

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)**

**WEDNESDAY, THE TWENTIETH DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY THREE**

PRESENT

THE HONOURABLE SMT JUSTICE JUVVADI SRIDEVI

WRIT PETITION NO: 2096 OF 2019

Between:

M. Thirupathaiah, S/o. Late M. Balaiah, Aged 53 years, Occ ; Ex. ADC, E.No. 250567, R/o. 21-117, Maruthinagar, Achampet, Nagarkurnool District.

.....PETITIONER

AND

1. TSRTC, Rep. by its Managing Director, Bus Bhavan, RTC X Road, Hyderabad.
2. The Depot Manager, TSRTC, Kalwakurthy Bus Depot, Mahabubnagar District.

.....RESPONDENTS

Petition Under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue an appropriate writ or direction particularly one in the nature of WRIT OF CERTIORARI, quash the impugned award dated 24.08.2018 made in I.D. No. 04 of 2016, published on 30.10.2016 on the file of Labour Court-III, Hyderabad for not granting any relief as illegal, unjust and in violation of Art. 14, 16 and 21 of the Constitution of India and consequently direct the respondents to reinstate the petitioner into service along with all consequential benefits in the interest of justice.

I.A.NO:1 OF 2019

Petition Under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the respondents to reinstate the petitioner into service by suspending impugned award dated 24.08.2018 made in I.D. No. 04 of 2016 and removal

order dated 05.12.2014 pending disposal of the above writ petition in the interest of justice.

**Counsel for the Petitioner : SRI SIDDARTHA GOUD, ADVOCATE FOR
SRI V.NARASIMHA GOUD**

Counsel for the Respondents : SRI THOOM SRINIVAS (SC FOR TSRTC)

The Court made the following ORDER

THE HON'BLE SMT. JUSTICE JUVVADI SRIDEVI

WRIT PETITION No.2096 of 2019

ORDER:

Petitioner has questioned the award, dated 24.08.2018 passed by Labour Court-III, Hyderabad in I.D.No.04 of 2016.

2. I have heard the submissions of Sri Siddartha Goud, learned counsel representing Sri V.Narasimha Goud, learned Counsel for the petitioner, learned Standing Counsel for TSRTC appearing for respondents and perused the record.

3. Petitioner joined the service of respondents-TSRTC as Conductor on 25.02.1987 and his services were regularized with effect from 01.11.1987. Thereafter he was promoted as Assistant Depot Clerk (ADC) in the month of October, 2012. While so, the 2nd respondent passed order, dated 05.12.2014 removing the petitioner from service on the ground that he was absent for duty from 08.08.2014 to 26.08.2014. Questioning his removal, he filed I.D.No.04 of 2016 before the Labour Court-III, Hyderabad which was dismissed by impugned order.

4. Case of the petitioner is that due to illness, he made a representation to the 2nd respondent on 07.08.2014 informing that he was unable to attend his duties. Further, when he received the

notice in the inquiry proceedings, he made another representation on 16.10.2014 requesting the Inquiry Officer that he was unable to attend the inquiry due to illness. In spite of the same, the inquiry was conducted *ex parte*. Basing on such inquiry report, he was removed from service in an arbitrary manner. It is also stated that the petitioner has submitted sick leave before the 2nd respondent for the period from 08.08.2014 to 12.10.2014 and from 13.10.2014 to 05.12.2014, however, when he reported for duty on 06.12.2014 along with fitness certificate, the removal order was served on him. The Tribunal, without considering all these aspects, has dismissed the I.D. Hence, the present writ petition.

5. Counter affidavit is filed by the respondents stating that the petitioner was engaged as Casual Conductor on 25.02.1987 in TSRTC and subsequently his services were regularized with effect from 01.11.1987. During his service, he was censured for 15 times and his annual increments were deferred for 26 times in various cases of misconduct. In view of his unauthorized absence from duties, he was removed from service with effect from 05.12.2014. Petitioner, without availing the remedies of appeal/review/Mercy Petition with the authorities, has filed the ID before the Labour Court which was rightly dismissed. It is the further case of the respondents that a

charge sheet, dated 28.08.2014 was issued to the petitioner with the following charge:

"For having absented un-authorizedly for your duties from 08.08.2014 to 26.08.2014 neither with Prior sanction leave from the Depot authorities nor submitted any sick certificate from the RTC Hospitals, which resulted in dislocation of day to day works at Earning Section, Kalwakurthy which constitutes misconduct under Reg.28(xvii) of APSRTC Employees (conduct) Reg. 1963."

6. When the above charge sheet was sent to the residential address of the petitioner by the 2nd respondent through registered post, the same was returned by the postal authorities with an endorsement, "unclaimed, returned to sender". Hence, a detailed inquiry was initiated. The petitioner was issued three notices on 16.09.2014, 07.10.2014 and 14.10.2014 calling upon him to appear before the Inquiry Officer along with the material available with him. Though the petitioner acknowledged the receipt of those notices, he neither appeared before the Inquiry Officer nor sent any intimation to the authorities or the Inquiry Officer. As there is no other alternative, the Inquiry Officer conducted *ex parte* inquiry by duly recording the statement of DC(E) of Kalwakurthy Depot. The Inquiry Officer, basing on the evidence available on record, submitted his report on 08.11.2014 to the Depot Manager, holding the petitioner guilty of charge. Copy of the inquiry report and the statement recorded during the inquiry proceedings were sent to the petitioner's

residential address by registered post, but the postal authorities returned the undelivered cover with an endorsement, "refused". The petitioner neither submitted comments/objections for the inquiry report nor reported to the Depot Manager. Thereafter, a show cause notice of removal from service, dated 22.11.2014 was sent to the residential address of petitioner by registered post, however the same was returned with an endorsement "refused". Under those circumstances, the Depot Manager passed the final order of removal from service vide proceedings, dated 05.12.2014 and the same was also sent to the residential address of the petitioner by registered post which was also returned with an endorsement, "continuously door locked". It is stated that 7 ½ months after passing the removal order i.e. on 13.08.2015 the petitioner submitted a representation to the 2nd respondent requesting to supply copy of the proceedings, which were supplied on the same day. In view of the above, as the petitioner did not participate in the inquiry and did not receive the notices, he is not entitled to any relief in the writ petition and the same is liable to be dismissed.

7. The allegation against the petitioner was his absence from duty during the period from 08.08.2014 to 26.08.2014. The case of the petitioner is that he intimated about his illness to the 2nd respondent on 07.08.2014 itself but inspite of the same, inquiry was initiated, for

which, he could not attend due to his illness and the same has resulted in the order of removal. Though the petitioner has stated that he intimated about his illness by representation, dated 07.08.2014, copy of such representation is not filed and he also failed to follow-up with the respondents as to what happened to such representation. The respondents are also silent about receiving such representation and their simple case is that the petitioner was on unauthorized absence from 08.08.2014 to 26.08.2014. It is to be seen that right from the initiation of inquiry proceedings, all the notices sent to the residential address of the petitioner through registered post were returned with endorsements like unclaimed/refused. Though the petitioner has received the notices sent by the Inquiry Officer on 16.09.2014, 07.10.2014 and 14.10.2014, for the reasons best known to him, he failed to appear before the Inquiry Officer nor he submitted any representation stating his inability to appear. If the petitioner is suffering from ill-health, he should have sought for some time to participate in the inquiry proceedings. In spite of receiving notices, the petitioner remained silent, which resulted in adverse report against him. The inquiry report sent to the petitioner's address was also returned with an endorsement "refused" and the subsequent show cause notice of removal sent to the petitioner's address was also returned with an endorsement "refused". This shows the indifferent attitude of the

petitioner towards the steps taken by the authorities against his unauthorized absence. Such behaviour of petitioner falsifies his contention that he intimated about his illness to the 2nd respondent by representation, dated 07.08.2014.

8. In support of his contentions, learned counsel for petitioner has relied on the judgment in **T.Charanjeevi vs. Telangana State Road Transport Corporation, Hyderabad**¹, wherein when the petitioners therein were removed from service for their absence for five days and eight days, this Court set aside the orders of removal holding that such removal was disproportionate to the misconduct alleged.

9. The learned counsel for the petitioner has also relied on another judgment of this Court in **APSRTC, Hyderabad and another vs. N.V.Subbaiah and another**², wherein this Court held that the cases in which the competent Court/Tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the concerned Court or Tribunal will be fully justified in directing payment of full backwages.

¹ 2016 (1) ALD 32

² 2016 (3) ALD 517

10. Both the above judgments are not applicable to the facts of the present case. In the present case, the punishment of removal was imposed for the unauthorized absence of petitioner from 08.08.2014 to 26.08.2014 i.e. for a period of 18 days. Here, it is to be seen that earlier, the petitioner was censured for 15 times and his annual increments were deferred for 26 times in various cases of misconduct. Therefore, the present unauthorized absence of petitioner shall be looked conjointly with the earlier incidents of misconduct. Further, the petitioner was indifferent towards the correspondence from the authorities. On some occasions he refused to receive the notices and on some other occasions inspite of receiving such notices, he did not respond/participate in the proceedings to putforth his case. In such circumstances, the respondents have no other option but to conduct the proceedings *ex parte* with his indifferent attitude, the petitioner cannot allege violation of principles of natural justice.

11. For the aforesaid reasons, the writ petition is devoid of merit and is accordingly dismissed. No costs.

Pending miscellaneous applications, if any, shall stand closed.

//TRUE COPY//

SD/-C.PRAVEEN KUMAR
ASSISTANT REGISTRAR


SECTION OFFICER

To

1. One CC to Sri V.Narasimha Goud, Advocate [OPUC]
2. One CC to Sri Thoom Srinivas (SC FOR TSRTC) [OPUC]
3. Two CD Copies

SA
SB 

HIGH COURT

DATED:20/09/2023



ORDER

WP.No.2096 of 2019

**DISMISSING THE W.P
WITHOUT COSTS.**

(5)
MA
10/10/23