

(2013) 10 AP CK 0095
In the Andhra Pradesh High Court
Case No : Writ Petition No. 17939 of 2013

G.N. Prasad

APPELLANT

Vs

A.P.S.R.T.C. and The Depot Manager, A.P.S.R.T.C. Bus Depot

RESPONDENT

Date of Decision : 22-10-2013

Acts Referred:

Citation : (2014) 2 ALD 237 : (2014) 3 ALT 144

Hon'ble Judges : K.G. Shankar, J

Bench : Single Bench

Advocate : V. Narasimha Goud, for the Appellant; C. Sunil Kumar Reddy, SC for APSRTC, for the Respondent

Judgement

K.G. Shankar, J.—The petitioner is a Mechanic working with the APSRTC. He was absent from duty from 11-03-2013 till 18-03-2013 without obtaining prior permission. A solitary charge was framed against the petitioner and enquiry was initiated against the petitioner. The petitioner participated in the enquiry. On 30-03-2013, enquiry report was submitted. On 24-04-2013, show cause notice was issued to the petitioner as to why he should not be removed from service. Subsequently, the petitioner was removed from service as the explanation offered by the petitioner was found not satisfactory. Assailing the same, the present writ petition is laid. The learned Standing Counsel for the respondents-Corporation raised preliminary objection that the petitioner has an alternative remedy and that the present writ petition consequently is not maintainable. The learned counsel for the petitioner placed reliance upon APSRTC Employees (Classification, Control and Appeal) Regulations, 1967 ("1967 Regulations", for short) and pointed out that under Regulation 12(3), the ground on which action is proposed shall be reduced into definite charge or charges and communicated to the employee and that the Corporation violated the same so much so the writ petition is maintainable. The ground on which the learned counsel for the petitioner raised this contention is the observation of the proceedings dated 17-06-2013 through which the petitioner was removed from service. The Depot

Manager, Bandlaguda Depot recorded in the proceedings dated 17-06-2013 that even after the enquiry, the petitioner absented himself from duty on 16-06-2013 and 17-06-2013 and that the conduct of the petitioner shows that the petitioner is a habitual unauthorized absentee.

2. The learned counsel for the petitioner offered explanation regarding the absence of the petitioner from duty on 16-06-2013 and 17-06-2013. His contention is that the wife of the petitioner fell down on 16-06-2013 and sustained injuries. The petitioner had to take his wife to the hospital. In this background, the petitioner could not attend duty on 16-06-2013 and could not apply for leave. 17-06-2013, being a Monday is a weekly off day for the petitioner. Consequently, the petitioner did not go to office on 17-06-2013. This is the explanation offered by the petitioner for his absence on 16-06-2013 and 17-06-2013.

3. The important contention however is that the Corporation did not issue any charge and did not hold any enquiry against the petitioner for his alleged unauthorized absence on 16-06-2013 and 17-06-2013 and that the order of the removal consequently is illegal. Where the petitioner contended that the procedure was not followed in ordering the removal of the petitioner from service in violation of Regulation 12(3) of 1967 Regulations, I consider that this writ petition is maintainable without invoking the alternative relief.

4. Regarding the merits of the case, the learned counsel for the petitioner contended that after enquiry officer submitted the report, the report was not furnished to the petitioner calling for his explanation on the show cause notice and that straight away a final show cause notice was issued on 24-04-2013 basing on which the petitioner was subsequently removed from service through impugned proceedings dated 17-06-2013. It is imperative to issue notice before taking appropriate action against the petitioner. The Corporation has not chosen to do so. I agree with the contention of the learned counsel for the petitioner that when the show cause notice dated 24-04-2013 was straight away issued without earlier show cause notice by furnishing copy of the enquiry report, the second show cause notice cannot be accepted.

5. The learned Standing Counsel for the respondents-Corporation contended that copy of the enquiry report was furnished to the petitioner. In the counter, it was pointed out that enquiry report was furnished to the petitioner not before the final show cause notice was issued but along with the final show cause notice. Thus it is a clear violation of the principles of natural justice where opportunity was denied to the petitioner to offer explanation regarding the enquiry report.

6. Above all, the most important consideration is the period of absence of the petitioner from duty. The petitioner was absent from duty from 11-03-2013 to 18-03-2013. Assuming that the petitioner was again absent for two days on 16-03-2013 and 17-03-2013, the total period of absence in two spells would be nine days. The learned counsel for the petitioner contended that imposition of

penalty of removal from service for such short spell of unauthorized absence is highly unjust and disproportionate to the misconduct alleged against the petitioner. In similar circumstances in Union of India and others Vs. Giriraj Sharma, , where the employee was absent for a period of 12 days, the Supreme Court set aside the order of dismissal holding that the same was not called for and that it was a case where minor penalty deserves to be imposed.

7. The learned Standing Counsel for the respondents however submitted that even the past conduct of the petitioner was so unsatisfactory that the petitioner faced disciplinary action ultimately leading to his removal for unauthorized absence and was later reinstatement into service. Be that as it may, the present absence in all is a period of nine days, in two spells. On the basis of the decision in Giriraj Sharma, I consider that it is not a fit case warranting the removal of the petitioner from service. The Supreme Court clearly observed that it is a case which at best should attract minor penalty. The Supreme Court ordered reinstatement of the petitioner with back wages and attendant benefits granting liberty to the employer to take steps for awarding minor penalty. The same course deserves to be adopted in the present case also. In view of the fact that the petitioner was admittedly absent from duty for a period of seven days and perhaps was absent from duty in all for nine days, in two spells, it is not a fit case for ordering the removal of the petitioner from service. Consequently, the impugned order is set aside. The petitioner is directed to be reinstated into service together with back wages and attendant benefits and continuity of service. The Corporation indeed is at liberty to initiate action for imposition of any minor penalty upon the petitioner. No costs.