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Andhra Pradesh High Court

Case No: Writ Petition No. 18093 of 2001

K.A.K. Babu	APPELLANT
Vs	
The Depot Manager, A.P.S.R.T.C. and Another	RESPONDENT

Date of Decision: Nov. 26, 2010

Acts Referred:

- Industrial Disputes Act, 1947 - Section 11A

Hon'ble Judges: B. Chandra Kumar, J

Bench: Single Bench

Advocate: M.V. Ramarao, for the Appellant; G.P. for Labour, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

B. Chandra Kumar, J.
This writ petition has been filed seeking direction in the nature of Certiorari, calling for the records in I.D. No. 207 of 1993, dated 29.04.1997 from the Industrial Tribunal-cum-Labour Court, Warangal and to quash that portion of the award, wherein the Labour Court directed the Respondents to reinstate the Petitioner into service as fresh recruiter as a Driver, without continuity of service, back wages and all other attendant benefits.

2. The brief facts of the case are as follows:

The Petitioner was appointed as Driver in A.P.S.R.T.C., Madhira Depot in 1979. According to him, he fell sick on 03.08.1991 to 29.08.1991 and subsequently, from 02.11.1991 to 12.11.1991. He was admitted in Government Hospital, Madhira and had taken treatment for Hypertension and heart problem. It is the case of the Petitioner that he had sent medical certificate to the office of the first Respondent i.e., Depot Manager,

A.P.S.R.T.C., Madhira, through his neighbour and when he reported to duty with fitness certificate, on 30.08.1991, he came to know that his neighbour had not informed about his sickness to the first Respondent. Though the first Respondent allowed him to duty, issued charge sheet, dated 29.08.1991, alleging that the Petitioner was un-authorisedly absent from 03.08.1991 to 29.08.1991 without intimation or prior sanction of leave, which is a misconduct as per the regulations of A.P.S.R.T.C.

3. The learned Counsel for the Petitioner submits that he was admitted in the hospital and had taken treatment for hypertension and heart disease and that though he had sent intimation through his neighbour, his neighbour did not intimate the first Respondent. Subsequently, another charge sheet was issued alleging that the Petitioner was absent to duty from 02.11.1991 to 12.11.1991 and the Petitioner submitted his explanation along with the medical certificate issued by the Medical Officers, showing that he was suffering from Jaundice during that period. Departmental enquiry was conducted and according to the Petitioner, the Enquiry Officer has not conducted an enquiry with reference to the second charge for the absence from 02.11.1991 to 12.11.19991 and that the Enquiry Officer without considering the explanation submitted by the Petitioner, held that the charges are proved. It is also submitted that the first Respondent without considering his explanation, passed orders removing the Petitioner from service. Then he filed I.D. No. 207 of 1993 and that the Industrial Tribunal, Warangal, by impugned orders held that the Petitioner was un-authorisedly absent; that the domestic enquiry was not initiated and that the charges have been proved. However, passed orders u/s 11-A of the Industrial Disputes Act and directed the first Respondent to reinstate the Petitioner into service as a fresh candidate as Driver without continuity of service and attendant benefits.

4. The main contention of the learned Counsel for the Petitioner is that the Labour Court ought to have considered that the Enquiry Officer did not give any opportunity to the Petitioner to lead evidence and that no documents were marked and no witness has been examined on behalf of the first Respondent to prove the charges and that the burden was shifted to the Petitioner to disprove the charges before the Labour Court.

5. The only point that arises for consideration is whether the impugned order is just and reasonable and whether the departmental enquiry was conducted following the principles of natural justice and whether the charges have been proved against the Petitioner.

6. As seen from the contents of the award passed by the Industrial Tribunal, the Respondent had taken a plea that the Petitioner was un-authorisedly absent to duty from 03.08.1991 to 29.08.1991 and that he had produced sick and fitness certificates and reported to duty on 30.08.1991. It is also the case of the Respondent that reasonable opportunity was given to the Petitioner by the Enquiry Officer and since the misconduct has been proved, the Respondent passed orders removing the Petitioner from service.

7. A reading of the counter and the impugned award gives an impression that departmental enquiry was conducted with regard to the absence of the Petitioner to duty

from 03.08.1991 to 29.08.1991 and no enquiry was conducted with regard to the absence from 02.11.1991 to 12.11.1991. Any how, admittedly on both occasions, the Respondent admitted the Petitioner to duty on the production of sick and fitness certificates. Then it is clear that the first Respondent''s office was having the sick and fitness certificates produced by the Petitioner on 30.08.1991. When there are sick and fitness certificates produced by the employee, of course not at the time of admitting in the hospital, but subsequently at the time of joining of duty, the only point that ought to have been considered by the Enquiry Officer and the first Respondent is whether the sick and fitness certificates produced by the Petitioner are genuine or not. When the Petitioner had taken a specific plea that he was admitted in Government Hospital, Madhira and when he had produced a certificate from the Government Hospital, Madhira, there appears nothing to disbelieve the said certificate. Of course, the only mistake appears to be committed by the Petitioner is that he did not inform the first Respondent at the time of admission in the hospital. Now it is not clear as to whether there was any other person available in his family to intimate to the office of the first Respondent about the admission of the Petitioner in the Government Hospital. A reading of the entire material gives an impression that it is a fact that the Petitioner was admitted in Government Hospital from 03.08.1991 to 29.08.1991. When an employee is admitted in Government Hospital and when he had produced sick certificate from the Government Hospital, it is clear that he was unable to report the matter to the concerned authority and in the above circumstances, the first Respondent and also the Labour Court ought to have taken into consideration the circumstances under which the Petitioner could not report the matter to the first Respondent. When there are such compelling circumstances such as admission in the Government Hospital, and when he is unable to move from the bed and when there is no evidence to show that there are other family members who are fit to report the matter to the authorities, the non-intimation about the admission in hospital by an employee at the time of his admission in the hospital, cannot be treated as a grave misconduct and for that simple mistake, denying the continuity of service and the entire back wages amounts to gross disproportionate to the proved misconduct. Therefore, the award requires to be modified as prayed for by the Petitioner. Of course, taking into consideration the mistake committed by the Petitioner in not intimating to the first Respondent, I consider it just and reasonable to held that the impugned award to the extent of holding that the Petitioner is not entitled to continuity of service and full back wages is set aside and the award in I.D. No. 207 of 1993, dated 29.04.1997 of the Industrial Tribunal stands modified as follows:

The Petitioner shall be reinstated into service with continuity of service, but in the circumstances, half of the back wages and all other attendant benefits.

8. The writ petition is allowed accordingly. No order as to costs.