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Court : Andhra Pradesh

Decided On : Feb-25-2002

Reported in : 2002(3)ALD30

Judge : Ghulam Mohammed, J.

Acts : [Industrial Disputes Act, 1947](#) - Sections 25F; Electricitiy (Supply) Act, 1948 - Sections 79

Appeal No. : WP No. 8880 of 1990

Appellant : S.A. Quader

Respondent : Superintending Engineer, (Operation), City Circle, Apseb, Hyd. and anr.

Advocate for Def. : S. Ravindranath, SC

Advocate for Pet/Ap. : A.M. Qureshi, Adv.

Disposition : Petition allowed

Judgement :

ORDER

Ghulam Mohammed, J.

1. In this writ petition, the petitioner seeks to quash the orders issued by first respondent in Memo No. SE (O) Estt/C1 478/86, dated 11-6-1986 and by the second respondent in Memo No. CEE/ HZ/P2/Misc./D.No. 108/90, dated 7-5-1990. The first respondent vide Memo dated 11-6-1986 ordered that the petitioner is deemed to have resigned from service with effect from 17-9-1983 and he is no more in the Board Service as he absented himself unauthorisedly for more than one year. On appeal by the petitioner, the second respondent vide Memo dated 7-5-1990 confirmed the said order of the first respondent. Aggrieved by the same, the petitioner filed this writ petition.

2. The brief facts of the case are that the petitioner was appointed as LDC in Andhra Pradesh State Electricity Board and he applied for leave from 20-5-1983 to 16-9-1983 vide his application dated 18-5-1983, which was sanctioned vide Memo dated 23-9-1983 and the petitioner was informed that he was having 88 days half pay leave after the sanctioned leave. Subsequently, the petitioner suffered health problems and therefore he could not rejoin duty till 30-6-1987. The first respondent through Memo dated 19-8-1987 informed the petitioner that he is deemed to have resigned from service with effect from 17-9-1983. Thereafter, the petitioner preferred an appeal before second respondent and the appeal was rejected on the ground that adequate opportunity was given to the petitioner and he was deemed to have been resigned from service on account of continuous unauthorised absence exceeding one year under Regulation 28(3) of the APSEB Service Regulations.

3. Learned Counsel for the petitioner has drawn my attention to the judgment of this Court in WP No. 282 of 1987, dated 1-9-1989 wherein the learned single Judge interpreted Regulation 28(3) and dealt comprehensively with various aspects in the light of various decisions of Supreme Court and other High Courts.

4. Learned Standing Counsel for the respondent-Board contended that there was no plea raised with regard to applicability of Section 25-F of Industrial Disputes Act and it cannot be raised for the first time in the writ petition. Secondly, he contended that the Board need not conduct an enquiry, since the Board had

published a notice and further the petitioner received it and therefore holding of enquiry against the petitioner does not arise. Thus, the principles of natural justice do not attract inasmuch the petitioner was given sufficient opportunity and he failed to avail the same and therefore, the petitioner cannot challenge the vires of Regulation 28(3) of the Service Regulations. Learned Standing Counsel has drawn my attention to the judgment of the apex Court in *Syndicate Bank v. General Secretary, Syndicate Bank Staff Association*, 2000 (1) LLJ 237, wherein an employee resigned from service and the same was accepted and subsequently the employee withdrew his resignation and requested the Bank to continue him in service. Since there was Clause 16 of the Bipartite Settlement and there was evidence of refusal to accept notice, it was held as not necessary for the bank to hold an enquiry. The facts of that case are completely different and do not apply to this case. Learned Standing Counsel also cited a decision in *B.V. Murthy v. Regional Manager, APSRTC*, : 2001(1)ALD529 and contends that the petitioner has to approach the Labour Court for the relief. This contention cannot be accepted inasmuch as this writ petition was admitted on 2nd July, 1990 and in view of the pendency of the writ petition and at this length of time, it is not proper to direct the petitioner to approach the Labour Court by raising an industrial dispute.

5. Similar controversy as in this writ petition came up for consideration before this Court in WP No. 282 of 1987 to the effect that the petitioner therein shall be deemed to have been resigned from service and shall automatically cease to be the Board employee by invoking the power under Regulation 28(3) of A.P. State Electricity Board Employees Service Regulations. The said regulation has statutory force. It was not in dispute that the provisions of Section 25-F of Industrial Disputes Act were not complied with while terminating the services of the petitioner therein. The relevant portion of the judgment in WP No. 282 of 1987 reads as follows :

'The definition of 'retrenchment' as amended by Act 49 of 1984 reads as follows :

(oo) 'retrenchment' means the termination by the employer of the service of a workman for any reason whatsoever otherwise than as punishment inflicted by

way of disciplinary action but does not include-

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) termination of the service of the workman as a result of the non-renewal of the contract of the employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) termination of the service of a workman on the ground of continued ill-health.'

This definition has been subject-matter of several decisions of Supreme Court and the High Courts in this country. Several decisions of the Supreme Court have emphasised upon and pointed out the significance of the words 'for any reason whatsoever' (vide *State Bank v. N.S. Money*, : (1976)ILLJ478SC ; *Hindustan Steel v. Labour Court*, Orissa, AIR 1977 SC 31; *DC&G; Mills v. Shambu Nath*, : (1978)ILLJ1SC and *Santosh Gupta v. State Bank of Patiala*, AIR 1980 SC 2219). It was explained that any and every termination of the service of a workman for any reason whatsoever would amount to 'retrenchment' except where the case falls within one or the other exception mentioned in the definition itself. Those exceptions (before the amendment in 1984) were :

(i) where the termination is by way of punishment in a disciplinary action;

(ii) where the workman obtains a voluntary retirement;

(iii) retirement of the workman on reaching the age of superannuation where such a stipulation is provided in the contract of employment;

(iv) termination of the service of a workman on the ground of continued ill-health.

Now by virtue of Amendment Act 49 of 1984 Sub-clause (bb) has been introduced, which introduces two more exceptions. They are, to number them consecutively ;

(v) termination of the service of a workman as a result of non-renewal of the contract of employment on its expiry; and

(vi) on the termination of a contract under a stipulation contained therein providing for such termination.

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The question therefore arises whether Regulation 28(3) of the Board Regulations can be said to be a stipulation contained in the contract of employment between the Board and the workman and whether it can be said that the service of the workman has been terminated under such stipulation. The first thing to be noticed is that, though the regulations constitute the terms and conditions of employment between the Board and its employees it cannot be said that it is a stipulation in the contract of employment between the employer and the workman. The said regulation is not the result of any contract. It is a regulation made unilaterally by the Board as the delegate of the Legislature. The said regulation has been made by the Board in exercise of the legislative power delegated to it under Section 79 of the Electricity (Supply) Act, 1948 which confers regulation-making power upon the Board. It cannot be said that Regulation 28(3) is a stipulation in the contract of employment between the Board and the workman. It may be a condition of service, but it cannot be called a stipulation in the contract of employment between the parties. Indeed, the conditions of service of the Board employees are not governed by a contract of employment entered into between the parties, but by the regulations made by the Board under Section 79 of the Electricity (Supply) Act. The situation may be different where the Board employs a person under a contract simpliciter. In such a case, the relationship is contractual in nature and the terms of employment are those mentioned in the contract. In such a case, the employee has no status other than that conferred by the contract.'

It was further observed as follows :

'I may also mention that in a recent case the first part of Sub-clause (bb) fell for consideration before my learned brother M. Jagannadha Rao, J. In his judgment dated 25-7-1989 in WP No. 13104/88 etc., the learned Judge agreed with the ratio of the decision in D. Chenniah v. Divisional Manager, APSRTC, 1987 (2) Labour & Industrial Cases 1259. The learned Judge pointed out on the basis of the decision of the Supreme Court in Workmen, AEIB Corporation v. Management, : (1985)IILLJ539SC and the decision of the Privy Council in Prens v. Simmond, 1971 (3) All.ER 237, that a literal interpretation in the context of a welfare measure may sometimes be counterproductive and tend to defeat the very objective underlying the enactment, I agree with the approach adopted by the learned Judge in the said decision.

For the above reasons, the writ petition is allowed on the ground that the termination being violative of Section 25-F of the Industrial Disputes Act, is invalid. The petitioner is entitled to be reinstated into service. It shall however be open to the Board, if it is so advised to take such disciplinary action against the petitioner as it chooses, in accordance with law.'

6. In the facts and circumstances of the case and following the judgment of this Court in WP No. 282 of 1987, dated 1-9-1989 in an identical case, the impugned orders are set aside and the writ petition is allowed with a direction that the petitioner shall be reinstated into service. Having regard to the facts and circumstances of the case, I decline to grant back wages for the earlier period on the principle 'no work noplay'. However, the petitioner shall be paid wages for the period he was sanctioned leave and was absent from duty on proper authorisation. It shall be open to the respondent Board, if it is so advised, to take such disciplinary action against the petitioner as it chooses, in accordance with law. No order as to costs.

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