
(1983) 02 AP CK 0005
In the Andhra Pradesh High Court
Case No : W.A. No. 163 of 1981

A. Samad

APPELLANT

Vs

Andhra Pradesh Road Transport Corporation

RESPONDENT

Date of Decision : 03-02-1983

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25F

Citation : (1983) 2 AnWR 190 : (1983) 2 LLJ 406

Hon'ble Judges : M. Jagannadha Rao, J;K. Ramachandra Rao, J

Bench : Division Bench

Judgement

Ramachandra Rao, J.—Writ Appeal No. 163 of 1981. This writ appeal is preferred against the judgment of our learned brother, Jayachandra Reddy, J., dismissing the writ petition filed by the petitioner-appellant herein for the issue of a writ of certiorari and for quashing the order dated 21st October, 1980 of the Depot Manager, Kamareddy Bus Depot of the Andhra Pradesh State Road Transport Corporation stating that the petitioner had lost his lien "on any post of the Corporation and ceased to be in the service of the Corporation with immediate effect." At the time the impugned order was passed, the petitioner was holding the post of mechanic in his substantive capacity. He applied for two days' leave on 13th and 14th of August, 1980 and left for Sircilla. He reported for duty on 22nd October, 1980. The petitioner alleged that he had fallen sick at Sircilla and underwent medical treatment of pneumonia and that he was under the treatment till 21st October, 1980 and discharged on 22nd October, 1980 on which date he reported to the Mechanical Foreman at Kamareddy for duty and he was directed to approach the Depot Manager, Kamareddy, the next day. Accordingly, when he reported for duty on 23rd October, 1980, the impugned order was served on him. The impugned order reads as follows :

"Sri A. Samad, Mechanic E. 34167 of Kamareddy Depot has failed to turn up for duty since 21st August, 1980 till today. He has absented for duties since 12th August, 1980 unauthorisely. Hence the period from 12th August, 1980 till today

has been treated as unauthorised absence.

According to Regulation 17(2) of Andhra Pradesh State Road Transport Corporation Employees' Leave Regulations 1963, a permanent employee who remains absent for a period exceeding seven days unauthorisedly shall cease to have lien on any post in the service of the Corporation.

The period of such absence of Sri A. Sanad E. 34167 Mechanic of Kamareddy Depot has exceeded the maximum period of seven days. Hence he has lost lien on any post of the Corporation and ceased to be in the service of the Corporation with immediate effect."

The petitioner challenged the said order by filing Writ Petition No. 5427 of 1980.

2. The contention of the petitioner in the writ petition was that the provisions of Regulation 17 of the Andhra Pradesh State Road Transport Corporation Employees (Leave) Regulations, 1963 (hereinafter called Leave Regulations) are not applicable and that the petitioner's services could not be terminated under the provisions of the aforesaid Regulation 17(2) and secondly that, if his services were sought to be terminated on the ground that he was absent without leave, that would amount to misconduct under Regulation 28 of the Andhra Pradesh State Road Transport Corporation Employees' (Conduct) Regulations, 1963 (hereinafter called "Conduct Regulations"), in which case he could be removed after holding an enquiry as required by Regulation 12 of the Andhra Pradesh State Road Transport Corporation Employees' (Classification, Control and Appeal) Regulations, 1967, (hereinafter called Classification Control and Appeal, Regulations). A third contention was also urged that the termination of the petitioner's service under Regulation 17(2) of the Leave Regulations would amount to retrenchment within the meaning of S. 2(oo) of the Industrial Disputes Act and that he could not be retrenched without complying with the provisions of S. 25F of the said Act.

3. The Chief Personnel Manager of the Corporation filed a counter-affidavit on behalf of the respondents stating that the allegation that the petitioner had applied for leave for two days on 13th and 14th of August, 1980 and that he obtained permission to leave the headquarters and left for Sircilla was not correct. In paragraph 5, it is stated that the leave record of the petitioner showed as follows :

"24-5-1980 to 27-5-1980, 4 days E.I. 27-5-1980 to 8-6-1980 12 days sick 8-7-1980 to 13-7-1980 6 days leave 3, 4, and 10-8-1980 3 days leave 12-8-1980 on awards absent."

4. It was alleged that, under Regulation 11 of the Leave Regulations, an employee of the Corporation, who applies for leave on medical grounds, should produce without delay, a medical certificate with regard to his sickness and that, in the instant case, the petitioner did not produce the medical certificate from the competent Medical Officer of the Corporation and that, under Regulation 17(2),

the petitioner's lien ceased and, therefore, his services were terminated. Our learned brother, Jayachandra Reddy, J., held that Regulation 17 of the Leave Regulations applies to both cases of absence without leave and also overstayal of leave and, therefore, the provisions of Regulation 17(2) were applicable to the petitioner's case. The learned Judge also held that no notice need to be given and no enquiry need be held when action is taken Regulation 17(2) and that the provisions of regulation 28 of the Conduct Regulations would not apply to the case of the petitioner. The third contention on that the impugned order amounted to retrenchment within the meaning of S. 2(oo) of the Industrial Disputes Act was also negatived. In that view, the learned Judge dismissed the writ petition.

5. In this writ appeal, Sri G. Ramachandra Rao, the learned Counsel for the appellant, reiterated the same contentions which were urged before the learned Judge. He contended that, in the instant case, the provisions of Regulation 17 of the Leave Regulations would not apply as it was alleged that the petitioner was absent without leave and that, if action is sought to be taken for termination of the services of the petitioner on the ground of absence, without leave, the absence without leave would constitute misconduct within the meaning of Regulation 28 of the Conduct Regulations, in which case an enquiry should be held under Regulation 12 of the Classification, Control and Appeal Regulations. He also contended that the termination of services would also constitute retrenchment under S. 2(oo) of the Industrial Disputes Act and such a termination of services, which amounts to retrenchment, cannot be effected without complying with the requirements of S. 25F of the Industrial Disputes Act.

6. Sri C. Ananda Rao, the learned Counsel for the Corporation, contended that Regulation 17 of the Leave Regulations applies to the petitioner's case, that the said regulation applies to both the cases of absence without leave and overstayal of leave, that the lien automatically ceases when there is absence without leave or overstayal of leave, and that no notice need be given and no enquiry need be held under the Classification, Control and Appeal Regulations. He also submitted that the ceasing of the lien, which results in termination of services, would not constitute retrenchment within the meaning of S. 2(oo) of the Industrial Disputes Act and, therefore the provisions of Section 25-F of the Industrial Disputes Act need not be complied with.

7. We will take up the first contention urged on behalf of the petitioner-appellant that the provisions of regulation 17 of the Leave Regulations would not apply to cases of absence without leave.

8. Regulation 17, in so far as it is relevant for the purpose of this case, reads as follows :

"17. Absence without leave and overstayal of leave : (1) an employee who is absent after the end of leave of any kind, is entitled no leave salary for the period of such absence, unless the competent authority retrospectively sanctions or extends the leave.

(2) If such absence exceeds a period of seven days the employee shall cease to have a lien on any post in the service of the Corporation.

(3) The authority competent to sanction leave may, if it is satisfied that reasonable grounds exist for the absence of the employee, grant leave or extend it for a period not exceeding two months. It would be at the discretion of the Corporation alone or such authority as may be specified by it in this behalf to grant leave retrospectively if the period of such absence exceeds two months."

Though the marginal note says absence without leave and overstaying of leave, the substantive provisions of Clauses (1) and (2) of Regulation 17 show that they only apply to cases of absence after the end of leave of any kind. This is clear from the expression "absence after the end of leave of any kind" used in Clause (1) of Regulation 17. The expression "such absence" in Clause (2) of Regulation 17 would necessarily apply to the absence mentioned in Regulation 17(1) i.e. "absence after the end of leave of any kind". In the instant case, the petitioner applied for grant of leave on 13th and 14th of August, 1980. But admittedly, no leave was granted. On the other hand, the averments in the counter-affidavit already extracted show that, the petitioner was absent without leave from 13th August, 1980, till 21st October, 1980, and reported for duty only on 22nd October, 1980. Therefore, this is not a case of absence, after the end of leave and, the provisions of Regulation 17(2) are not attracted to the petitioner's case. We are unable to agree with the contention of the learned Counsel for the Corporation, which was accepted by the learned single Judge, that, by reason of the marginal note to Regulation 17 of the Leave Regulations, cases of absence without leave would fall within the purview of Clause (1) or Clause (2) of Regulation 17. It is well-settled that the language used in marginal note cannot be imported or read into the body of a statutory provision. On a reading of the provisions of Clauses (1) and (2) of Regulation 17, it is clear that they do not apply to cases of absence without leave and that they apply only to cases of absence after the end of leave or overstaying of leave.

9. Therefore, the question of the petitioner ceasing to have a lien on any post in the service of the Corporation under Regulation 9(2) of the Classification, Control and Appeal Regulations provides that an employee shall be liable to be removed from service on any of the grounds mentioned in Clauses (a) to (h). One of the grounds mentioned is misconduct in Clause (b). Regulation 28 of the Conduct Regulations enumerates the acts or omissions which shall be treated as misconduct. Clause (xxvii) of Regulation 28 provides that the following acts or omission shall constitute misconduct : "habitual late attendance, irregular attendance, absence without leave and without reasonable cause and absence without permission and wasting time or loitering while on duty". If disciplinary action is to be taken against an employee of the Corporation for removal on the ground of misconduct under the Classification, Control and Appeal Regulations, the procedure prescribed by Regulation 12 has to be followed. The said Regulations provide for holding an enquiry, for furnishing the grounds on which

the charge or charges are based and communication of the same to the employee, for allowing the charged employee to have inspection of the records and also for hearing the employee in person and allowing him to adduce such oral and documentary evidence as he may desire to produce at such enquiry. Admittedly, in the instant case, no such enquiry, as contemplated by the aforesaid Regulation 12, has been held. Therefore, the impugned order, which amounts to removal for misconduct under Clause (xxvii) of Regulation 28 of the Classification, Control and Appeal Regulations, without following the procedure prescribed by Regulation 2 of the Classification, Control and Appeal Regulations is illegal and without jurisdiction and is liable to be quashed on that ground.

10. In the view, we have taken, it is unnecessary to express any opinion on the third contention argued by Shri Ramachandra Rao, the learned Counsel for the appellant-petitioner, that the impugned order amounts to retrenchment within the meaning of S. 2(oo) of the Industrial Disputes Act and that such an order of retrenchment without complying with the provisions of S. 25F of the said Act would be invalid.

11. In the result, we allow the writ appeal and set aside the order under appeal and quash the impugned order by issuing a writ of certiorari as prayed for. In the circumstances of the case, we direct the parties to bear their own cost both here and in the writ petition.