

THE HONOURABLE SMT. JUSTICE P. MADHAVI DEVI

WRIT PETITION NO.19717 OF 2011

ORDER

This Writ Petition has been filed by the petitioner under Article 226 of the Constitution of India seeking a Writ of Certiorari to quash the impugned order of removal from service issued in Proceedings No.P1/1(7)/2007-KLKY dt.12.03.2007 and the order of the 3rd respondent issued in Proceeding No.PA/19(47).2008-RM-MBNR dt.07.11.2008 served on 28.03.2011 in so far as not granting continuity of service, attendant benefits and back wages and not allowing the petitioner to discharge his duties when the petitioner reported for duty before the 5th respondent on 31.03.2011 as arbitrary, illegal, unjust and in violation of Articles 14, 16 and 21 of the Constitution of India and consequently to direct the respondents' Corporation to allow the petitioner to discharge his duties along with continuity of service, attendant benefits and back wages in the interest of justice and fair play.

2. Brief facts leading to the filing of this Writ Petition are that the petitioner joined respondent Corporation as a Driver in the year 1990. On 01.01.1992, his services were regularised. The petitioner was removed from service on 12.03.2007 on the ground of unauthorised absence from 07.02.2007 to 12.02.2007 without any prior sanction of

leave from the departmental authorities and for not submitting any sick certificate from RTC Hospital. The petitioner preferred an Appeal before the Appellate Authority who rejected it and thereafter, the petitioner preferred a Revision before the 3rd respondent who granted relief to the petitioner *vide* order dt.07.11.2008 to the effect that the petitioner should be reinstated into service as a fresh Driver. A copy of the order of respondent No.3 was received by the petitioner on 28.03.2011 and thereafter the petitioner reported for duty on 31.03.2011 before the 5th respondent but the 5th respondent did not allow him to join on the ground that the time granted in the order had already expired. The petitioner submitted that he had received a copy of the impugned order only on 28.03.2011 from the 3rd respondent and therefore his joining report is also within time. However, he was not allowed to join and discharge his duties. The petitioner preferred a Review petition before the 3rd respondent. However, the same was also held as time barred by the 3rd respondent who did not allow the petitioner to join the service. Against such action of the respondents, the petitioner has filed this Writ Petition. He submits that the reason for his absence during the period 07.02.2007 to 12.02.2007, i.e., for a period of five (5) days was due to his sickness and he also submitted sick certificate from the RTC Hospital before the 4th respondent. Therefore, his absence was due to reasonable and sufficient cause only and there was no misconduct on his part requiring removal from service. He further reiterated that the order of reinstatement was

received by him only on 28.03.2011 and thereafter he admittedly reported for duty on 31.03.2011 and therefore, there is no delay on his part.

3. When the matter came up for admission on 18.11.2011, this Hon'ble Court was pleased to direct the respondents to consider allowing the petitioner to join the duty and discharge his duties pursuant to the proceedings dt.07.11.2008 issued by the 3rd respondent.

4. Learned counsel for the petitioner, Sri V. Narasimha Goud, submits that pursuant to the interim direction, the petitioner was reinstated into service on 27.12.2011 and was being paid fresh basic pay till he retired from service on 31.01.2015.

5. The respondents have filed counter affidavit on 15.09.2011, i.e., prior to the interim direction and as far as the service of order of reinstatement on the petitioner is concerned, at para 8 of the counter, it is stated that the order was sent to the house address of the petitioner, but it was returned by postal authorities and the address given in the Writ Petition and the address to which the proceedings of the 3rd respondent are sent are one and the same. It is submitted that the petitioner had approached the 3rd respondent on 28.03.2011, i.e., after a gap of 2 years 8 months by which time the order was not alive.

6. In view of the same, it is clear that the order copy was not served on the petitioner as it was returned unserved by the postal authorities and the reason for non-service of the order is not mentioned in the counter filed by the petitioner. But the fact remains that the petitioner was not aware of the order of reinstatement and thereafter upon receiving the order, the petitioner immediately approached the authorities for joining and discharging his duties in accordance with law. Further, it is also seen that the period of sickness from 07.02.2007 to 12.02.2007 was only 5 days and the petitioner had also submitted sick certificate. It is clearly not a case of misconduct but only unauthorised leave.

7. Learned counsel for the petitioner has relied upon the following judgments:

1. **Vijay Singh Vs. State of Uttar Pradesh and others**¹
2. **Chhel Singh Vs. MGB Gramin Bank, Pali and others**²
3. **Union of India (UOI) and others Vs. Giriraj Sharma**³
4. **G.N. Prasad Vs. A.P.S.R.T.C. and others**⁴
5. **D. Yadagiri Vs. APSRTC rep. By its Managind Director, Musheerabad, Hyderabad**⁵

¹ (2012) 5 SCC 242

² (2014) 13 SCC 166

³ MANU/SC/0058/1994

⁴ 2014(2) ALD 237

⁵ W.A.No.1126 of 2009 dt.12.11.2009 of AP High Court

The said decisions are also to the effect that the punishment of removal from service for the charges of unauthorised absence is very harsh.

8. Taking the contentions of the petitioner as well as the facts and circumstances of the case and the above judgments into account, the action of the respondents in not permitting the petitioner to join duty on 31.03.2011 on the ground of delay without actually serving the order of reinstatement of the petitioner, is bad in law. Therefore, the petitioner has to be directed to be reinstated. However, it is noticed that the petitioner was reinstated on 27.12.2011 pursuant to the interim order and retired from service on 31.01.2015 and therefore directing reinstatement of the petitioner into service would be futile.

9. Therefore, the respondents are directed to pay 50% of the back wages for the period of removal from service to the date of reinstatement into service. The petitioner shall also be granted continuity of service only for the purpose of payment of retirement benefits. As it is stated by the learned counsel for the petitioner that due to pendency of the Writ Petition, the petitioner has not been paid his retirement benefits, the respondents are directed to settle the retirement benefits within a period of 60 days from the date of receipt of a copy of this order.

10. The Writ Petition is accordingly partly allowed. No order as to costs.

11. Pending miscellaneous petitions, if any, in this Writ Petition shall stand closed.

JUSTICE P. MADHAVI DEVI

Dt. 21.02.2022

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