
(2003) 04 AP CK 0022

In the Andhra Pradesh High Court

Case No : Writ Petition No. 4478 of 1995

K. Satyanarayana Murthty (Died) by LRs	APPELLANT
Vs	
Andhra Pradesh State Electricity Board and Another	RESPONDENT

Date of Decision : 10-04-2003

Acts Referred:

Andhra Pradesh State Electricity Board Service Regulations — Regulation 28(3)

Citation : (2003) 4 ALD 90 : (2003) 4 ALT 282

Hon'ble Judges : C.V. Ramulu, J

Bench : Single Bench

Advocate : G. Vidyasagar, for the Appellant; S. Ravindranath, SC, for the Respondent

Final Decision : Partly Allowed

Judgement

C.V. Ramulu, J.—This Writ Petition is filed for issuance of a Mandamus declaring the Proceedings of the 1st respondent in Memo No. DP/DM.V/161-Q2/90-5, dated 26-12-1994 and the Memo No. Persl/CF.749-85/909/89, dated 7-9-1989 of the 2nd respondent as arbitrary, illegal and without jurisdiction and for a consequential direction to the respondents to reinstate the petitioner into service with full back wages and all other attendant benefits with effect from 7-9-1989 and also to direct the respondents to pay the wages to the petitioner from 22-6-1985 to 7-9-1989 with attendant benefits.

2. At the outset it is noticed, that the petitioner K. Satyanarayana Murthy passed away during the pendency of the Writ Petition and as such, petitioners 2 and 3 were brought on record as legal representatives as per the Court Order dated 19-2-1998.

3. According to the petitioner, he joined the services of the erstwhile Andhra Pradesh State Electricity Board (for short "the Board") initially as Switch Operator in the year 1968. Subsequently, he was promoted as Additional Assistant Engineer in the year 1979. While working as such at Gajapathinagaram

in Vizianagaram District and attending to the Rural Electrification works, the departmental vehicle bearing registration No. APV 5935 met with an accident and he sustained severe injuries including pressing of the adjacent rib of the heart. He underwent treatment and attended to his official duties. But, after about an year, the injury caused at the heart began to cause unbearable pain. In this view of the matter, to have expert medical attendance, he requested the Superintending Engineer, Operation, Visakhapatnam to consider his transfer to Vizianagaram where better medical facilities are available. As his health was causing alarm, he applied for casual leave for a period of seven days from 15-6-1985 to the Assistant Divisional Engineer, Lines, Vizianagaram, who was his immediate superior. After expiry of the casual leave, he reported for duty on 22-6-1985, but the Assistant Divisional Engineer refused to admit him to duty and on 29-6-1985 the latter had issued Memo No. 1203/85, dated 29-6-1985 stating that he was deemed to have been relieved of his duties retrospectively from 15-6-1985. Thus, he approached the Divisional Electrical Engineer, Operations, Vizianagaram for issuance of posting orders. The Divisional Engineer assured him of posting orders, but asked him to wait for few days till the instructions are obtained from the Superintending Engineer. Later, after few months i.e., on 14-11-1985, the 2nd respondent ordered disciplinary proceedings against him and appointed the Divisional Electrical Engineer, Srikakulam as Enquiry Officer. Even at this stage, he approached the 2nd respondent and asked for posting orders pending enquiry proceedings. The 2nd respondent did not give any posting orders on the ground that the enquiry is pending. Thus, neither he was allowed to join duty nor was placed under suspension. However, a charge sheet dated 19-5-1986 was issued to him framing the following charges:

- "(i) that you absented from duty with effect from 15-6-1985;
- (ii) that certain works in your section were not completed within the target time;
- (iii) that you did not reside in the headquarters at Gajapathinagaram;
- (iv) that you did not handover the section to your successor;
- (v) that you did not reconcile shortages of certain materials in the section; and
- (vi) that you did not offer any reply to the Memos of the Assistant Divisional Engineer, Lines, Vizianagaram on the reconciliation of materials, accounts etc."

He submitted his explanation on 18-7-1986 and on the very same day, he also filed a separate petition seeking posting orders. However, after long persuasion, the Superintending Engineer, Operation, Srikakulam through his Memo No. 332/98, dated 20-1-1988 advised him to approach the 2nd respondent for obtaining reposting orders. Accordingly, he approached the 2nd respondent on 25-1-1988 for posting orders, but no orders were issued. Again, he was asked to await the outcome of the enquiry instituted against him by Memo dated 27-2-1988 of the Superintending Engineer, Operation, Srikakulam. Further, the enquiry, which was initiated on 14-11-1985, was not conducted expeditiously in

spite of best co-operation rendered by him. The enquiry was at last completed after three years of its initiation and the report was submitted on 18-12-1989. On the basis of the enquiry report, a show cause notice was issued asking him to explain as to why the following punishments should not be inflicted:

"(1) stoppage of one increment without cumulative effect for unauthorized absence from 15-6-1985 onwards;

(2) recovery of H.R.A. for not residing at Headquarters , Gajapathinagaram; and

(3) recovery of Rs. 1,59,278.45 ps. for failure to reconcile the account of materials in the section."

He submitted his explanation to the show cause notice on 15-4-1989 stating that there is no fault on his part in absenting for duties from 15-6-1985 to 15-6-1986. In fact, it is the lapse on the part of the department as he was not given any posting orders during that period and as such, it cannot be treated as unauthorized absence. Further, insofar as the recovery of Rs. 1,59,278.45 ps. being the value of unaccounted material is concerned, he had already rendered the accounts for such amount to the Divisional Engineer, Operations, Vizianagaram on 10-11-1988. Further, it is not true to say that he left the headquarters. In fact, he resided at Gajapathinagaram itself in the house of one D. Appala Narasimha Raju and he has produced documentary evidence to that effect and as such, the house rent allowance need not be recovered. The 2nd respondent rejected the explanation and issued final orders dated 7-9-1989 inflicting the following punishments;

"Accordingly, it is hereby ordered that Sri K. Satyanarayana Murthy, Addl. Asst. Engineer is deemed to have been resigned and cease to be in the employment from APSEB service with effect from 15-6-1985 forenoon without prejudice to the rights of the Board to recover any amounts found due from him to the APSEB and it is also ordered that an amount of Rs. 52,193.85 ps the amount outstanding in his name and an amount of Rs. 1,079.22 ps wrongly drawn by him towards H.R.A. for the place Gajapathinagaram, totalling to Rs. 53,373.07 ps shall be recovered from him."

Aggrieved by the said order of the 2nd respondent dated 7-9-1989 he filed Writ Petition No. 15468 of 1989, which was disposed of on 23-6-1994 with a direction to him to file an appeal before the 1st respondent. In obedience to the orders of this Court, he had filed an appeal before the 1st respondent challenging the order of the 2nd respondent. The 1st respondent -appellate authority -rejected the appeal by order dated 26-12-1994. Hence, this Writ Petition.

4. It is contended by the petitioner that under Proviso to Regulation 10 of the Discipline and Appeal Regulations of the Board no punishment shall be imposed without concurrence of the committee and in the instant case, the concurrence was not obtained. Therefore, the punishment imposed by the 2nd respondent itself is illegal and without jurisdiction. Further, no charge has been framed with

regard to the amount ordered for recovery. There is no provision under the Regulations for imposing the punishment of deemed to have been resigned and ceased to be in employment from the Board's services. Deemed resignation is traceable to Regulation 28(3) of the A.P.S.E.B. Service Regulations (for short "the Regulations") and the same is applicable when an employee is continuously remained absent unauthorisedly for a period of more than one year and not otherwise. This Regulation has no application so far as the instant case is concerned, as he never absented unauthorisedly for more than one year. In fact, he had approached the authorities immediately within two weeks and asked for posting orders, which was denied to him. Thus, he cannot be said to be unauthorisedly absent. He also contended that the action of the 2nd respondent is very vague and the 2nd respondent did not understand the scope of Discipline and Appeal Regulations. The Enquiry Officer recommended the punishment of deferment of one increment; therefore, the 2nd respondent could have imposed that punishment only and could not have initiated action under Regulation 28(3) of the Regulations. There is no enquiry with regard to the unauthorized absence under Regulation 28(3). Simply because he reported for duty on 22-6-1985 he was issued with a Memo dated 29-6-1985 stating that he was deemed to have been relieved. He further submits that absolutely there is no evidence before the Enquiry Officer as to his absence from duty and there is sufficient material to establish that he reported for duty and that no posting orders were issued to him. Thus, the order that he deemed to have been resigned from service is absolutely illegal and contrary to the very rules of the Board.

5. A detailed counter-affidavit has been filed on behalf of the respondents denying the allegations made by the petitioner. The respondents asserted that there is no truth in the contention of the petitioner that he has reported for duty on 22-6-1985 and thereafter he made representations to the authorities seeking posting orders. In fact, the petitioner for the first time reported for reposting orders only on 12-12-1987. The Enquiry Officer in his report has stated that the petitioner has not made any representation or leave till 12-12-1997. The Enquiry Officer further held that the petitioner is guilty of charge of unauthorized absence apart from the other charges framed against him. The action taken by the disciplinary authority is perfectly legal and valid and no exception can be taken to the same. Since the charges levelled against the petitioner were proved, the 2nd respondent has rightly invoked Regulation 28(3) of the Regulations and passed an order that the petitioner was deemed to have resigned and ceased to be an employee of the Board.

6. Learned Counsel for the petitioner at the outset submitted that in fact the petitioner was relieved from duty as contemplated under Regulation 28(3) of the Regulations and after waiting for about five months an Enquiry Officer was appointed on 14-11-1985 and a charge sheet was issued on 19-5-1986. This is only an afterthought. In fact, the petitioner was relieved of his duties under Regulation 28(3) of the Regulations. To cover up the lapses, the management felt that an enquiry should be conducted into the matter, however, kept the petitioner

out of service by keeping him under suspended animation. From the date of deemed resignation till the date of passing of the final orders by the 2nd respondent, the petitioner was neither permitted to join duty nor was suspended from service. Further, no subsistence allowance was paid during that period.

7. Shorn of all the details, it is suffice to note that the petitioner was deemed to have been resigned and ceased to be in the employment of the Board with retrospective effect from 15-6-1985 by the Memo dated 29-6-1985 of the Assistant Divisional Engineer, Lines, Vizianagaram. The Enquiry Officer was appointed on 14-11-1985 i.e., about after five months. If really, the respondent-Board wanted to take action under Regulation 28(3) of the Regulations, there was no necessity of conducting any enquiry into this matter, as the petitioner was already deemed to have been resigned from service with effect from 15-6-1985 itself. As the petitioner was going around the offices of the respondent-authorities, they realized that there is necessity of conducting a detailed enquiry into the matter before the services of the petitioner are done away with. Further, it is seen that there is no co-relation between the charge and the finding of the Enquiry Officer. The charges are as vague as they could be. It is curious to note that the Enquiry Officer after finding the petitioner guilty of the charges recommended for a minor punishment. It is very clear from the impugned Order of the 2nd respondent that he wanted to get rid of the services of the petitioner and to regularize the orders issued by him earlier treating that the petitioner deemingly resigned from service under Regulation 28(3) of the Regulations and to fill up the lacuna in not conducting an enquiry into the matter. The Regulation 28(3) of the Regulations reads as under:

"Any employee of the Board who remained unauthorisedly absent from duty for a continuous period of one year shall be deemed to have resigned from service from the date of absence and shall automatically cease to be in Board Employment"

8. At the Bar, the learned Counsel for the petitioner argued that the petitioner was relieved of his duties with effect from 15-6-1985 by applying Regulation 28(3) and the same has been repeated by conducting a farce of an enquiry into the matter. The petitioner was neither paid any subsistence allowance nor was permitted to join duty during the pendency of the enquiry into the matter.

9. On the above allegations and submissions, this Court called for the original records of the Board, particularly relating to the Proceedings dated 29-6-1985 issued by the Assistant Divisional Engineer, Vizianagaram. The Board has expressed its inability to place the original record and the said Proceedings dated 29-6-1985. However, after adjourning the matter for sometime, the Board was able to place some record relating to these proceedings.

10. From a close scrutiny of the records placed before this Court, it is seen that the petitioner was relieved of his duties with effect from 15-6-1985 under Regulation 28(3) of the Regulations by Proceedings of the Assistant Divisional

Engineer, Lines, Vizianagaram dated 29-6-1985. Once this is so, the relation of employer and employee ceased. There was no necessity for the department to proceed with the enquiry for the misconduct alleged against the petitioner. However, in their wisdom, the respondents have taken a decision to conduct enquiry into the matter and appointed an Enquiry Officer. Thereafter, Charge Memo was issued and explanation was sought from the petitioner. After the Enquiry Officer submitting his report proposing punishment, show cause notice was issued. However, the very same order of "deemed resignation" under Regulation 28(3) of the Regulations was passed by the 2nd respondent. Further, it took more than 3 1/2 years after initiation of the disciplinary proceedings to complete the same. During this interregnum period, the petitioner was kept in suspended animation. He was prevented from joining duty, though he was not suspended from the service of the Board. Thus, it is clear that the 2nd respondent having realized that the order passed earlier under Regulation 28(3) of the Regulations may not stand the scrutiny of law, conducted an enquiry into the matter, may be in a farcical manner and finalized the same only to cover up his lapses. Otherwise, there was no question of conducting an enquiry into the matter again and passing the same order under Regulation 28(3) of the Regulations. No enquiry is contemplated while passing an order under Regulation 28(3) of the Regulations. It is as simple as that being a deemed provision, which, in fact, was, invoked by the respondents as early as on 29-6-1985 declaring the petitioner as deemed to have been relieved of his duties with effect from 15-6-1985 under Regulation 28(3) of the Regulations.

11. The fact that the petitioner was not paid any subsistence allowance during the period of enquiry itself clearly speaks that the whole enquiry is deemed to be vitiated. Petitioner was practically prevented from joining duty and was kept in suspended animation. The respondent-Board cannot keep a person in suspended animation while asking him to appear for an enquiry contemplated by the Board as a part of disciplinary measure, particularly when the enquiry was prolonged for more than 3 1/2 years. Thus, the very enquiry initiated and conducted is vitiated and deserves to be declared as void and non est in the eye of law.

12. For all the above reasons, the impugned orders passed by the 2nd respondent as confirmed by the 1st respondent are liable to be set aside and accordingly set aside. The petitioner is entitled to reinstatement with continuity of service and all attendant benefits including the back wages. However, it cannot be ignored that the charges are grave in nature, but they cannot be enquired into since the petitioner expired. In view of this, the ends of justice would be met by denying 50% of back wages to the petitioner for the period from 15-6-1985 till his death.

13. As noted above, during the pendency of the writ petition, the petitioner-workman died and petitioners 2 and 3 are brought on record as his legal representatives. Hence, petitioners 2 and 3 are entitled for all the benefits that flow out of this order treating that the petitioner was in service till the date of his

death.

14. The Writ Petition is allowed to the extent indicated above. No order as to costs.