

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.11155 OF 2002

ORDER:

The petitioners, officials of the APSRTC, filed this writ petition being aggrieved by the award of the Labour Court-II, Hyderabad passed in I.D.No.106 of 1998 dated 03.01.2002 and published on 02.03.2002, whereby the Labour Court while setting aside the order of removal dated 20.02.1997 passed by the 2nd petitioner directed reinstatement of the 1st respondent-workman into service with continuity of service without back wages from the date of removal till the date of re-appointment and imposing the penalty of stoppage of annual increments for two years with cumulative effect, as being illegal and arbitrary.

2. The case of the petitioners is that the 1st respondent-workman was appointed as Conductor in the petitioners-Corporation on 07.01.1974 and later he was promoted as Assistant Depot Clerk with effect from 20.10.1983. While he was working as such, based on the report of the Chief Inspector of the 2nd petitioner-Depot, issued charge sheet dated 27.11.1996 with the following charges:

“1. For having absented to the duty from 6.10.96 onwards and submitted sick certificate for the period from 6.10.96 to 13.10.96 and 16.10.96 to 28.10.96 on 23.10.96 and failed to submit any intimation from 29.10.96 onwards even the sick certificates submitted by you are not accepted as they were not in conformity

with the Regulations of the corporation and were not submitted within 48 hours as per the Regulation 11(2) of APSRTC Employees (leave) Regulations 1963 and hence the period from 6.10.96 onwards is treated as unauthorised absence which constitutes misconduct in terms of the Regulations 28(xxvii) of APSRTC Employees Conduct Regulations, 1963.

2. For having left the Head Quarters without obtaining prior permission from the competent authority which constitutes misconduct as per Regulation 5 of APSRTC Employees (Conduct) Regulations, 1963.

3. For having unauthorisedly absented to the duties for 59 days during the year 1995 and 129 days during the year 1996 (upto September, 1996) causing effect on allot work when constitutes serious misconduct as per the Regulations no.28(xxvii) of APSRTC Employees (Conduct) Regulations, 1963.”

Subsequently, the 2nd petitioner ordered for domestic enquiry. The 1st respondent could not participate in the enquiry and thereby an *ex parte* enquiry was conducted. The Enquiry Officer submitted enquiry report holding that the charges were proved. Thereafter, a show-cause notice was issued to the 1st respondent. The 2nd petitioner, having not convinced with the explanation submitted by the 1st respondent, removed the 1st respondent by order dated 20.02.1997 for the proved misconduct of unauthorised absence from 06.10.1996 to 28.10.1996. The 1st respondent preferred an appeal to the Deputy Chief Traffic Manager, but the same was rejected. Then, the 1st respondent preferred review to the Regional Manager, Medak at Sangareddy. By

order dated 21.02.1998, the Regional Manager confirmed the order of removal by holding that the appellate authority had rightly rejected the appeal preferred by the 1st respondent, but however, on humanitarian consideration, the Regional Manager ordered fresh appointment of the 1st respondent as Assistant Depot Clerk. The 1st respondent having accepted the said order joined in the service. However, the 1st respondent raised an industrial dispute in I.D.No.106 of 1998 before the Labour Court-II, Hyderabad. The Labour Court, having considered the evidence before it, passed the award reinstating the 1st respondent into service with continuity of service but without back wages from the date of removal to the date of re-appointment and imposing a penalty of stoppage of two annual increments with cumulative effect. Being aggrieved by the award of the Labour Court, the petitioners-Corporation filed the present writ petition.

3. On 24.06.2002, this Court while admitting the writ petition passed interim stay of the impugned award only in respect of continuity of service, until further orders of the Court in WPMP No.13724 of 2002.

4. On 18.08.2010, the learned counsel for the petitioners was permitted to take out personal notice on the 1st respondent by registered post with acknowledgement due and file proof of service and in default, the writ petition stands dismissed against the 1st respondent without further

reference to the Court. The petitioners failed to take out notice on the 1st respondent. Hence, the order dated 18.08.2010 was given effect and the writ petition was dismissed against the 1st respondent.

5. Sri N.Vasudeva Reddy, learned counsel for the petitioners, would contend that the 1st respondent-workman was removed from service after conducting departmental enquiry for unauthorised absence. The appeal filed by the 1st respondent was rejected and on review petition, the Regional Manager of the petitioners-Corporation, Medak at Sangareddy rejected the review petition confirming the order of removal, but however, on humanitarian grounds, the 1st respondent-workman was reinstated afresh as an Assistant Depot Clerk on considering his past service of 23 years. The 1st respondent-workman having accepted the order unconditionally, joined to duty. However, the 1st respondent-workman raised industrial dispute in I.D.No.106 of 1998 before the Labour Court-II, Hyderabad against the order of removal from service dated 20.02.1997. The petitioners filed counter and contested the industrial dispute. Before the Labour Court, Exs.M.1 to M.20 were marked. The Labour Court, on considering the evidence before it; on an erroneous appreciation of law and fact; having not considered the plea of the petitioners that the claim under Section 2-A(2) of the Industrial Disputes Act (for short 'the Act') is not maintainable against the order of removal,

reinstated the 1st respondent-workman afresh as Assistant Depot Clerk. The Labour Court having held that the charges 1 and 2 were proved held that the Charge No.3 was not proved, but however, the finding of the Labour Court on Charge No.3 is perverse. It is also contended that the award of the Labour Court is perverse, arbitrary and capricious, in the absence of any finding that the penalty is disproportionate to the gravity of the proved misconduct committed by the 1st respondent-workman, and therefore, prays to allow the writ petition.

6. The writ petition was dismissed against the 1st respondent-workman and thereby the workman has not contested the writ petition.

7. Admittedly, the Labour Court based on the evidence held that the authorities having accepted the medical certificates submitted by the 1st respondent-workman and without disputing the genuineness of the same, claimed that the workman had absented from duty without prior permission from 06.10.1996 onwards, but the petitioner remained absent without prior intimation from 21.10.1996 onwards only i.e. for about one month. Therefore, the Labour Court, exercising the power under Section 11-A of the Act and on appreciation of the evidence before it, reinstated the 1st respondent-workman with continuity of service. The Labour Court also held that by the order of the

2nd petitioner, the 1st respondent lost about 23 years of service. The proved misconduct against the 1st respondent is that he remained absent without reasonable cause and without prior permission from the competent authority. Taking into consideration of his length of service, the Labour Court held that terminating the petitioner from service on 28.02.1997 and reinstating the 1st respondent afresh as an Assistant Depot Clerk, is quite unreasonable. However, the Labour Court passed the award reinstating the petitioner into service with continuity of service but without back wages from the date of removal to the date of re-appointment and the denial of annual increment for two years with cumulative effect.

8. This Court having considered the evidence on record found that the removal of the 1st respondent-workman from service for unauthorised absence is disproportionate to the proved misconduct and the Labour Court rightly passed the award on considering the evidence on record. This Court found that there is no perversity in the finding of the Labour Court. There is no error of fact and error of law which warrants interference of this Court under Article 226 of the Constitution of India in the award of the Labour Court.

9. Accordingly, the Writ Petition is dismissed. No order as to costs.

(Contd...)

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

JUSTICE M.GANGA RAO

08-08-2018
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WRIT PETITION No. 11155 OF 2002

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