

HIGH COURT FOR THE STATE OF TELANGANA

THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN

AND

THE HON'BLE SRI JUSTICE A.ABHISHEK REDDY

Writ Appeal No.1384 of 2018

Date: 09.09.2019

Between:

National Insurance Company Limited,
Rep.by its General Manager,

..Appellant

And

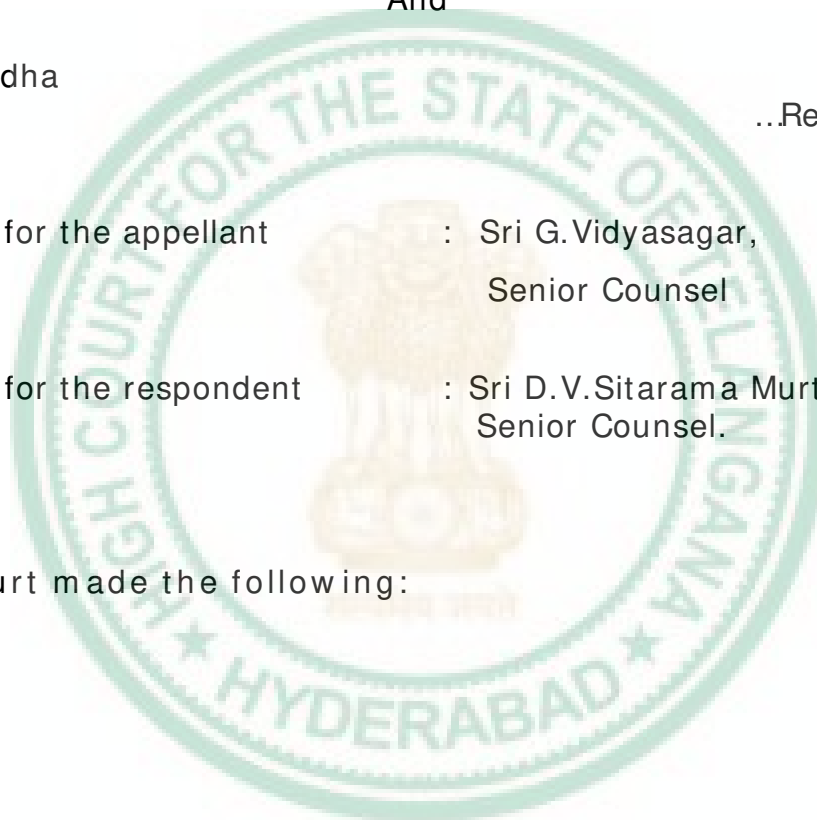
M.Anuradha

...Respondent

Counsel for the appellant : Sri G.Vidyasagar,
Senior Counsel

Counsel for the respondent : Sri D.V.Sitarama Murthy,
Senior Counsel.

The Court made the following:



JUDGMENT: (Per the Hon'ble Sri Justice A.Abhishek Reddy)

The present Writ Appeal is filed by the National Insurance Company Limited, aggrieved by the orders passed in W.P.No.25116 of 2005, dated 03.08.2018.

2. The brief facts of the case are that the respondent herein, who was working as a Deputy Manager in the appellant-Insurance Company, was made to retire compulsorily from service vide letter, dated 12.07.2005, on the charges that she was unauthorizedly absent from service. It is the case of the respondent herein that she has initially applied for leave, and after obtaining the necessary sanction, she went to U.S.A. along with her husband. There, her husband died. Subsequently, she also fell ill. As such, she had to necessarily extend her stay in U.S.A. Her application for extension of the leave was initially considered favourably, subsequently, her extension for leave on *loss of pay* was not considered by the authorities. Though she had reported for duty on 19.07.2004, she was not allowed to join duty for want of fitness certificate from her doctor.

3. It is the case of the appellant that generally only after receiving the fitness certificate from the Doctor, the respondent would be permitted to join the duty. But as she has not enclosed the fitness certificate along with her joining report, dated 19.07.2004, she was not allowed to join duty. Subsequently, she submitted the joining report on 20.09.2004 along with the *fitness certificate*. Therefore she was allowed to join duty. Thereafter, she was issued a memo for her unauthorized absence and regular enquiry was initiated. Based on the enquiry report, dated 19.11.2004, the competent authority vide order, dated 10.12.2004, has passed the order of compulsory retirement of the

respondent herein. Though she had preferred an appeal before the appellate authority, the same was rejected. Thus she filed W.P.No.25116 of 2005 before this Court.

4. The learned Single Judge, after going through the record, has allowed the writ petition, and directed the appellant herein to reinstate the respondent herein into service with continuity of service, and other attendant benefits, and further directed to pay 50% of the back wages for causing severe hardship and financial trouble to the respondent herein. Aggrieved by the order of the learned Single Judge, the present Writ Appeal is filed by the appellant-Corporation mainly on the ground that the unauthorized absence of the employee amounts to grave misconduct; the penalty of compulsory retirement is a valid, reasonable and justified punishment. Secondly, the order of the learned Single Judge directing reinstatement is contrary to the rules as the medical certificate produced by the respondent herein, in support of her case, was neither proper, nor satisfactory. The same was procured from a Doctor and not from any hospital.

5. Heard Sri G.Vidyasagar, the learned Senior Counsel for the appellant-Insurance Company, and Sri D.V.Sitarama Murthy, the learned Senior Counsel for the respondent-employee.

6. As per the record, it is seen that the respondent herein has initially proceeded on leave after taking due permission from the concerned authority; she has applied for extension of the leave due to the death of her husband in U.S.A., and also subsequently on medical grounds. The appellant-Insurance Company has approved the extension of leave applications submitted by the respondent herein. Though she submitted another leave letter, dated 24.09.2003, duly

enclosing the medical certificate, the same was also considered vide letter, dated 09.10.2003, granting leave for a period of three months from 03.09.2003 to 02.12.2003. Thereafter, she has sent another letter, dated 01.12.2003, requesting for extension of leave till 02.03.2004, but the same was negatived. She was served with a memorandum of charges, dated 31.05.2005, for not attending the duties; basing on the enquiry report, she was compulsorily retired from service.

7. In catena of cases, this High Court and the Hon'ble Supreme Court, while dealing with matters pertaining to disciplinary proceedings and the quantum of punishment imposed on the delinquent employee, have held that the punishment imposed should commensurate with the charges levelled against the delinquent employee.

8. The learned Senior Counsel appearing for the appellant-Insurance Company has relied upon the decision of the Hon'ble Supreme Court reported in **UNION OF INDIA AND OTHERS v. P.GUNASEKARAN**¹. But the facts in the case on hand are different from that of the facts before the Supreme Court cited supra. There it was a case where the employee was arrested by the police in a criminal case for cheating and extortion of money, and separate departmental proceedings were initiated against him. Though the Hon'ble Supreme Court has sounded a word of caution regarding the jurisdiction and powers of the High Court under Articles 226 and 227 of the Constitution of India insofar as interference with the conclusion of the disciplinary authorities are concerned and dealing with the said proceedings as an appellate Court at para 20 an exception has been carved wherein the Hon'ble Supreme Court held as under:-

¹ (2015) 2 SCC 610

“Equally, it was not open to the High Court, in exercise of its jurisdiction under Articles 226/227 of the Constitution of India, to go into the proportionality of punishment **so long as the punishment does not shock the conscience of the Court.**” (emphasis added)

9. It is apparent from the record that the appellant-Insurance Company was extending the leave of its employee from time to time based on the requests of the employee and the medical reports submitted by her. Rejection of extension of leave while she was in U.S.A. *in spite* of enclosing medical certificate in the absence of any other reason cannot be countenanced in view of the fact that the very same authority has accepted the medical certificate issued by the very same Doctor. Thus, the award of punishment of compulsorily retirement is rather harsh punishment which does not commensurate with the charges levelled against the employee. It does shock the conscience of the Court, more particularly in view of the fact that the employee has suffered a personal tragedy i.e., loss of her husband in U.S.A. Therefore, the order of the learned Single Judge setting aside the order of compulsory retirement does not warrant any interference, more particularly, in view of the fact that the employee has retired from service on 31.10.2018.

10. Insofar as the second relief granted by the learned single Judge directing the appellant – Insurance Company to pay 50% of the back wages to the employee for causing severe hardship and financial troubles is concerned, the Counsel for the respondent herein has fairly conceded that his client is agreeable for reduction of the same by half. Hence, the order of the learned Single Judge is modified to the limited extent that the respondent herein is entitled to receive only 25% of the

back wages from the date of passing of the impugned order till the date of her retirement i.e., 31.10.2018.

11. In view of the above reasons, the Writ Appeal is partly allowed to the extent indicated above.

The miscellaneous petitions pending, if any, shall stand closed.
There shall be no order as to costs.

RAGHVENDRA SINGH CHAUHAN, HCJ

A.ABHISHEK REDDY, J

9th September, 2019
smr

