

Vijay Kumar Vs. Chairman and Managing Director, Bhel Hou

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Court : Andhra Pradesh

Decided On : Nov-18-2014

Judge : The Hon'ble Sri Justice L.Narasimha Reddy and the Hon'ble Sr

Appellant : Vijay Kumar

Respondent : Chairman and Managing Director, Bhel Hou

Judgement :

THE HONBLE Sr.JUSTICE L.NARASIMHA REDDY and THE HONBLE Sr.JUSTICE CHALLA CHALLA KODANDA RAM WRIT APPEAL No.507 of 2006 18-11-2014 Vijay Kumar D...APPELLANT Chairman & Managing Director, BHEL House....RESPONDENT COUNSEL FOR THE APPELLANT :- Sr.Emani Srinivas COUNSEL FOR RESPONDENT :- Sr.E.Kalyan Ram ?.

Cases Referred: THE HONBLE Sr.JUSTICE L.NARASIMHA REDDY AND THE HONBLE Sr.JUSTICE CHALLA KODANDA RAM WRIT APPEAL No.507 of 2006

JUDGMENT

: (per the Honble Sr.Justice L.Narasimha Reddy) The unsuccessful petitioner in W.P.No.11263 of 1994 is the appellant.

He filed the writ petition challenging the order, dated 15.02.1991, passed by the respondent dismissing him from service from the post of Engineer.

The writ petition was dismissed by the learned Single Judge of this Court on 04.02.2004.

Briefly stated, the facts are that the appellant was appointed as a Trainee Engineer in the respondent-organisation on 05.10.1981 after selection.

His services were regularized on 22.11.1982.

However, he was dismissed on disciplinary grounds on 27.07.1985 on the ground that he made an attempt to avail leave by forging the signature of the superior.

However, on a representation made by him, he was reinstated into service through order, dated 10.10.1986, as a fresh candidate.

He joined the service on 20.10.1986.

The appellant filed W.P.No.15002 of 1989 with a prayer to direct the respondent to extend the benefit of past service.

The writ petition was disposed of on 07.09.1990 leaving it open to the appellant to make a representation in this regard.

Such representation was made and the same was pending.

The respondent passed an order, dated 15.02.1991, terminating the appellant from service on the ground of unauthorized absence.

An appeal preferred by the appellant to the competent authority was rejected on 25.02.1991.

Therefore, the writ petition was filed challenging the order of termination.

The appellant pleaded that no charge sheet was issued, much less any disciplinary enquiry was conducted and straightaway, the order of termination was passed.

He pleaded that the order impugned in the writ petition is not only contrary to the Standing Orders adopted by the respondent, but also violative of principles of

natural justice.

The writ petition was opposed by the respondent.

It was pleaded that the probation of the appellant was not declared as yet and in that view of the matter, there is no necessity to conduct any disciplinary enquiry.

It was also mentioned that the unauthorized absence has crippled the functioning of the organisation and left with no alternative, the order of termination was passed.

The learned Single Judge dismissed the writ petition through order, dated 04.02.2004.

Heard Sr.Emani Srinivas, learned counsel for the appellant and Sr.E.Kalyan Ram, learned counsel for the respondent.

Brief service particulars of the appellant have been furnished in the preceding paragraphs.

He was dismissed from service on 27.07.1985.

However, the disciplinary authority reviewed the order of termination and directed re-appointment of the appellant as Engineer.

The relevant portion of the order reads as under: I order that your punishment be reduced from dismissal from service and you be re-appointed to the post of Engineer (E1 grade) and placed at the minimum of the scale at Rs.1100/- p.m.basis pay.

It is further ordered that you will be treated as fresh appointee for all purposes and this appointment is purely on humanitarian grounds.

You will be on trial for a period of one year during which period your performance and conduct will be observed and your services are liable to be terminated without notice and without assigning reasons therefor.

You will be placed junior most to all those who are in the grade as at time of joining.

The respondent joined the service and was continuing.

Three years later, he filed W.P.No.15002 of 1989 as an attempt to get the benefit of his past service i.e.the one between the date of appointment and the date of re-appointment.

That, however, did not fructify except that he was permitted to make a representation in that behalf.

Five years after the appellant was re-appointed, the order of termination was passed.

A perusal of the same discloses that it was not preceded by any charge sheet, much less any departmental enquiry.

It is important to note that the appellant made a representation for specific orders as to declaration of probation and while considering the representation, the order of termination was passed.

Two aspects become relevant here.

The fiRs.is that the appellant was initially appointed on 05.10.1981 and on completion of probation, his services were regularized on 22.11.1982.

Though he was dismissed from service on 27.07.1985, the order of punishment was modified to the one of re-appointment.

The text of the order has been extracted in the preceding paragraphs.

Though his pay scale was reduced, nowhere it was mentioned that he is placed under probation once again.

For all practical purposes, the punishment of dismissal stood converted to the one of reduction of pay scale to the minimum.

Therefore, it became seriously doubtful as to whether it was open to the respondent to place the appellant on probation once again in the light of the modified punishment.

Secondly, assuming that the appellant was on probation on being re-appointed through order, dated 10.10.1986, the matter is governed by Clause 2 of the Standing Orders. Clauses 2.2 to 2.4 of the Standing Orders read as under: 2.2: The period of probation may be extended at the discretion of the competent authority, but will not be extended by more than one year save for exceptional reasons to be recorded in writing.

2.3: Every new employee appointed in the Company's service will be issued with a formal order of confirmation on satisfactory completion of probationary period or the extended period of probation, as the case may be.

The employee will be considered to be continuing on probation until so confirmed in writing.

2.4: An order relating to confirmation or extension of probation will normally be communicated within one month from the date of completion of the probationary period or extended period of probation.

If, however, for administrative or other reasons, it is not done so, the employee concerned will be informed of the reasons therefore, within the stipulated period of one month.

They provide for placing of an employee under probation for a period of one year and the same is extendible maximum, by one year more.

If the performance of the employee is not found satisfactory during the extended period of probation, he can be discontinued.

Clause 2.4 of the Standing Orders mandates that if the performance of the employee is found not satisfactory during the extended period of probation, the same shall be informed to him within one month.

In the instant case, though an attempt was made to extend the probation by six months, no orders were passed either declaring or terminating the appellant.

Once the appellant was continued beyond the period of two years from 20.10.1986 i.e. the date of his joining on being reappointed, his probation is deemed to have

been confirmed.

On such deemed declaration, the appellant became a member of the cadre and his services could not have been terminated, except by issuing charge-sheet and conducting departmental enquiry.

The respondent cannot have the luxury of extending the period of probation for unlimited period.

If that were to be so, (a) necessary information in this behalf ought to have been made within the time stipulated under Clause 2.4 of the Standing Orders and (b) no reference ought to have been made to any acts of indiscipline.

There is intrinsic evidence to establish that it is not a case of mere non-confirmation of the probation.

The respondent referred to the period of absence between 1987 and 1991.

The major period of absence was subsequent to the expiry of two years from the date of re-appointment.

To be precise, the instances of absence alleged against the appellant are as under: Year period of unauthorized absenteeism 1987 11 days 1988 70 days 1989 275 days 1990 155 days 1991 (up to 12.02.1991) 28 days Though the period of absence during the years 1989 and 1990 was considerable, the respondent himself did not feel the necessity of either initiating disciplinary proceedings or of terminating the probation.

It was only in the year 1991 that such a step was taken.

It is also important to note that in the counter-affidavit in W.P.No.15002 of 1989, no mention was made about the alleged absence or of their disinclination to declare the probation.

Once it emerges that the appellant became a member of the service and the order of punishment was passed without conducting enquiry, the inevitable conclusion is that it is liable to be set aside.

Strictly speaking, the matter must be relegated for conducting disciplinary enquiry.

Since the allegation is about the absence for some period, we are of the view that denial of 50% back wages would meet the ends of justice.

We also make it clear that the respondent shall not be under obligation to pay salary for the period during which the appellant was absent.

Hence, the writ appeal is allowed and the order, dated 04.02.2014 is set aside.

The respondent shall reinstate the appellant into service forthwith and pay 50% of the back wages and extend other benefits.

There shall be no order as to costs.

The miscellaneous petition filed in this writ appeal shall also stand disposed of.

_____ L.NARASIMHA REDDY,J _____
CHALLA KODANDA RAM,J Dt:18.11.2014

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