the Revisional Authority. Earlier, petitioner filed W.P.No.24001 of 2005 challenging the order of removal. The said writ petition was dismissed granting liberty to the petitioner to raise Industrial Dispute. Accordingly, industrial dispute was raised before the Industrial Tribunal cum Labour Court at Anantapur numbered as I.D. No. 75 of 2006. By award dated 18.9.2009, the said dispute was dismissed. Hence, this writ petition.

2. Heard learned counsel for petitioner and learned standing counsel for respondent corporation.

3. Learned counsel for petitioner submitted that petitioner did not indulge in theft of aluminum scrap as alleged. After consuming food, she kept her lunch box and bag in guard room and was unattended to. In her absence somebody kept the aluminum scrap in her lunch box without her knowledge, only to harass and victimize the petitioner. He would submit that as she did not indulge in theft of property belonging to the respondent corporation and there is no material on record to show

that she kept the aluminum scrap in her lunch box, merely because it was recovered from her by the security guard, is no ground to hold the petitioner guilty of the charge alleged. He would submit that aluminum scrap is useless item and by carrying the same no purpose would be served to the petitioner. Further, the value of the aluminum scrap may at the most be .100/- and on that ground and for a trivial allegation punishment of removal from service is highly excessive. He submitted that employment was provided on compassionate grounds due to demise of her husband at young age and she was not aware of procedural aspects of employment. On account of punishment imposed, she and her young children are thrown on to the roads. Having regard to peculiar facts of the case, the punishment of removal was highly excessive and disproportionate. He would submit that the Labour Court erred in not appreciating contentions urged by the petitioner and erred in recording a finding of guilt and dismissing the industrial dispute.

3.1. In support of his contentions, learned counsel for petitioner placed reliance on the following decisions:

Dev Singh Vs. Punjab Tourism Development Corporation Ltd and another¹, Shri Ganapati Bus Service, Thirunelveli Vs. Presiding Officer, labour Court and another², B.C. Chaturvedi Vs Union of India and others³, State of Gujarat Vs. Anand Acharya⁴, Director General ,RPF and others Vs. Ch.Sai Babu⁵, C.Basaiah Vs Depot Manager, APSRTC Tandur, RR District⁶, Ranjit Tjakur Vs Union of India⁷ , Hyderabad Plywood Industries (P) Ltd Vs Presiding Officer, Labour Court-III, Hyderabad⁸, K Ramesh Vs Presiding Officer⁹,

¹ (2003) 8 SCC 9

² (2001) 2 SCC 602

³ AIR 1996 SC 484 (1)

⁴ (2007) 9 SCC 310

⁵ (2003) 4 SCC 331

⁶ 2008 (6) ALD 518

⁷ (1987) 4 SCC 611

⁸ 2004 (3) ALD 707

⁹ WP 16569 of 2009 Madras High Court dt 26.7.2011

Sukhbir Singh Vs. Deputy Commissioner¹⁰, and Anjali Vs. State Bank of India¹¹.

4. Learned standing counsel for respondent corporation submitted that petitioner was caught red handed while going out of the office. She had no explanation to offer as to how the aluminum scrap pieces were found in her lunch box. A vague allegation of some miscreants kept the aluminum scrap in her lunch box was made only to wriggle out from the charge. She has not disclosed the names of persons who are inimical to her. There was no history of the petitioner complaining of any harassment by her colleagues. Since the aluminum scrap which belongs to the corporation was found in her box, burden is on her to prove how aluminum scrap was found in her box. Whereas, she failed to bring on record any evidence in support of her stand and to disprove the charge leveled against her. He would submit that due opportunity was afforded to the petitioner in the domestic enquiry and before the Labour Court also but, she failed to bring any material to disprove the charge. Since the allegation is theft of property belonging to the employer-respondent corporation, petitioner is not entitled to any relief. By her conduct, petitioner lost the confidence of the employer and is not fit to continue in service. Having regard to the charge leveled and proved, the punishment of removal from service is validly made as upheld by the Labour Court. He would submit that petitioner was indulging in similar misconduct earlier resulting in removal from service. She was also visited with punishment of censure twice for dereliction of duty. He would therefore support the punishment imposed and upheld by the Labour Court.

4.1. In support of his contentions, learned standing counsel placed reliance on following decisions:

¹⁰ 1985 (50) FLR 139

¹¹ (1994) ILLJ 312 MP

Divisional Controller, NEKRTC Vs H Amaresh¹², APSRTC Vs. Raghuda Siva Sankar Prasad¹³, and Union of India and others Vs. P.Gunasekaran¹⁴.

5. The factum of recovery of aluminum scrap belonging to the respondent corporation weighing about ½ Kg from the lunch box of the petitioner is not in dispute. When the allegation is of grave nature i.e, theft of property belonging to the employer, the burden lies on the petitioner to disprove such allegation. Except raising vague contention that somebody kept the aluminum scrap in her lunch box, no material is brought on record in support of such contention. She has not disclosed the names of the persons who are stated to be inimical to her and who could have kept the aluminum scrap in her lunch box. Petitioner raised same plea in the domestic enquiry and also before the Labour Court but without any supporting material. Labour Court on analysis of the material on record did not agree with the contention of the petitioner that some miscreants have kept the aluminum scrap in her lunch box. Further this contention of the petitioner also stands discarded, having regard to the specific assertion of the respondent corporation that she was earlier visited with punishment of censure on two occasions and was also removed from service on the allegation of theft when she was working in Yemmiganur depot.

6. Labour Court found that fair and proper enquiry was conducted by the employer and holding that due opportunity was afforded to the petitioner, validated the domestic enquiry. Even on independent consideration, this Court do not find any error in the procedure followed by the employer and assessment of evidence made by the Labour Court. Thus, the charge of theft is held proved.

¹² (2006) 6 SCC 187

¹³ (2007) 1 SCC 222

¹⁴ (2015) 2 SCC 610

7. The only question remains for consideration is whether on the basis of the charge proved, the punishment of removal from service is excessive and whether this Court can interfere with the quantum of punishment ?

8. Ordinarily, once charge is proved, what punishment can be imposed on the employee is within the domain of the employer. Writ Court can interfere on the punishment imposed only if the Court finds that punishment imposed is outrageously disproportionate to the charge leveled and proved and/or shocks the conscience of the Court. Further, even if writ Court finds that the punishment is disproportionate to the delinquency alleged and proved and shocks the conscience of the Court, ordinarily the Court remit the matter for consideration by the disciplinary authority on the quantum of punishment. However, to give quietus to the litigation, in the given facts of a case, the Court can mould the relief.

9. I have carefully considered the decisions cited at the Bar. Though several decisions are cited at the Bar by learned counsel for petitioner and learned standing counsel for respondent corporation in support of their respective submissions, having regard to the facts noted above, it is suffice to note the decision of Supreme Court in **Raghuda Siva Sankar Prasad**.

10. In **Raghuda Siva Sankar Prasad**, it was alleged against the employee that while he was working in the night shift, he committed theft of 'Fuel injection pump' and has stolen a new tyre tube. The employee admitted his guilt. Enquiry Officer held petitioner guilty of the charge leveled against him. Based on the said findings, the employee was removed from service. The Labour Court upheld the disciplinary action and punishment imposed. On a challenge, High Court while upholding the charge of theft held that punishment of removal was not in

consonance with the gravity of the charge proved; observed that the Labour Court ought to have exercised discretion vested in it under Section 11-A of the Industrial Disputes Act; observed that the employee deserves lenient view; set aside the punishment of removal and directed reinstatement with continuity of service. Same was affirmed by the Division Bench.

10.1. Supreme Court observed that once an employee has lost confidence of the employer, it would not be safe and in the interest of the corporation to continue the employee in service. The punishment of removal from service is just and reasonable to the proved misconduct. It is further held that once Labour Court held the charge proved, no interference is called by the High Court.

10.2. The Supreme Court further observed, **“when the employee is found guilty of theft, there is nothing wrong in the Corporation losing confidence of faith in such an employee and awarding punishment of removal. In such cases, there is no place of generosity or place of sympathy on the part of the judicial forums and interfering with the quantum of the punishment”** (paragraph 20).

(emphasis supplied)

11. As noted above, in the instant case, the allegation leveled and proved is one of theft of aluminum scrap weighing ½ Kg. It is categorical assertion of respondent-Corporation that petitioner was earlier visited with punishment of censure on two occasions and that on the very allegation of theft earlier also, she was removed from service. This stand of respondent-Corporation would go against the contention of the learned counsel for petitioner that the allegation of theft ought not to have resulted in punishment of removal. Theft of employer property is grave misconduct and warrants punishment. If such act is repeated, it would be viewed more seriously. Moreover, if the employer views the

action of employee as grave misconduct, court in exercise of power of judicial review cannot hold otherwise and substitute its view. In the facts of this case, once the allegation of theft is proved, it cannot be said that the punishment of removal is shockingly disproportionate warranting interference by this Court.

12. For the foregoing reasons, the writ petition fails and accordingly the same is dismissed. No costs. Miscellaneous Petitions, if any, pending in the Writ Petition shall stand closed.

Date:19.1.2018

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P. NAVEEN RAO, J



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