
(2014) 01 AP CK 0018
In the Andhra Pradesh High Court
Case No : Writ Petition No. 25784 of 2007

D. Chakraiah

APPELLANT

Vs

A.P.S.R.T.C.

RESPONDENT

Date of Decision : 21-01-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 3 ALT 708

Hon'ble Judges : D. Seshadri Naidu, J

Bench : Single Bench

Advocate : G. Ravi Mohan, Advocate for the Appellant; C. Sunil Kumar Reddy, Standing Counsel, Advocate for the Respondent

Judgement

Dama Seshadri Naidu, J.—The present writ petition is filed by the petitioner, who is the workman of the respondent Corporation, questioning the order, dated 20.04.2006 of the first respondent-revisional authority, who ordered fresh appointment by modifying the order of punishment of removal imposed by the disciplinary authority as was confirmed by the appellate authority. The facts, in brief, are that the petitioner joined the respondent Corporation on 04.06.1977 as a Security Guard and continued to be in service till 2006. On 23.12.2004, the petitioner was charge-sheeted with an allegation that he fabricated the Attendance Register with a view to benefiting himself and three of his other colleagues. Though the petitioner submitted his explanation on 10.01.2005, having not been satisfied with it, the respondent Corporation proceeded with the departmental enquiry, which resulted in his removal from service through an order, dated 19.08.2005, passed by the disciplinary authority, based on the enquiry report, dated 05.04.2005. The appeal filed there against also stood dismissed through an order, dated 07.12.2005.

2. Aggrieved by the order of the appellate authority, the petitioner preferred a revision before the first respondent i.e., Vice-Chairman and Managing Director of the respondent Corporation, who through his order, dated 20.04.2006, modified

the order of punishment to that of a fresh appointment without the benefit of back wages and past service etc. Aggrieved still, the petitioner has approached this Court by filing the present writ petition.

3. Before appreciating the submissions made by the respective counsel for the petitioner and the respondent Corporation, it is apposite to extract the charges that have been framed against the petitioner as they have vital bearing on the discussion.

The Charges are:

1. For having destroyed the original muster of November, 2004 of Security Staff of BHEL Depot certified by SSI/SNG to do away with the evidence with a malafide intention in violation of Reg. 28 (xxx) of APSRTC Employees' (Conduct) Regulations, 1963.

2. For getting the leave of Sri P. Praveen Kumar, E. 272138, SG, sanctioned by DM/BHEL by misleading the DM in violation of Reg. 28(xxxii) of APSRTC Employees (Conduct) Regulations, 1963.

3. For having prepared and submitted a manipulated muster at DM's Office for the month of Nov 04 and drawn ineligible wages to self and 2 Security Guards by way of falsification of Musters in violation of Reg. 28(xxx) and (xxxii) of APSRTC Employees (Conduct) Regulations, 1963.

4. The first charge concerns itself with an allegation of destruction of original muster register of the Security Staff of the respondent Corporation BHEL Depot. The second charge is with regard to securing leave to one of the fellow workmen in the place of unauthorized absence. The third charge speaks about the manipulation of the muster in the month of November, 2004 facilitating drawal of wages by himself and two other Security Guards, who were allegedly absent from duty, but later got their absence shown as leave.

5. During the course of enquiry, the respondent Corporation examined five witnesses. The first witness is the one who conducted the preliminary enquiry and the second witness is the Security Sub-Inspector, who originally had the control of the Attendance Register of the Security Guards and who marked absence to the petitioner and three other workmen at a particular point of time. The third and fourth witnesses are the fellow workmen, who are said to be the beneficiaries of the alleged manipulation of the Attendance Register. The fifth witness is said to be the System Supervisor in the respondent Corporation, who eventually computerized the information of attendance submitted by the petitioner.

6. Sri G. Ravi Mohan, learned counsel for the petitioner, has taken this Court through the entire record including the statements/depositions of all the five witnesses and has strenuously contended that though the charges are very grave since they speak about the destruction and manipulation of the record, none of the witnesses has spoken in support of the said charges. Elaborating on his

submissions, the learned counsel has further submitted that the first witness, who conducted the preliminary enquiry, though alluded to the alteration of the record, did not specifically allege anything against the petitioner and as such, nothing substantial emerges from his deposition.

7. Subjecting the evidence of the second witness i.e., the Security Sub Inspector, to a minute scrutiny, the learned counsel has stated that the edifice of his entire evidence is based on the alleged information supplied to him by the Depot Manager. He has further submitted that though the entire deposition of this witness was based on the said statement of the Depot Manager, the very Depot Manager was not examined to throw more light on the issue. According to the learned counsel, the entire evidence of the second witness is hearsay in nature.

8. Referring to the evidence of the three (sic. third) and four witnesses, the learned counsel has also submitted that it is the third witness, namely, Mr. P. Praveen Kumar, who actually prepared the muster register, albeit on the instructions of the petitioner, by way of reconstruction, since the original record could not be traced. The said witness has clearly stated that with regard to his own leave, he left the columns blank and later, they were filled up by the Depot Manager-the Competent Authority. The said witness has not stated anything incriminating against the petitioner. In the words of the learned counsel, the evidence of the fourth witness is no different.

9. Finally, referring to the evidence of the fifth witness, the learned counsel has stated that he does not have any personal knowledge about either the original record or the subsequently reconstructed record, but he has spoken to the extent of computerizing the data that had been supplied to him.

10. The learned counsel, adumbrating the career particulars of the petitioner, has stated that by the time he faced the charges, he had put in 28 years of unblemished service and that the authorities ought to have taken his past record as well, while considering the charges framed against him. The learned counsel has also further submitted that though no material has been brought on record to clinch the issue that it is the petitioner, who destroyed the record, and though the petitioner directly does not have any role in sanctioning leave to the workmen, he was made a victim on mere surmises and conjectures.

11. Finally, referring to the order in revision, the learned counsel has submitted that as could be seen from the extract of the grounds of revision and in the very order itself, the petitioner has never conceded, much less admitted, that he was guilty of any misconduct. Despite it, without any discussion, the revisional authority has simply concluded that in view of the petitioner's past record, he should be provided employment as a fresh appointee. According to the learned counsel, providing fresh appointment without taking into account his entire past record is as bad as not providing any employment at all, since the petitioner has hardly been left with any years of service.

12. The learned counsel for the petitioner has accordingly urged this Court to set

aside the order of the revisional authority and direct the respondent Corporation to reinstate the petitioner with backwages and with full attendant benefits.

13. Per contra, Sri C. Sunil Kumar Reddy, learned standing counsel for the respondent Corporation, has strenuously opposed the claims and contentions raised by the learned counsel for the petitioner. Countering the assertions on the part of the learned counsel for the petitioner, the learned standing counsel has laid much stress on the deposition of the second witness i.e., the Security Sub-Inspector and asserted that there is any amount of evidence brought on record to conclude that it is the petitioner, who destroyed the record, or, in the alternative, made it to disappear, and that it is he, who manipulated the record to suit his own needs and also that of the fellow workmen. The objective the petitioner has achieved either by instructing one of his fellow workmen to prepare the record with false information or by misleading the Depot Manager with false information.

14. The learned standing counsel has further laid stress on the fact that the petitioner directly stands to gain from the manipulated record as he withdrew the salary which he is not entitled to. The learned standing counsel has also referred to the scope of judicial review and has contended that the revisional authority has already taken a lenient view and has provided the petitioner with a fresh appointment, which does not call for any interference even on the principle of proportionality, since manipulation of record is a grave offence calling for the stickiest (sic.) possible punishment, which is nothing but removal from service. And it is that punishment that has been imposed on the petitioner. Accordingly, the learned standing counsel has urged this Court to dismiss the writ petition as being without merit, especially as it is not a matter to be interfered with under Article 226 of the Constitution of India. According to the learned Standing Counsel there is neither an error apparent on the face of the record nor are the findings perverse.

15. Heard the learned counsel for the petitioner and the learned standing counsel for the respondent Corporation, apart from perusing the record.

16. Indeed, indisputably, the charges are grave. Having said that, it is axiomatic to stress the settled principle of law that the graver the charges the more onerous is the element of proof required in that regard. A perusal of the evidence of all the five witnesses amply indicates that only the evidence of the second witness speaks in detail as to the alleged involvement of the petitioner in disappearance or misplacement of the original Attendance Register, and also the discrepancies that have crept into the leave position of the petitioner and other fellow workmen, when the said record was reconstructed. The third witness" has clearly stated that it is he, who prepared the record, based on the instructions given by the petitioner, though. He has further gone on record saying that concerning his own leave position, he has left it blank and it was later filled by the Depot Manager in this regard. The evidence of the second witness would show that the very Depot Manager told him that he effected the changes in the

Attendance Register marking leave to those persons instead of absence based on the information provided by the petitioner. Accordingly, the second witness would depose that the petitioner was instrumental in destroying the record by providing false information to the Depot Manager and that it should be given credence since the petitioner is one of the beneficiaries.

17. Be that as it may, though there is an element of assertion on the part of the second witness with regard to the role played by the petitioner, if not in disappearance of the register, which has not been brought home conclusively, at least to the extent of discrepancies or inaccuracies in the leave position of the petitioner himself, as well as the other workmen. Having said that, I hasten to add that any amount of suspicion would not be equal to an ounce of proof.

18. Regarding the gravity of the charges, I am of the considered opinion that, to bring home the complicity of the petitioner in the episode, if not conclusively, at least on the basis of the preponderance of probabilities, the respondent Corporation ought to have brought on record better material to clinchingly show that it is the petitioner, who played the vital role, which resulted in the eventual manipulation of the record. This reasoning gets support from the fact that in the words of the second witness, he got the information as to the manipulation from the Depot Manager, who is said to have effected the changes based on the incorrect and false information allegedly supplied by the petitioner. As has been rightly contended by the learned counsel for the petitioner, the very Depot Manager, who is perhaps crucial in this episode, has not been examined, nor does the record contain any of his statements.

19. Being conscious of the fact that in a departmental enquiry, sufficient leeway has to be given to the management; strict proof cannot be insisted upon. Once the record is examined in that perspective, it clearly emerges that the petitioner was the custodian of the record when it disappeared and subsequently, it was prepared based on his own instructions. Even the third witness, who is one of the beneficiaries, has stated that he reconstructed the muster as per the information provided by the petitioner. It seems that he has left blank the portion of Attendance Register concerning his own leave, but not that of others. Thus, in the place of absence, leave was marked concerning two other workmen ostensibly on the instructions of the petitioner. Discounting the factor of statement given by the second witness regarding the information provided by the Depot Manager, for the reasons stated supra, still the petitioner could not entirely escape from the guilt, since he too played a role in the reconstruction of the record. Even the fifth witness deposed that when the record was sent to him for computerizing the data, it was not accompanied by any supporting material as to the leaves.

20. In the light of the above discussion, I am inclined to hold that the petitioner has been guilty of the misconduct to the extent of causing discrepancies in the Attendance Register, at least with regard to two fellow workmen, who eventually stood to gain from the said variation in their leave position. Having held that,

what falls for consideration is whether the punishment of reinstatement afresh without the benefit of continuity of service and without any other attendant benefits, leave alone backwages, would be proportionate to the misconduct proved against the petitioner.

One cannot lose sight of the fact that by the time the petitioner was charge-sheeted, he had put in 28 years of service without any blemish, for the respondent Corporation has not placed any material on record to show that his past service had any blemish. Having accepted the same, denying him the entire benefits of his past service, in my considered opinion, is shockingly disproportionate and accordingly it calls for interference. In the ordinary course, I would have to remand the matter to the revisional authority to consider the petitioner's case afresh taking into account the evidence of the witnesses along with the observations made at the time of disposal of the present writ petition. However, I am informed at the Bar by the learned counsel for the petitioner that the petitioner now has been left with hardly six months' service. Remanding the matter at this juncture would serve no useful purpose; rather it would prolong the wait and agony of the petitioner. Thus, *ex debito justitiae*, it is incumbent on my part to set aside the order, dated 20.04.2006, of the first respondent-revisional authority, and in its place impose the following punishment by way of modification of the said order.

21. The petitioner shall be reinstated with continuity of service, but without backwages, however, with stoppage of two annual increments with cumulative effect. Rest of the benefits shall be provided in terms of the Regulations of the respondent Corporation. Accordingly, the Writ Petition is disposed of. There shall be no order as to costs. As a sequel, the miscellaneous petitions, if any, pending in this writ petition, shall stand disposed of as infructuous.