
(2003) 02 AP CK 0108

In the Andhra Pradesh High Court

Case No : Writ Petition No. 7503 of 1997

S.S. Ramachandra Rao

APPELLANT

Vs

Singareni Collieries Company Limited and Another

RESPONDENT

Date of Decision : 14-02-2003

Acts Referred:

Singareni Collieries Executives (Conduct, Discipline and Appeal) Rules — Rule 29

Citation : (2003) 3 ALD 155 : (2003) 3 ALT 707

Hon'ble Judges : R. Subhash Reddy, J

Bench : Single Bench

Advocate : T.P. Acharya, for the Appellant; K. Srinivasa Murthy, for the Respondent

Final Decision : Allowed

Judgement

R. Subhash Reddy, J.—This Writ Petition is filed questioning the order dated 8-3-1997 issued in Proceedings No. C/38/391 by the Director, Personal Administration and Welfare, Singareni Collieries Company Limited, Kothagudem, Khammam District, the second respondent herein. By the impugned order, the name of the petitioner was struck off from the rolls of the company with effect from 25-10-1996 stating that he abandoned the employment on his own accord.

2. Necessary facts for disposal of the Writ Petition are as under: The petitioner joined the service of the respondent-company on 18-12-1961 and he was promoted as Personal Manager in the month of May, 1990. In the month of October, 1996 he reported sick at company's dispensary and he was referred to area hospital on 24-10-1996. Further he has stated in his affidavit filed in support of the Writ Petition that in view of his sickness, he came to Hyderabad where his wife and children are staying and took treatment at Government Hospital, Malakpet for his ailment-Lumbago osciata. While so the respondent-management has issued notice dated 7-2-1997 calling upon the petitioner to report for duty on or before 24-2-1997 failing which his name will be struck off from the rolls of the company with effect from 25-10-1996. In the said notice, it

is further stated that the said action is without prejudice to the rights of the management to recover an amount Rs. 65,439.61 Ps towards three months salary in lieu of notice, which is inclusive of other loans which he has obtained. To the said notice, reply was sent by the petitioner on 24-2-1997 stating that there is no one to look after him at the place of his working and informed the management that he prefers to take treatment at Hyderabad where his wife and children are staying. In the said reply, he has expressed his inability to report for duty on or before 24-2-1997 as per notice and requested to grant three more weeks" time to enable him to join duty. It is pertinent to mention here that it is also further stated in the reply that he joined the service of the company in the year 1961 and rendered unblemished service for about 32 years and only after 1993 onwards, in view of the ailment, he was constrained to report sick in different spells. Thereafter the second respondent has passed the impugned order without considering his reply submitted by him though it is referred in the references.

3. The said impugned order is questioned by the petitioner stating that the said order is passed without any authority of law and in arbitrary exercise of power and contrary to relevant rules i.e. Singareni Collieries Executives Conduct, Discipline and Appeal Rules. It is submitted by the learned Counsel, Sri T.P Acharya, appearing for the petitioner that the petitioner is the executive of the respondent-company and any action against him for misconduct can be only as per the procedure prescribed in the rules referred above. Chapter -III of the said rules deals with the disciplinary proceedings. As per Rule 28(1) of the said Rules, penalties may be imposed for good and sufficient reasons on an employee for misconduct. The penalties are classified into two divisions, i.e. minor penalties and major penalties and as per the said classification, removal from service is a major penalty. Misconduct is dealt with under Rule 5 of the said Rules and as per Sub-rule (7) of Rule 5, absence without leave or over staying the sanctioned leave for more than four consecutive days without sufficient grounds or proper or satisfactory explanation is a misconduct. Rule 29 deals with the procedure for imposing major penalty and the relevant extracts of the rules reads as under:

"29.0: Procedure for imposing major penalties.

29.1: No order imposing any of the major penalties specified in Rule 27 shall be made except after an inquiry is held in accordance with this rule.

29.2: Whenever the Disciplinary Authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against an employee, it may itself inquire into or appoint any official of the Company or any public servant and in exceptional cases any other person or a committee hereinafter called the inquiring authority to inquire into the truth thereof.

29.3: Where it is proposed to hold an inquiry, the Disciplinary Authority shall frame definite charges on the basis of the allegations against the employee; The

charges, together with a statement of the allegations, on which they are based, a list of documents by which and a list of witness by whom, the articles of charges are proposed to be sustained shall be communicated in writing to the employee, who shall be required to submit within such time as may be specified by the Disciplinary Authority (no exceeding 15 days), a written statement whether he/she admits or denies any of or all the articles of charge."

4. As such, it is submitted by the learned Counsel for the petitioner that impugned order is contrary to the rules framed by the respondent-Company. Further, the learned Counsel for the petitioner submitted that though the petitioner has submitted explanation to the notice dated 7-2-1997 and though the respondent has referred the said explanation in the references, the respondent has passed the impugned order stating that the petitioner has neither reported for duty nor he has sent any communication till the date of the passing of the impugned order. As such, the learned Counsel for the petitioner states that the said impugned order is passed without considering the explanation filed by the petitioner and is in violation of principles of natural justice.

5. Counter-affidavit is filed on behalf of the respondent-Company stating that the petitioner was absent for duty for number of days even during the years 1993, 1994, 1996 and 1997 and he was also given warnings. It is stated that the petitioner has absented from duty without leave or permission from the competent authority and as such, it shows that he is not interested to continue in the job as he was unauthorizedly absent for a period of four months and as he failed to report for duty within the stipulated date, his name was struck off by the impugned order. It is also stated that the respondent-management has no other alternative except to terminate the services of the petitioner and as he has not given three months notice, he is liable to pay Rs. 65,439. 61 Ps., which includes other dues from him. It is also stated that the petitioner was to retire from service in the month of February, 1999 in normal course.

6. In the counter filed on behalf of the respondent-company, there is no answer to the principal contention raised in the writ petition namely the order is passed in violation of conduct, discipline and appeal rules framed by the respondent-company.

7. Heard the learned Counsels appearing for the petitioner and the respondent-Company.

8. It is not in dispute that the petitioner entered into service in the year 1961 and he suffered the impugned order at the verge of his retirement. The principal question that falls for consideration is whether the respondent-company has power to remove the petitioner without conducting regular enquiry. It is not in dispute that the petitioner was the Executive employee of the respondent-company and his services are governed by the Singareni Collieries Executives Conduct, Discipline and Appeal Rules. It is not in dispute that as per the said

rules, unauthorized absence without leave or overstaying sanctioned leave is misconduct within the meaning of the rules framed by the respondent-company. Rule 29 prescribes the procedure for imposition of major penalties and no order imposing major penalty specified under Rule 29 shall be made except after conducting an enquiry as specified under Rule 29.3. As per the said rule, the disciplinary authority shall frame definite charges on the basis of the allegations against employee and that charges together with statement of allegations on which they are based and list of documents should be communicated to the employee as a matter of right and the employee is given right to reply by written statement on the articles of charge. There is further elaborate procedure prescribed before concluding enquiry. In the instant case, admittedly except notice dated 7-2-1997, no other requirement is complied with. Even with reference to notice dated 7-2-1997, though the petitioner-employee has submitted explanation on 24-2-1997, the said explanation was not considered while passing the impugned order. Though the said grounds are raised categorically in the writ petition, the counter is silent on this aspect and during the course of hearing, the learned Standing Counsel for the respondents has submitted that as much as there is admission of misconduct on the part of the employee, there is no need to hold enquiry as per the rules. In support of the said contention, the learned Counsel relied on the decision of the Supreme Court in *Dharmarathmakara Raibahadur Arcot Ramaswamy Mudaliar Educational Institution v. Educational Appellate Tribunal and another*, reported in *Dharmarathmakara Raibahadur Aroot Ramaswamy Mudaliar Educational Institution Vs. The Educational Appellate Tribunal and Another*, In the said judgment, the Supreme Court has held that no, enquiry is necessary when one admits his violation. The said decision is not helpful to the plea of the respondent, having regard to the facts and circumstances of this case. In the present case, there is no admission of misconduct by the petitioner. In the absence of any admission of misconduct by the petitioner, it is a matter of enquiry to establish misconduct by verifying as to sufficient grounds and proper explanation is there or not, for the absence of the petitioner during the period. Further the learned Counsel also relied on the judgment of the Supreme Court in *Punjab and Sindu Bank v. Sakattar Singh*, reported in (2001) 1 SCC 214. Even the ratio decided in the said case is also not helpful to the facts of the present case. In the said case there was bipartite settlement between the company and the employees and there was definite clause empowering the management to terminate the services in case of absence for more than 90 days. In the instant case there is no such settlement and the disciplinary action is governed by the procedure contemplated under the *Singareni Collieries Executives Conduct, Discipline and Appeal Rules*. As such even the said decision is not helpful to the respondent. Further the respondent also relied on the decision of the Division Bench of this Court in *Management of Indian Airlines, Begumpet Sec"bad Vs. Industrial Tribunal-I, Hyd. and another*, . This is a case where delinquent employee failed to attend the enquiry in spite of giving opportunity. In the said case the employee admitted his unauthorized absence from duty. Even the said

judgment is also not helpful to the respondent having regard to the facts of the present case as much as very enquiry is not initiated and there is no admission anywhere by the petitioner with regard to his unauthorised absence, as alleged.

9. It is not in dispute that the impugned order has been passed terminating the services of the petitioner, who has worked more than 35 years with the respondent-company and the respondent-company has not followed the procedure prescribed under the said rules. It is the case of the petitioner that due to ill-health, he has not attended and as such automatically it cannot be constructed as misconduct. Mere absence from duty is not misconduct unless it is proved as misconduct within the meaning of Rule 5 of the said Rules. If the absence, without leave or overstaying, without sufficient grounds or proper or satisfactory explanation, alone will constitute misconduct. Whether grounds are there or not, it can only be a matter of enquiry as per the procedure prescribed. All the more, when penalty imposed is major one, it is obligatory on the part of the respondent to hold regular enquiry as per the rules in force. Though at the time of hearing, the impugned order is sought to be defended by the respondents stating that no enquiry is necessary before passing the said order, as much as the petitioner admitted his absence, but, as a matter of fact there is no admission of unauthorized absence, which alone will constitute misconduct. Having framed the rules, there is no reason for the respondents to depart from the procedure while passing the impugned order. For the said lapse of not following the procedure alone, the impugned order is liable to be set aside.

10. Further though reply dated 24-2-1997 is filed by the petitioner to the notice dated 7-2-1997, the said reply is not considered at all while passing the impugned order. Except referring the reply in the references of the impugned order, the reply of the petitioner has not been considered before passing the impugned order. Contrary it is stated in the impugned order that the petitioner neither reported for duty nor sent any communication to the notice. The said recitals in the impugned order would indicate that the reply filed by the petitioner though referred in the references has not been looked at all, which amounts to passing of the order, in violation of principles of natural justice.

11. For the foregoing reasons, the impugned order is to be set aside. In the normal course, it is a matter to remit back to the authorities to pass appropriate orders after conducting enquiry, but, as much as the petitioner has already attained the age of superannuation in this interregnum period, i.e., by February, 1999, I deem it not proper to subject him to further enquiry at this stage in view of his age. As such, I allow the writ petition and set aside the impugned order dated 8-3-1997 issued in Proceedings No. C/38/391 and declare that the petitioner is entitled to all the consequential benefits of his service including arrears of salary till he attained age of superannuation. No costs.