

(2021) 12 TEL CK 0021
In the Telangana High Court
Case No : Writ Petition No. 15753 Of 2004

Md.Hafeezuddin, Hyderabad

APPELLANT

Vs

APSRTC By Md.,Musheerabad, HYD 2 Others

RESPONDENT

Date of Decision : 09-12-2021

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2021) 12 TEL CK 0021

Hon'ble Judges : P. Madhavi Devi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. This Writ Petition is filed by the petitioner under Article 226 of the Constitution of India seeking a Writ of Certiorari to quash the impugned proceedings No.PA/19(132)/2002-DVM(CR) dt.31.12.2002 in so far as denying the back wages, postponing the increment which fall due next for a period of two years with cumulative effect and treating the removal period as not on duty, as arbitrary, unjust and in violation of the principles of natural justice and consequently to direct the respondents to pay the back wages along with all consequential benefits in the interest of justice and fair play.

2. Brief facts leading to filing of the Writ Petition are that the petitioner joined the service of the respondent Corporation as a driver in the year 1986 and while he was working under the control of the 3rd respondent, the respondent issued a charge sheet dt.25.09.2001 alleging that the petitioner absented from duties unauthorisedly from 06.09.2001 to 12.09.2001 without prior sanction of leave which constitutes a misconduct in terms of Regulation 28(xxvii) of the APSRTC Employees (Conduct) Regulations, 1963. The petitioner submitted his explanations explaining that due to illness, the petitioner could not attend his duties during the above period and requested that since he had taken treatment from Osmania General Hospital, Hyderabad, he should be granted sick leave. However, he submitted the medical certificate from a private doctor. The 3rd

respondent was not satisfied with the petitioner's contentions and removed the petitioner from service. Aggrieved, the petitioner preferred an appeal before the 2nd respondent who modified the punishment to that of reinstatement into service but with stoppage of two increments with cumulative effect and also treating the period of absence as 'not on duty' for the purposes of pay, leave and increment. Aggrieved by the same, the petitioner has filed this Writ Petition.

3. Learned counsel for the petitioner, Sri V. Narasimha Goud, submitted that the petitioner had put in 16 years of service and the gravity of misconduct did not call for any harsh punishment such as removal from service, or the modified punishment of stoppage of two increments with cumulative effect and without back wages and also treating the period of absence as 'not on duty' for the purpose of pay, leave and increment. Therefore, according to him, the punishment meted out to the petitioner is harsh and disproportionate to the gravity of the misconduct alleged by the respondents and he prayed for setting aside the punishment as modified by the 2nd respondent Divisional Manager. He placed reliance upon the decision of a Coordinate Bench of this Court in the case of N. Balakrishna Vs. Security Officer, APSRTC, Hyderabad Zone and others 2003 (3) ALT 96, wherein it was held that the certificate issued by the competent medical officer or by the petitioner's own medical attendant should be accepted and if for any reason the medical certificate is doubted, the authority should refer the case for investigation by the competent medical officer for his advice and report and if such a procedure is not followed, then the action of the respondent authority in removing the petitioner from service is to be set aside. The learned counsel further drew the attention of this Court to the finding of the 3rd respondent that the petitioner had submitted sick certificate from a private doctor who has treated him and therefore, in view of the decision in the case of N. Balakrishna Vs. Security Officer, APSRTC, Hyderabad Zone and others (1 supra), the medical certificate should have been accepted by the respondents.

4. Sri Radha Krishna, learned counsel representing Sri Praveen Kumar, learned counsel for the respondents, on the other hand, relied upon the contentions of the respondents in the counter affidavit filed by the respondents, wherein it is stated that though the petitioner has stated that he had taken treatment from Osmania General Hospital, he has produced a certificate of private doctor only to avoid the disciplinary proceedings and that the unauthorised absence during the period mentioned in the charge sheet was proved and hence the punishment as modified by the appellate authority should be confirmed.

5. Having regard to the rival contentions and the material on record, it is found that before the appellate authority, in addition to his illness, the petitioner had also stated that he has not attended duties on account of death of his young son and that he has submitted medical certificate of illness of his son in September, 2001 till his death. The explanation given by the petitioner that his young son was ill and that he ultimately died is not disputed. Further, this Court finds that the period of unauthorised absence is also only 6 days and for these 6 days the

petitioner had submitted sick leave from a private doctor. In the decision of this Court in N. Balakrishna Vs. Security Officer, APSRTC, Hyderabad Zone and others (1 supra), the Hon'ble Court has taken into consideration similar circumstances and observed at para 9 as under:

"9. Prima facie, a reading of Sub-Rule 1 makes it clear that the employee who, being unable to attend his duties by reason of illness, submits an application for grant of leave or extension of leave, shall produce sick certificate issued by a competent medical officer or in special circumstances by the applicant's own medical attendant, without delay. Two types of medical certificates are contemplated under this Rule i.e. medical certificate issued by the Competent Medical Officer and that of applicant's own medical attendant. Accordingly, the petitioner who was unable to attend to duties by reason of his ill-health and was undergoing treatment under a private doctor and thereafter shifted to Government Hospital, Naryanpet. Thus under special circumstances, the applicant submitted sickness certificate issued by his medical attendant. Therefore, the respondents should have accepted the certificate submitted by the petitioner under Rule 11(1) of the Regulations, to which he is entitled to. Under sub-rule 3 of Rule 11, the authority competent to grant leave is given discretionary power, subject to any general or special orders of the Corporations, either to accept the certificate issued by the Medical Attendant or if he entertains a doubt, refer the case for investigation by the competent Medical Officer for his advice and report and on receipt of such report, deal with the case as the circumstances may require. Therefore, this contingency arises when the authority competent to grant the leave doubts the genuineness of the medical certificate submitted by the applicant. In normal course, the authority competent to grant leave is given a discretionary power to admit sick certificate issued by the medical attendant. In the event he doubts its genuineness, a duty is cast on the authority competent to grant leave, to refer the employee to the Competent Medical Officer of its own hospital or to the Government Hospital, for investigation, advice and report, as to whether the employee is suffering with any illness."

6. In the case before this Court also, the petitioner had submitted a certificate of a private medical practitioner and if the respondents doubted its genuineness, they ought to have referred the petitioner's medical certificate to the competent medical officer for verification. It is also an admitted fact that during the relevant period the petitioner's son was sick and subsequently he also died. Taking all of these facts into consideration, this Court is of the opinion that the punishment of stoppage of increments for a period of two years with cumulative effect and also treating the period of absence as 'not on duty' for the purpose of pay, leave and increment is harsh and disproportionate to the gravity of the misconduct. Therefore, the impugned punishment is set aside and the petitioner is granted continuity of service without back wages for the period of absence with all attendant benefits.

7. The Writ Petition is accordingly allowed. No order as to costs.
8. Pending miscellaneous petitions, if any, in this Writ Petition shall stand closed.