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Court : Andhra Pradesh

Decided On : Dec-06-2001

Reported in : 2002(1)ALD314; 2001(6)ALT689; [2002(92)FLR807]

Judge : S.R. Nayak and ;L. Narasimha Reddy, JJ.

Acts : [Industrial Disputes Act, 1947](#) - Sections 2, 11-A and 25-F

Appeal No. : WP No. 30036 of 1995

Appellant : Thimmiah

Respondent : Additional Industrial Tribunal-cum-additional Labour Court, Hyderabad and anr.

Advocate for Def. : D. Prabhakar Reddy, Adv.

Advocate for Pet/Ap. : P. Damodar Reddy, Adv.

Disposition : Petition dismissed

Judgement :

S.R. Nayak, J.

1. The petitioner while serving as Composer in the establishment of the 2nd respondent absented himself from duty unauthorisedly from 12-6-1985 to 22-6-1985. In the circumstances the 2nd respondent issued a Memo dated 22-6-1985 which reads as under:

'It is noticed from the records that you have abstained from duty from 12th of June 1985 till date without intimation of whatsoever. Absenting from duty without intimation for 8 consecutive days amounts to desertion of services, for which your name could have been struck off from the rolls. Moreover, this is not the first time for you to do so. Earlier, you were issued several memos for the same lapse and warned several times, by way of giving you chances to improve your attendance and to overcome this habit of habitual absence. But you have failed to refrain from this habit.

Hence, you are directed to report to the undersigned immediately on receipt of this memo, failing which your name will be struck off from the rolls for desertion of services. You are also directed to explain as to why action should not be taken against you for the same.'

2. According to the 2nd respondent, the petitioner did not reply to the said notice nor report for duty as directed in the Memo. The above Memo was followed by another Memo dated 28-10-1985, It reads-

'You are hereby informed that you have wilfully abstained from duty, from 11th June, 1985 till today after completing your duty on 11th June, 1985. We have not received any intimation or prior permission of any kind for the last 139 days. Due to your wilful absence from duty, it has become very difficult for the management to arrange alternative to run the page make up section. Due to your wilful absence, the management has suffered heavily. Your absence from duty unauthorisedly shall amount to violation of standing orders.'

'Any employee who absents for eight consecutive working days in any one month without leave shall be deemed to have left the services without notice, thereby terminating his contract of service. Any employee leaving the service of the concern in this manner shall have no claim for (a) re-employment in the concern

(b) gratuity and (c) bonus. He shall also be liable to pay notice pay in lieu of notice where he is required to issue such notice.'

Hence, if you do not reply suitably to this notice within a week, it will be presumed that you have no explanation to offer. The management will be left with no option but to take action on the material information available on records.

3. Despite the second Memo also the petitioner did not report for duty nor submit any explanation for his unauthorised absence. In the circumstances, the 2nd respondent passed the order dated 19-11-1985 declaring that the petitioner has abandoned the job on his own accord. The order-dated 19-11-1985 issued by the 2nd respondent reads as under:

'With reference to our Memo dated 28th October, 1985 for your wilful abstention from duty without any intimation or priorsanction of leave from 11th June, 1985 till date, which was received by you on 30th October, 1985, you were required to show-cause in writing to our charge memo. Since we have not received any reply in writing it is considered that you have left the job of your own accord.'

4. The petitioner being aggrieved by the said departmental action, instituted ID No. 36 of 1993 in the Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad (for short 'the Labour Court'). Before the Labour Court the petitioner examined himself as WW-1 and on behalf of the Management one K. Ramachandran was examined as MW1. On behalf of the petitioner Ex.W1 to Ex.W 11 were marked and on behalf of the Management Ex.M1 to Ex.M123 were marked. The Labour Court, on appreciation of the oral and documentary evidence, found the petitioner guilty of absenting himself unauthorisedly. However, the Labour Court opining that the termination of services of the petitioner vide office order dated 19-11-1985 of the 2nd respondent is contrary to the provisions of Section 25F of the [Industrial Disputes Act, 1947](#) (for short 'the Act'), and exercising discretion vested in it under Section 11A of the Act directed reinstatement of the petitioner into service while denying back wages and continuity of service. The Labour Court however, directed that the services of the petitioner should be protected and counted for the terminal benefits only.

5. The petitioner not being satisfied with the award passed by the Labour Court dated 13-8-1993 has preferred this writ petition assailing the validity of the Award as regards denial of back wages and continuity of service.

6. The learned Counsel for the petitioner would contend that the action of the Management in terminating the services of the petitioner is quite contrary to the mandate of Section 25F of the Act and therefore, the Labour Court has rightly held that the action of the Management was quite contrary to Section 25F of the Act. The learned Counsel would maintain that the Labour Court having held that the termination of services of the petitioner was contrary to Section 25F of the Act was not justified in denying back wages as well as continuity of services to the petitioner.

7. No doubt Section 25F of the Act provides that, no workmen employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until the workman concerned has been given one month's notice in writing indicting the reasons for retrenchment and the period of notice has expired, or alternatively the concerned workman has been paid in lieu of such notice, wages for the period of the notice. The primary question that is required to be considered is whether the action of the Management dated 19-11-1985 in terminating the services of the petitioner for his unauthorised absence from duty from 12-6-1985 to 22-6-1985 shall be treated as 'retrenchment' within the meaning of that term as defined under Clause (00) of Section 2 of the Act. Clause (00) defines the term 'retrenchment', which reads as under:

'Retrenchment' means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a 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.'

8. As can be seen from the definition of retrenchment, four categories of termination of services of a workman cannot be treated to be retrenchment within the meaning of that term. Sub-clause (bb) of Clause (00) of Section 2 of the Act excludes the termination of services 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, from the definition of retrenchment.

9. In the instant case, the services of the petitioner were terminated by the Management by invoking the enabling certified Standing Orders. The enabling Standing Orders are extracted in the Memo issued by the Management dated 28-10-1985 extracted above. In that view of the matter, the termination of services of the petitioner squarely falls within the ambit of Sub-clause (bb) of Clause (00) of Section 2 of the Act. In other words the termination of services of the petitioner was effected under a stipulation contained in the certified Standing Orders and therefore, that termination would not amount to retrenchment within the meaning of the term 'retrenchment' as defined under Clause (00) of Section 2 of the Act. If that is so, there is no scope for applying Section 25F of the Act. This aspect of the matter is completely lost sight of by the Labour Court. Be that as it may, after hearing the learned Counsel for the parties, we are satisfied that there is no failure of justice. The petitioner despite receiving two memos referred to above, did not bother to report for duty nor offer any explanation for his unauthorised absence. Unauthorized absence is also a form of mis-conduct under the Conduct Rules. At the same time, the Employer can invoke the enabling provisions in the certified Standing Orders to determine the employment of an employee on the ground of unauthorised absence for a stipulated period continuously without conducting a regular departmental enquiry. The only requirement, even in such a fact situation,

is that the termination of services of an employees should be brought about in a fair way and after complying with the principles of natural justice. In the instant case, that requirement of the principles of natural justice is fairly complied with. It is not as if the 2nd respondent-Management straightway issued the order terminating the services of the petitioner immediately after the petitioner absented himself for eight consecutive working days. When the Management noticed the unauthorised absence for more than eight consecutive days, it issued two memos, one after the other, giving fair opportunity to the petitioner to report for duty, despite serious lapses. The petitioner for the reasons best known to him did not respond to those memos nor report for duty. Despite this, the Labour Court in its discretion directed re-instatement of the petitioner into service under Section 11A of the Act. The Labour Court, we should say, is more than fair in doing so.

10. In the result, the writ petition is dismissed. No order as to costs.

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