(2014) 07 AP CK 0045

Andhra Pradesh High Court

Case No: W.A. No.1599 of 2013

Chand Pasha		APPELLANT
	Vs	
APSRTC		RESPONDENT

Date of Decision: July 4, 2014

Citation: (2015) 2 ALD 41

Hon'ble Judges: L.N. Reddy, J; Challa Kodanda Ram, J

Bench: Division Bench

Advocate: V. Narsimha Goud, Advocate for the Appellant; H. Venugopal, Advocate for the Respondent

Final Decision: Allowed

Judgement

L. Narasimha Reddy, J.

The unsuccessful petitioner in W.P.No.9662 of 2013 filed this writ appeal. The appellant is a Conductor in the Kalwakurthy Depot of A.P.S.R.T.C, 2nd respondent herein. Disciplinary proceedings were initiated against him, by issuing charge sheet, dated 20.11.2012 alleging that he remained unauthorized absent from duty from 10.11.2012 to 20.11.2012. The explanation submitted by the appellant was found to be not satisfactory and accordingly domestic enquiry was conducted. In the report, dated 26.01.2013, the enquiry officer held the charge as proved. Based upon that, the 2nd respondent issued a show cause notice, dated 28.01.2013 proposing to impose the punishment of removal. Thereafter, the order of removal was passed on 27.02.2013. The same was challenged in the writ petition.

2. The contention of the appellant was that the only charge framed against him was in relation to unauthorized absence of 9 days and even the 2nd respondent was satisfied that the punishment cannot be imposed, on the basis of that charge, but the impugned order was passed by taking into account, the subsequent absence from 04.02.2013 to 26.02.2013. He pleaded that the period referred to in the show cause notice was not the subject matter of enquiry and thereby, the order of removal is vitiated.

3. The respondents opposed the writ petition by raising several grounds. Firstly, it was pleaded that the writ petition is not maintainable, since the appellant has an alternative remedy of raising Industrial Dispute. Secondly, it was pleaded that the subsequent absence in the month of February 2013 was mentioned in the impugned order only as an aggravating circumstance and the punishment was referable to the absence, which constituted the subject matter of domestic enquiry.

4. Learned single judge dismissed the writ petition through order, dated 02.04.2013. Hence, this writ appeal.

5. Heard learned counsel for the appellant and learned counsel for the respondent.

6. It is no doubt true that the appellant has an alternative remedy by way of raising Industrial Dispute before the Tribunal. However, he does not intend to dispute any questions of fact. It is a matter of record that he remained absent for 9 days and the enquiry officer found the same to be unauthorized. The challenge to the impugned order is on the basis of a pure question of law viz., whether the period of absence, which did not constitute the subject matter of domestic enquiry can be treated as basis, for passing an order of removal. Therefore, we find that no exception can be taken to the filing of the writ petition directly, without exhausting the remedy of raising Industrial Dispute.

7. Coming to the merits of the matter, it is no doubt true that the unauthorized absence for a period of 9 days in November 2012 was proved and a show cause notice was also issued proposing the punishment of removal. All the same, what appears to have weighed with the 2nd respondent is the subsequent absence of the appellant between 04.02.2013 to 26.02.2013. The relevant paragraphs read:

Even after acknowledging the Show Cause of Notice for Removal from service the Conductor Sri. Md. Chand Pasha, E.281346 was once again absented fro his duties from 04.02.2013 to 26.02.2013. In spite of many chances given to the conductor he has absented for his duties repeatedly.

From the above, it is concluded that the delinquent is not interested to perform his duties. Therefore, I do not find any valid reasons to modify the proposed punishment of removal; from service and it is not proper to keep such an employee on the rolls of the Corporation in the interest of the traveling public.

8. The further discussion on this aspect must be preceded by a reference to sanctioning of sick leave to the appellant for 02.02.2013 and 03.02.2013. It is stated that his health condition has further deteriorated and that he reported to duty on 26.02.2013 duly after recovery. He enclosed the certificates of treatment.

9. It is important to note that the 2nd respondent did not treat the finding of the enquiry officer about the absence for 9 days in November 2012 as a grave misconduct enough to warrant punishment of removal. As a matter of fact, no reference whatever, was made to that in the concluding portion of the impugned

order.

10. It is quite possible to argue that the absence in the Month of February 2013 was referred to as an aggravating circumstance. It is not uncommon that while determining the punishment to be imposed against an employee, the aggravating circumstances on the one hand, and extenuating circumstances on the other hand are taken into account. That would be the case, if only the disciplinary authority arrived at a conclusion that the acts of misconduct are proved and they must entail in punishment of a particular description. The extenuating or aggravating circumstances would be referred to only for the purpose of determining the punishment. In the instant case, the whole basis for the 2nd respondent to decide to impose the maximum punishment of removal was just, the absence of the appellant in the Month of February 2013. Therefore, it is difficult to conclude that the reference to the absence in February 2013 is only as an aggravating circumstance. We therefore, hold that the impugned order suffers from the serious infirmity of taking into account, the factum of absence in February 2013 for imposing the punishment, though it did not constitute the subject matter of domestic enquiry. We are supported in our conclusion from the judgments rendered by this Court in W.A.No.769 of 2005 and W.A.No.1126 of 2009. It is stated that those judgments were upheld by the Hon''ble Supreme Court.

11. Now comes the question as to whether the appellant must be reinstated into service without any conditions. The charge of unauthorized absence was framed against him. It is not difficult to imagine the inconvenience to the Corporation as well as the travelling public, on account of unauthorized absence of conductors. Many a time the services have to be cancelled or recalled. That would not only result in loss of revenue to the Corporation but also a serious hardship to the travelling public. We are of the view that ends of justice would be met, if the appellant is directed to be reinstated by denying him the benefit of backwages as well as any continuity of service for the period between the date of removal and the date of reinstatement, except for the limited purpose of determining the retirement benefits.

12. Hence, the writ appeal is allowed, setting aside the order, dated 02.04.2013 passed by the 2nd respondent, subject to the condition that the appellant shall be reinstated into service without backwages and attendant benefits. However, he shall be entitled to count the service for the limited purpose of calculating the retirement benefits.

13. The miscellaneous petition filed in this writ appeal shall also stand disposed of. There shall be no order as to costs.