
(2010) 09 AP CK 0049
In the Andhra Pradesh High Court
Case No : Writ Petition No. 9107 of 2010

Prameela and Others

APPELLANT

Vs

The A.P.S.R.T.C. and Others

RESPONDENT

Date of Decision : 27-09-2010

Acts Referred:

Andhra Pradesh State Road Transport Corporation Employees (Classification, Control and Appeal) Regulations, 1967 — Regulation 8

Citation : (2010) 09 AP CK 0049

Hon'ble Judges : Nooty Ramamohana Rao, J

Bench : Single Bench

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

Judgement

Nooty Ramamohana Rao, J.—This writ petition has been preferred by the wife and sons of the deceased - driver of the Andhra Pradesh State Road Transport Corporation (for short "the APSRTC") questioning the validity of the orders passed by the Deputy Chief Traffic Manager, Medak Region, Sanga Reddy, rejecting the appeal submitted by the said driver against the orders passed on 5.7.2008 by the Depot Manager, Zahirabad Depot, imposing on him the punishment of removal from service.

2. Sri P. Pandu, was engaged as a Driver Gr.II with the APSRTC w.e.f., 1.9.1988. He was inflicted with punishment of removal from service earlier on 17.5.1990 when he was involved in an accident. When he preferred an appeal against the said orders, he was reinstated back into service. When the Traffic Supervisor of Zahirabad Depot filed an adverse report that the said Pandu was unauthorisedly absent w.e.f., 17.1.2007 to 30.1.2007 without any intimation or prior sanction of leave and that he was also away from duties for 134 days during the year 2006, the said Pandu was subjected to disciplinary enquiry on two counts of charges. The 1st charge related to his unauthorized absence for duty w.e.f., 17.1.2007 to 30.1.2007. The 2nd charge relates to his absence for 134 days during the year

2006, which comprised of 23 days of leave availed and medical sickness for 68 days and absented to duties for 43 days. The Enquiry Officer who was appointed to conduct a detailed enquiry as the explanation offered by the writ petitioner for the charge sheet was not found satisfactory, conducted enquiry in accordance with the APSRTC Employees CCA Regulations and submitted his report on 2.5.2007 finding the said P. Pandu guilty of both the charges. An opportunity was provided for meeting the veracity of the findings. The said Pandu submitted his detailed explanation to the findings of the Enquiry officer on 11.7.2007 and after perusal of the said explanation, a show-cause notice was issued by the Depot Manager on 18.7.2007 calling for his explanation as to why he be not inflicted with the punishment of removal from service. An explanation followed thereto from the said Pandu on 22.7.2007. Thereafter, he was attending to his duties normally. At this stage, nearly after one year period has elapsed after issuing the show-cause notice, the Depot Manager has passed orders on 5.7.2008 inflicting on him the punishment of removal from service. Against this order of removal from service imposed by the Depot Manager, an appeal has been preferred to the Deputy Chief Traffic Manager which was received by the appellate authority on 18.7.2008. It is stated that the said P. Pandu expired on 1.8.2008 and thereafter, the present writ petitioners have submitted a representation dated 16.10.2008 to the appellate authority which was received by him on 20.10.2008 wherein the petitioners have informed the appellate authority about the demise of the said Pandu and requested the appellate authority to take appropriate action in the matter. Since the appellate authority has not moved, the petitioners herein have instituted WP No. 13310 of 2009. The said writ petitioner was disposed of on 21.12.2009 directing the appellate authority to consider the representation submitted by the petitioners herein on 16.10.2008 and allow them to prosecute the appeal preferred by Pandu. In pursuance of the said order passed by this Court, the appellate authority has passed final orders on 4.3.2010 rejecting the appeal.

3. I have heard Sri V. Narasimha Goud, Learned Counsel for the petitioners and Sri C. Sunil Kumar Reddy, learned Standing Counsel for the respondent Corporation.

4. Sri Narasimha Goud, Learned Counsel for the petitioner would submit that the Depot Manager, has taken into account and consideration the period of absence of Sri Pandu w.e.f., 22.6.2008 to 3.7.2008 into account and consideration and based thereon passed the orders of removal whereas the charge sheet laid against the said Pandu did not comprise of any specific allegation relating to the said period of absence. Thus, according to the learned Counsel, the Depot Manager has removed the petitioner from service without providing him an opportunity to meet the charge laid against him. Learned Counsel submits that no person should have been condemned without affording an opportunity and hence the said Pandu should have been ordered to be reinstated by the appellate authority.

5. Per contra, Sri C. Sunil Kumar Reddy, learned Standing Counsel would submit that the reference made by the Depot Manager to the period of absence of Sri Pandu between 22.6.2008 to 3.7.2008 is merely for the purpose of recording the information available in respect of the said individual and that it does not amount to condemning the said Sri Pandu for his unauthorized absence for the said period between 22.6.2008 to 3.7.2008. Both the disciplinary authority and the appellate authority, according to the learned Standing Counsel have gone into the matter of the alleged misconduct committed by the said Pandu which formed part of the charges laid against him and hence a mere reference made to a subsequent period of absence by the said authorities is only a casual reference whereas the order of punishment has been confined to the merits behind the charges laid against the petitioner.

6. The two charges laid against Sri Pandu relate to two specific instances or acts of misconduct. The 1st charge centers around the alleged misconduct arising out of his unauthorized absence for the period between 17.1.2007 to 30.1.2007 while the 2nd charge relates to his absence for a total period of 134 days during the year 2006. The Enquiry Officer has found the writ petitioner guilty on both counts. Accepting the findings of the Enquiry Officer, a show-cause notice was issued to the said Pandu by the Depot Manager on 18.7.2007 proposing to impose on him the punishment of removal. A reply was submitted thereto on 22.7.2007. Thereafter, no proceedings have taken place. The disciplinary proceedings have not been brought to an end. The said Pandu continued to work as a Driver. When it was reported that he again absented to duties w.e.f., 30.3.2007 to 5.4.2007, from 13.4.2007 to 27.4.2007 and again from 8.6.2007 to 10.7.2007 and once again he was found to have absented to his duties from 22.6.2008 to 3.7.2008 as reported by the Traffic Inspector - II of Zahirabad Depot, then the order of punishment of removal was passed by the Depot Manager on 5.7.2008. It will be important to notice two features, which are evident from the face of the order of removal passed by the Depot Manager. It is observed in the said order as under:

...when he had absented to the duties w.e.f., 17.1.2007 to 30.1.2007, he had personally in the presence of C.I: ZHB had promised that he would not absent to the duties unauthorisedly in future. But he could not keep his promises and absented to the duties w.e.f., 30.3.2007 to 5.4.2007, again from 13.4.2007 to 27.4.2007 and again from 8.6.2007 to 10.7.2007. This clearly shows that he has not changed his attitude.

7. The Depot Manager was obviously referring here to a promise said to have been obtained from the said Pandu on 30.1.2007 in the presence of Chief Inspector of Zahirabad Depot. It is to be noted that, an adverse report has been filed against the said Pandu by the Traffic Supervisor by then complaining of his unauthorized absence of Sri Pandu between 17.1.2007 to 30.1.2007. But, the periods of absence noted in the above quoted paragraph are of prior period to the issuance of the show-cause notice on 18.7.2007. Even then, the Depot

Manager has not passed any final order pursuant to the show-cause notice issued by him on 18.7.2007. He almost waited for a period of one year. When another adverse report has been filed by the Traffic Inspector, Zahirabad, complaining of unauthorized absence by the said individual, then the impugned order has come to be passed. It is therefore relevant to notice what the Depot Manager has said in the next paragraph:

Therefore, a show-cause notice of removal was issued vide reference cited 9th. The party in his explanation to the SCN issued vide reference 10th cited stated that due to sudden death of Grand mother and brother-in-law he had absented but not intentionally. Therefore, one more chance has given to the party to improve his attendance and action could not be initiated. Again he had absented to his duties from 22.6.2008 to 3.7.2008 as per the report given by TI.II Zaheerabad Depot.

Thus, it is opined that he is not interested to perform his duties and absenting frequently. Thereby appears an unprofitable employee to the corporation. Hence it is decided to impose the punishment of removal.

8. Clearly, the Depot Manager has indicated his mind or say his readiness and willingness to condone the lapses committed by the said Pandu prior to 22.6.2008. Perhaps, the Depot Manager had found the said Pandu to be an unproductive employee because of his repeating the same act of misdemeanor between 22.6.2008 to 3.7.2008. Thus, it is evident that the Depot Manager has concluded the issue and arrived at a finding that the deceased Pandu was not a useful or productive employee of the organization because of repetition of misdemeanor and not because of the 1st round of the misdemeanor itself. Clearly, the reference made to the period of unauthorized absence between 22.6.2008 to 3.7.2008 is not merely a casual reference, but a clear case of reference for the purposes of firming up the opinion which is requisite for ultimately imposing the punishment of removal from service. It is not at all difficult to comprehend that the Depot Manager was not very keen to penalize the said Pandu for his period of absence which formed the basis for the two charges up to 30.1.2007. In fact, the subsequent periods of absence were also inclined to be condoned by the Depot Manager, Zaheerabad Depot, as the said Pandu could offer genuinely valid reasons for his absence. It is therefore clear to my mind that the order of removal came to be passed not for the unauthorized absence, which formed part of the charges, but for the unauthorized absence caused between 22.6.2008 to 3.7.2008. Such an allegation has not been part of the charges laid against the deceased Pandu.

9. My opinion that the Depot Manager, Zaheerabad, has imposed punishment of removal on Sri Pandu all because of his unauthorized absence between 22.6.2008 to 3.7.2008 gets fortified from the cryptic notification signed by the Depot Manager on 5.7.2008 and exhibited on the notice board of Zaheerabad Depot, which reads as under:

NOTIFICATION

Sub: Absentism: Unauthorised absence of Sri P. Pandu, E251922, Driver of ZHB Depot w.e.f. 22.6.2008 to 3.7.2008.

Ref: Proceedings of DM/ZHB dated 22.7.2007

Sri P. Pandu E251922 DRIVER of Zaheerabad Depot is removed from the services of the corporation on 5.7.2008 as he has unauthorisedly absented to his duties w.e.f. 22.6.2008 to 3.7.2008.

(Emphasis is brought out)

10. The above notification clearly indicates that it is the unauthorized absence between 22.6.2008 to 3.7.2008, which triggered the said order of removal from service, but not the period of absence which formed part of the two charges laid against Sri Pandu.

11. Let us have a look at it from a different perspective.

12. The 2nd limb of the charges talks of absence from duties for 134 days during the year 2006 by Sri Pandu. Out of these 134 days, Sri Pandu appears to have availed leave of absence for 23 days and he was also declared to have been sick for 68 days. Thus, put together for 91 days, his absence from duty cannot become either unauthorized or unapproved or a misconduct. When once the leave of absence from duty is sanctioned to an employee, the consequential absence from duty by such an employee becomes a legitimate one and cannot constitute misconduct on his part. Similarly, if an industrial workman has been reported sick by a competent medical officer, the absence from duty of such a sick workman cannot constitute misconduct. It is fundamental that a workman who is sick and is otherwise unfit to perform duties should not be allowed or permitted to perform duties even if he wishes to do so. Every sick workman is got to be rested and put off duty. On the contrary, if a sick workman is allowed to be entertained to duty, he will pose a risk and danger to not only himself but also to fellow workmen. Like in the instant case, if the workman happen to be a driver, a whole set of passengers who unwittingly avail the transportation services provided by the Corporation, would be exposed to the risks and dangers. It is therefore in larger public interest to avoid industrial mishaps that a sick driver should not be allowed to perform duties. In such cases, depending upon the regulations dealing with pay, persons who are on sick leave may not be entitled to receive wages. But, certainly the sick leave availed by such a workman does not constitute a misconduct. Therefore, looked at from this angle, the 2nd limb of the charge could not have been returned to have been proved in toto against the workmen. Appropriately, the workman could be guilty for the period he was unauthorisedly absent, but he can not be held be guilty of any misdemeanor for his legitimate or authorized period of absence. But, in the instant case, the Enquiry Officer, has held the individual guilty of the 2nd charge

in toto and the said finding of the Enquiry Officer is accepted by the disciplinary authority. To this extent, the finding of guilt recorded against Sri Pandu undoubtedly amounts to arriving at a perverse finding. Perverse findings are certainly fatal when they form the basis for imposition of punishments. Hence, from this angle also, the order of removal passed by the Depot Manager deserves judicial correction.

13. In the instant case, the appellate authority has not applied his mind as to how far the Depot Manager is justified into looking into the conduct of the said Pandu for the period beyond 30.1.2007. He has also not borne in mind the fact that Sri Pandu died on 1.8.2008. Unfortunately, the counter affidavit makes a cryptic statement of fact that the respondents are not aware of the death of the said Pandu. Such statements of fact are palpably inaccurate statements. Firstly, it is not disputed that the appellate authority has received a representation from the present petitioners on 20.10.2008, wherein they have specifically averred that because Sri Pandu's death on 1.8.2008, they are seeking leave to prosecute the appeal preferred by him on 18.7.2008 against the punishment order dated 5.7.2008. Further, the present set of respondents are also respondents to WP No. 13310 of 2009 preferred by the petitioners herein. That writ petition was disposed of by this Court on 21.12.2009 wherein it is clearly recorded that the said Pandu has died on 1.8.2008. Hence, this Court permitted the petitioners herein to prosecute the appeal preferred by him on 18.7.2008. Therefore, the respondents are not justified in pleading that they are not aware of the death of Sri Pandu. Such pleadings are incompatible with the material on record.

14. Since Sri Pandu died on 1.8.2008, the relationship of Master and Servant between him and the APSRTC could not have survived thereafter. Since I have found that the order passed by the Depot Manager is revited around the period of absence of Sri Pandu between 22.6.2008 to 3.7.2008, which element of misconduct did not form part of the two charges laid against him, the order of punishment passed on 5.7.2008 deserves to be set aside. It is a principle of justice that no person should be condemned unheard. It has been now recognized as forming part of the principles of natural justice as well. A.P.S.R.T.C. Employees (CCA) Regulation 8 provides for good and sufficient reasons, various punishments that been inflicted upon the employees. They start with censure and end up with dismissal from service. Hence, it is expected of every disciplinary authority to carefully assess the quantum of guilt held established against the delinquent employee and then consider the appropriate punishment that is to be imposed. The choice of punishment, hence, has to be meet the standards of fairness. It shall not be too harsh or excessive or too lenient. It should be fair, adequate and proportionate. This exercise, apparently was not carried out by either the disciplinary or the Appellate authority. However, in my opinion, for that part of the misconduct held established against Sri Pandu, perhaps, imposition of a minor punishment of reduction of pay by two stages would have met the ends of justice. For, this purpose, the matter, in ordinary circumstances would have been remitted back. Since the writ petitioners are the

legal heirs, I prefer to condense the litigation and prefer to impose the minor punishment of reduction of pay of Sri Pandu by two stages as of 5.7.2008. Accordingly, I modify the punishment imposed by the Depot Manager, Zaheerabad on 5.7.2008 to that of reduction of pay by two stages of Sri Pandu. Since he has died in a short time, thereafter, the period between 5.7.2008 to 1.8.2008 be treated as period spent on duty and the said Sri Pandu is entitled to payment of wages for this period.

15. Since Sri Pandu is no more, all the terminal benefits payable to him shall be calculated in accordance with this judgment within a maximum period of three months from the date of receipt of this order and be settled on to the petitioners. The writ petition stands disposed of accordingly. No costs.