

**HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE P. KESHA RAO**

WRIT APPEAL No.1568 of 2018

JUDGMENT: (Per the Hon'ble Sri Justice P. Keshava Rao)

Heard the learned Standing counsel for the appellant Corporation and the learned counsel for the respondents.

The present appeal came to be filed against the orders of the learned Single Judge in allowing the writ petition and thereby setting aside the removal order as well as the award of the Industrial Tribunal-cum-Labour Court, Godavarikhani by granting 50% back wages, since the termination is declared as illegal.

The facts in brief are that the deceased 1st respondent, (hereinafter referred to as "the deceased") was appointed as driver on 02.12.1987 on daily wage basis. On 01.07.1998, his services were regularized. When the deceased was working at Utnoor, he was unauthorizedly absent to his duties with effect from 26.01.2000 to 22.02.2000. The reason mentioned by him is that he suffered with heavy fever and bronchitis asthma leading to unbearable cough. He took treatment at Government Civil Hospital, Jannaram. Though he has sent the sick certificate by post to the Senior Traffic Inspector, he treated the sick period as absent and submitted a report to the appellant. Basing on the said report, charge sheet dated 13.03.2000 was issued with the following charges:

“1. For having absent to your duties unauthorisedly without prior permission from 26-1-2000 to till date i.e., 22-2-2000 and submitted sick certificate from Jannaram, due to your absence the punctual operations of Utnoor are effected badly yet times it leads to cancellation of scheduled services also, which caused much inconvenience to the travelling public and loss of revenue to the Corporation, amounts to misconduct under Reg. No.28(xxvii) of APSRTC Employees (Conduct) Regulations, 1963.

2. For having maintained irregular attendance i.e., not available for duty for (169) days, leave: (16): Sick: (86) and absent (67) days, due to your irregular attendance the traffic supervisors of Utnoor depot have suffered a lot in arranging crew to schedule services, leads to last operation of services and yet times cancellations also, caused much inconvenience to the traveling public and defaced the image of the Utnoor depot, amounts to mis-conduct in terms of Reg.28(xxxi) of APSRTC Employees (Conduct) Reg.1963.”

Basing on the Enquiry Officer's report, the deceased was removed from service by orders dated 05.08.2000. Against the said orders, the deceased raised an industrial dispute vide I.D.No.175 of 2003 before the Industrial Tribunal-cum-Labour Court, Godavarikhani (for short, “the Tribunal”). After considering the evidence on record, the Tribunal found that there is no illegality or irregularity in removing the deceased from service and dismissed the I.D. by orders dated 17.12.2004. Against which the writ petition came to be filed before this Court.

The learned Single Judge, after hearing both the parties, allowed the writ petition and while setting aside the removal order as well as the award passed by the Tribunal, granted 50% of the back wages declaring the termination order as illegal. Learned Single Judge observed that while removing the deceased from service, he was not issued any notice during the course of enquiry and no show cause notice was

issued on the Enquiry Officer's report before the orders of removal from service were issued. Against the said order, the present writ appeal came to be filed.

Learned Standing counsel appearing for the appellant Corporation contended that during the course of enquiry, the appellant issued notices on different dates, but the same were returned un-served. The deceased was given an opportunity to participate in the enquiry, but he failed to avail the same. Therefore, it cannot be said that the enquiry conducted is ex-parte and contrary to the regulations of the Corporation.

Per contra, the learned counsel appearing for the respondents submitted that the order of removal from service is illegal, since the deceased sent medical certificates to the Assistant Traffic Inspector. However, he submitted a report stating that the absence of the deceased was unauthorized. Basing on the said report, an Enquiry Officer was appointed as required under Rule 35-A of the APSRTC Employees (Classification, Control and Appeal) Regulations, 1967 (for short, "the Regulations"). However, the Enquiry Officer conducted enquiry without issuing any notice to the deceased. The disciplinary authority without forwarding the copy of the enquiry report for comments and without issuing any show cause notice of removal as required under Rule 12(13) of the Regulations passed the order of removal resulting in violation of principles of natural justice. The

Tribunal, without properly appreciating the facts on record, dismissed the I.D.

Having heard both the counsel and from a perusal of the material on record, it is evident that the deceased was issued charge sheet dated 13.03.2000 for his unauthorized absence from 26.01.2000 to 22.02.2000 and thereby leading to cancellation of scheduled services and causing inconvenience to the travelling public apart from loss of revenue to the Corporation by misconducting himself. The deceased requested the appellant Corporation to send him to the APSRTC, Tarnaka Hospital for treatment. However, the said request was denied. This fact ipso facto evidence that the deceased participated during the course of enquiry before the Senior Traffic Inspector, Utnoor Depot. Therefore, the contention of the deceased that he was not issued any notice cannot be countenanced. As far as issuance of notices to the deceased is concerned, when the appellant Corporation addressed letter dated 27.04.2000 to the Medical Officer, PHC, Jannaram, requesting him to send the deceased to his office, the same was returned un-served. Similarly, the letters sent by the Enquiry Officer dated 05.05.2000 and 29.05.2000 sent to the residential address of the deceased also returned un-served. In those circumstances, the Corporation on receipt of the Enquiry Officer's report addressed letter dated 05.07.2000 to the deceased calling for his remarks, but the same was also returned undelivered.

Therefore, it cannot be said that the deceased deserves any sympathetic consideration from this Court.

Be that as it may, the deceased was removed from service on 05.08.2000. The proceedings initiated under the Industrial Disputes Act vide I.D.No.175 of 2003 came to be dismissed by award dated 17.12.2004 against which the writ petition was filed before this Court. When the writ petition was pending, the 1st respondent died and respondent Nos.2 to 4, being wife and children, were brought on record as his legal representatives. Though the learned Single Judge observed that there is no evidence before the Tribunal to show that the Enquiry Officer's report was furnished to the deceased to submit his explanation and comments as required under Rule 12(13) of the Regulations and the order of removal from service was issued without show cause notice, at this length of time, this Court is not inclined to go into those aspects, since the deceased was removed from service on 05.08.2000 and he died when the writ petition was pending consideration before this Court. Therefore, in the conspectus of the factual matrix as discussed supra, more particularly, with regard to the misconduct of the deceased as well as the observations made by the learned Single Judge, this Court is inclined to take a lenient view and of the opinion that granting of 50% of the back wages is on the higher side and the same is liable to be modified.

Accordingly, the order of the learned Single Judge is modified to the extent of reducing the back wages to 25% from 50%. Except the said modification, the remaining part of the impugned order remains undisturbed.

The writ appeal is disposed of as indicted above. No order as to costs.

Miscellaneous petitions, if any, shall also stand disposed of.

V. RAMASUBRAMANIAN, J

P. KESHAVA RAO, J

Date: 27.12.2018.
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