

K.S.C. Bose Vs. Apsrtc and ors.

K.S.C. Bose Vs. Apsrtc and ors.

SooperKanoon Citation : sooperkanoon.com/440795

Court : Andhra Pradesh

Decided On : Aug-18-2008

Reported in : 2008(6)ALD492

Judge : L. Narasimha Reddy, J.

Acts : APSRTC Employees (Conduct) Regulations 1963 - Regulation 28

Appeal No. : WP No. 15926 of 2008

Appellant : K.S.C. Bose

Respondent : Apsrtc and ors.

Advocate for Def. : C. Prakash Reddy, SC

Advocate for Pet/Ap. : S.M. Subhan, Adv.

Disposition : Petition allowed

Judgement :

ORDER

L. Narasimha Reddy, J.

1. The petitioner was initially appointed, as Conductor, in the APSRTC, on 26.1.1977. Thereafter, he was promoted, as Assistant Depot Clerk and was working in the Jangareddy Gudem Depot. The Depot Manager, the fourth

respondent herein, issued a charge-sheet, dated 17.1.2007, alleging that the petitioner remained absent, from duty, from 15.1.2007 to 16.1.2007, unauthorisedly. The petitioner submitted his explanation on 1.2.2007, stating that he could not attend the duties on 15.1.2007, due to his serious illness. On the basis of a report submitted by the Enquiry Officer, the fourth respondent issued show-cause notice, dated 1.2.2007, proposing the punishment of removal from service. The petitioner submitted his explanation on 2.2.2007. Through proceedings, dated 13.8.2007, the fourth respondent removed the petitioner from service. Departmental remedies of appeal and review, filed by the petitioner, were rejected. Hence, this writ petition.

2. Sri S.M. Subhan, learned Counsel for the petitioner, submits that the fourth respondent has reduced the domestic enquiry into an empty formality. He contends that ,the occasion to appoint an Enquiry Officer would have arisen, only when it was found that the explanation offered by the petitioner was not satisfied, but, in the instant case, the four important steps, namely, appointment of Enquiry Officer, conducting of enquiry, submission of enquiry report and issuance of second show-cause notice have taken place on one and the same day, namely, on 1.2.2007. He submits that having proceeded with such jet speed, the fourth respondent passed the order of removal eight months later, taking into account the subsequent periods of absence. He contends that removal of an employee from service for absence of one day, is just unconscionable.

3. Learned Standing Counsel for the respondents, on the other hand, submits that the petitioner was given opportunity, at every stage of proceedings to defend himself. He contends that since the charge was in relation to absence of one day, the enquiry was concluded and subsequent steps were taken on the same day. Learned Counsel submits that the petitioner remained absent for subsequent periods also.

4. The only charge framed against the petitioner in the charge-sheet, dated 17.1.2007, reads as under:

For having absented to your duties from 15.1.2007 to 16.1.2007 unauthorisedly which constitutes misconduct in terms of Regulation 28(xxvii) of APSRTC

Employees (Conduct) Regulations 1963.

5. The petitioner submitted his explanation on 1.2.2007, stating, inter alia, that he applied for leave for 14.1.2007 and 15.1.2007, but was granted on 14.1.2007 and when he attempted to resume duty on 15.1.2007, he became seriously ill. The record is not clear as to at what time, the fourth respondent was appointed, as Enquiry Officer. It must obviously be after receipt of the explanation of the petitioner. However, the impugned proceedings disclose that not only the enquiry was conducted, but even the enquiry report was submitted on the same day, on which the petitioner submitted his explanation. Added to this strange development, the fourth respondent issued show-cause notice on the same day, proposing the punishment of removal from service. Therefore, the submission of the explanation, conducting of enquiry, submission of report and issuance of show-cause notice took place on 1.2.2007. This would only indicate the manner in which the fourth respondent as well as the Enquiry Officer have reduced the requirement under law to farcical levels.

6. The appointment of an Enquiry Officer is not an empty formality. The disciplinary authority would appoint the Enquiry Officer with a definite purpose. The Enquiry Officer has to inform the delinquent employee of his intention to proceed with enquiry. The communication must contain the list of witnesses proposed to be examined by the management and the documentary evidence, which they rely upon. Reasonable time has to be given to the employee, not only to defend himself, but also to prepare his own case. Many a time, apart from cross-examining the witnesses, examined by the management, the employee may also examine his own witnesses. It is just unthinkable, as to how the Enquiry Officer came into the picture on the same day on which petitioner submitted his explanation, completed the enquiry, and submitted his report. He proceeded as though, the Corporation need not discharge its burden to prove the charge. The allegation of the petitioner that, except examining him, with reference to the charge, the Enquiry Officer did not consider any other material becomes significant.

7. The mere fact that the charge is trivial, does not absolve the Enquiry Officer, of the obligation, to follow the procedure. The fact that the petitioner came to be removed on such a trivial charge, emphasizes the importance of the procedure.

8. A copy of the report of the Enquiry Officer is placed before this Court. It contains peculiar and strange observation. When the petitioner pleaded that he developed serious illness and thereby, could not discharge duties on 15.1.2007, the Enquiry Officer observed that since the petitioner did not become unconscious, his plea cannot be accepted. There cannot be a more perverse approach, than this. Unfortunately, this observation weighed with the fourth respondent and he exhibited his over enthusiasm by issuing the second show-cause notice, on the same day.

9. Having proceeded in unimaginable and super fast speed upto the stage of issuing second show-cause notice, the fourth respondent just remained silent for a period of eight months, though the petitioner submitted his explanation within one day. Be it, on account of his prejudice against the petitioner, or lack of proper guidance or experience in the matter, the fourth respondent has taken into account, the alleged periods of absence subsequent to the date of show-cause notice, while imposing the punishment of removal from service.

10. Even assuming that the only charge framed against the petitioner, namely, absence for one day, is proved, by no stretch of imagination, it can lead to imposition of severe punishment of removal from service. It is just unconscionable and unthinkable. In case, the petitioner was absent for subsequent periods, it ought to have constituted the subject-matter of separate departmental proceedings, or additional charges ought to have been framed, against the petitioner.

11. Though learned Counsel for the respondents raised an objection as to the maintainability of the writ petition, this Court is of the view that the impugned proceedings are vitiated on account of serious procedural irregularities and the petitioner cannot be required to approach the Labour Court Further, there is every likelihood of the respondent being mulcted with back wages for the period during which the proceedings will be pending with the Labour Court.

12. For the foregoing reasons, the writ petition is allowed and the impugned order is set aside. The respondents shall reinstate the petitioner with 50% back wages. The petitioner shall be entitled to attendant benefits and continuity of service. In case, the fourth respondent intends to proceed against the petitioner, it shall be open to him to appoint an Enquiry Officer and proceed with the matter, afresh. There shall be no order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com