
(2014) 02 AP CK 0106
In the Andhra Pradesh High Court
Case No : Writ Petition No. 1977 of 2006

V. Madhumohan

APPELLANT

Vs

The Chairman

RESPONDENT

Date of Decision : 26-02-2014

Acts Referred:

Citation : (2014) 5 ALD 133 : (2014) 5 ALT 83 : (2014) LabIC 4197

Hon'ble Judges : D. Seshadri Naidu, J

Bench : Single Bench

Advocate : B. Tara Sujathan, Advocate and A. Hanumantha Reddy, Advocate for the Appellant; G. Ramachandra Rao, Advocate for the Respondent

Final Decision : Allowed

Judgement

Dama Seshadri Naidu, J.—The petitioner, having served the respondents company, resigned from his post and joined as an Agricultural Officer in the department of Agriculture, the Government of Andhra Pradesh. Holding that the petitioner left the respondent company without having his resignation accepted and that he was also guilty of misconduct of causing financial loss to the respondent company by providing stock to one particular dealer in his territory over and above the sanctioned limit, the respondent company initiated disciplinary proceedings. Eventually, the petitioner was dismissed from service through an order dated 02.07.2004 of the Disciplinary Authority- When even the intra-departmental appeal proved futile, the petitioner approached this Court by filing the present writ petition.

2. The facts in brief are that on 13.09.1995 the petitioner joined the service of the respondent company as a Sales Officer in the Marketing Division located in the State of Andhra Pradesh. Having served the company for a few years, he obtained an experience certificate and also no objection certificate from the respondent company with a view to applying to a suitable post in the Government of Andhra Pradesh. After obtaining those certificates, the petitioner applied for the post of Agricultural Officer in the department of Agriculture,

Government of A.P. On selection, the petitioner submitted his resignation letter on 18.12.2002 to the respondent company stating that he had to report to duty in the department of his new employer on 23.12.2002 and that his resignation might to treated to have come into force from the very date of his submitting the letter of resignation, i.e., 18.12.2002.

3. In the manner stated in the letter of resignation, the petitioner went ahead and joined the services of his new employer, incidentally Government of A.P., on 23.12.2002. Later, on 04.03.2003 the 5th respondent issued a notice to the petitioner asking him to recover from a dealer an amount of Rs. 6,46,000/- said to be due from him. To expatiate on this aspect, it could be seen that while the petitioner was in the service of the respondent company, he is alleged to have allowed one of the dealers in his territory to draw stock in excess of his sanctioned limit. It appears from record that this communication was followed up with further directions to the petitioner to ensure the recovery of the amount from the dealer. Eventually, on 11.09.2003 the respondent company issued to the petitioner a memo of charges alleging that the petitioner was guilty of misconduct on two counts: that he absented himself from duty without leave and that he failed to recover the amounts due from the dealer and thus caused pecuniary loss to the respondent Company.

4. Not satisfied with the explanation submitted on 23.09.2003 by the petitioner, the respondent Company went ahead with the departmental enquiry. It appears that, despite notice, the petitioner did not participate in the enquiry. Eventually, the Enquiry Officer submitted his report dated 31.03.2004. Though it was held by the Enquiry Officer that the first charge concerning not recovering the amounts due from the dealer was not proved, the Disciplinary Authority, however, differed on the said finding and issued the final show cause notice dated 22.04.2004 holding that both charges stood proved. Accordingly, the disciplinary authority issued final show-cause notice seeking the explanation from the petitioner. In any event, despite the explanation submitted, by the petitioner, the Disciplinary Authority imposed the major punishment of dismissal from service through its order dated 02.07.2004. On appeal, the appellate authority, through an order dated 09.01.2006, confirmed the punishment imposed by the Disciplinary Authority, thereby dismissing the intra-departmental appeal. Aggrieved thereby, the petitioner approached this Court by filing the present writ petition.

5. In the above factual backdrop, the learned counsel for the petitioner has submitted that in terms of clause 4 of the appointment letter dated 25.08.1995 the resignation of the petitioner is not subject to the approval of the employer.

6. The learned counsel has also stated that even before applying for the job in the establishment of the Government of Andhra Pradesh, the petitioner intimated to the respondent company in advance and obtained no-objection certificate and experience Certificate from the management. The learned counsel has further submitted that the resignation letter was submitted with a clear request that he had to join the duty in the department of his new employer on a particular date

and that his resignation ought to be treated to have come into force on the day when it had been submitted, but the respondents-authorities remained silent for many months.

7. According to the learned counsel, the communication addressed to the petitioner subsequently, though after many months, makes it amply clear that the officials of the respondent company have all along been fully aware that the petitioner secured a new employment and that he had been working in the said establishment all through.

8. In support of his submissions, the learned counsel has placed reliance on the decisions reported in State of U.P. and others Vs. Ved Prakash Sharma (D.R.) 1995 SCC (L&S) 968 and Superintendence Company of India (P) Ltd. Vs. Sh. Krishan Murgai, .

9. Per contra, the learned Standing Counsel for the respondent company has strenuously opposed the claims and contentions of the petitioner. In furtherance of his submissions, the learned Standing Counsel has laid emphasis on Rule 35.A of the Fertilizers and Chemicals Travancore Limited Employees" (Conduct, Discipline and Appeal) Rules, 1977 ("the Rules", for brevity) and submitted that the terms of the letter of appointment should be read along with the said Rules.

10. The learned Standing Counsel has also submitted that mere issuance of no objection certificate and experience certificate would not amount to an express consent on the part of the employer to the resignation of the employee. According to the learned Standing Counsel, the petitioner resigned and left the company only with a view to avoiding punishment, especially in the wake of the disciplinary proceedings to be initiated by the respondents-Company. The learned Standing Counsel has also stated that the actual pecuniary loss to the company is of no consequence once it is established that the petitioner allowed overdrawing of the stock by the dealer without the consent of the higher officials, the very action of the petitioner being an instance of major misconduct. Though every opportunity was given to the petitioner to defend himself in the domestic enquiry, even after receiving the notice, the petitioner, contends the learned Standing Counsel, did not participate in the enquiry.

11. The learned Standing Counsel has also strenuously contended that the Disciplinary Authority is not bound to accept every finding of the enquiry officer. Summing up the submissions, the learned Standing Counsel for the respondent company has stated that the order of the Disciplinary Authority, as was confirmed by the appellate authority, does not suffer from any legal infirmity; and as such, it cannot be interfered with in a judicial review.

12. Heard Sri B. Tara Sujatha, the learned counsel for the petitioner and the learned Standing Counsel for the respondents company, apart from perusing the record.

13. To appreciate the issue in its proper perspective, we may examine the impact

of the Rule 35.A, in conjunction with clause 4 of the letter of appointment dated 25.08.1995, on the termination of employment. In fact, the said clause 4 states that the appointment is terminable at the behest of either party without notice and without assigning any reasons whatsoever. In any event, Rule 35.A of the Rules on which heavy reliance has been placed by the learned Standing Counsel is as follows:

35.A Termination of employment:

The employment of any employee may be terminated by 3 months' notice or by payment of 3 months' Salary in lieu of notice. So also, any employee who is desirous of leaving the company's service shall give 3 months' written notice of his intention to resign from the Company's service or alternately, if the Company agrees, pay 3 month's Salary to the Company in lieu of the notice. However, Management has the right not to accept such a resignation if in the opinion of the Management, the circumstances so warrant, like inability of the Company to relieve as the individual is in charge of an important work, the pendency of disciplinary proceedings, vigilance enquiry, etc.

14. A plain reading of the above makes it clear that the management has right not to accept a resignation, if, in the opinion of the management, the circumstances so warrant. The circumstances illustratively may concern themselves with eventualities like the inability of the company to relieve an individual entrusted with important work, the pendency of disciplinary proceedings, vigilance enquiry.

15. Indeed, clause 4 of the appointment letter is to be read in harmony with the condition of termination of employment as provided in the Rules. As such, it is to be concluded that the respondent company does have the power to reject the resignation of the petitioner. Stated thus, we may now examine whether the conditions laid down in Rule 35.A are in existence in the present case. On 18.12.2002 the petitioner resigned from his job. In the resignation letter the petitioner clearly stated that he had to report for duty in the establishment of his new employer, the Government of A.P., on 23.12.2002. In terms of the appointment letter, the petitioner was required to put the respondent company on three months' notice or notice pay in lieu thereof. For the said purpose, in his letter of resignation, the petitioner requested the authorities to adjust the said amount from the terminal benefits due to him.

16. Despite the petitioner clearly stating that he had to join in the service of his new employer by a particular date and despite his request to give effect to his resignation immediately, the respondent company neither immediately nor at any point of time later informed the petitioner that it had any difficulty in accepting the resignation. I hasten to add that it does not mean that an employee has the privilege of unilaterally declaring his resignation, or for that matter, when it should come into effect. At any rate, it is for the management to show that there were any circumstances existing at the time of the petitioner offering his

resignation that there existed any of the circumstances as have been enumerated in Rule 35.A of the Rules, not to accept the resignation. More particularly, the said circumstance ought to be manifest in the communication of the management in response to the offer of resignation by the employee. Except stating that the petitioner was to recover certain amounts from one particular dealer, no other reason had been assigned why the resignation should not be accepted. In fact, there has been no particular communication emanated from the respondent company in response to the letter of resignation submitted by the petitioner, save the communication by the company after more than three months demanding the petitioner to perform the task of recovering the dues from a dealer.

17. Taking Rule 35.A into account, it could not be stated that the petitioner was in-charge of an important piece of work; nor could it be said that any disciplinary proceedings were pending, leave alone any enquiry by vigilance at the time of petitioner's resignation.

18. It leaves us to consider two vital aspects: Whether the petitioner's resignation has actually been accepted by the respondent company and whether the charge against the petitioner could be sustained on account of the alleged misconduct of the petitioner in causing financial loss to the respondents-Company. Insofar as the second charge is concerned, the enquiry officer did hold that the said charge of causing financial loss to the company was not proved. To fully appreciate the said issue, it is profitable to extract the summary of articles of charge framed against the petitioner. They are as follows:

2.1 The Memo of charges, inter alia, states that Shri V. Madhumohan, B. No. 13255, while functioning as Sales Officer, Nellore supplied fertilizers valued Rs. 14,45,000/- to M/s Venkiteswara & Co., Dekurupally on credit during November, 2002 exceeding the sanctioned credit of Rs. 12,00,000/-. Shri V. Madhumohan submitted resignation from the service of the Company on 18.12.2002 when an amount of Rs. 6,57,923/- was outstanding as dues from the said dealer towards unauthorized supply made by Shri Madhumohan. His resignation was not accepted as the said unauthorized supply of fertilizer and his failure to recover outstanding dues had caused pecuniary loss to the Company to the tune of Rs. 6,57,923/-.

2.2 Shri V. Madhumohan without waiting for any communication from the Management regarding acceptance of his resignation joined service under his Employer, the Department of Agriculture, Government of Andhra Pradesh. By the said act/omission Shri V. Madhumohan, violated Rule 4 (a)(i), (ii) and 14(a) of Fertilizers and Chemicals, Travancore Limited Employees" (Conduct, Discipline and Appeal) Rules for Managerial Personnel, 1977 and committed misconduct under Rule 7(a), (e) and (g) of the said Rules.

19. Insofar as the alleged financial loss is concerned, the findings of the enquiry officer are quite revealing. He has observed thus:

5.1.6 It is an undisputed fact that Company had ratified the issue of stock against transportation bill amount subsequently by adjusting the amount towards the dues against-credit supply. The value of stock issued to the dealer on credit is only Rs. 10 lakhs when the amount due to the dealer towards transportation bill is deducted from the total credit supply which in turn is within the approved selective credit limit of Rs. 12 lakhs. It is rightly contended by C.S.E. that the subsequent overdue is only due to default by the Dealer. It is evident from Exhibit P11 letter of P.W.3 that the Dealer was involved in a case of selling spurious fertilizer and was absconding since 18.11.2002.

5.1.7 In view of the above discussion of facts and circumstances, it is concluded that the violation of rules and procedure by C.S.E. while issuing stock to FACT dealer M/s. Venkateswara & Co. who was also Transport Contractor of the Company against pending transportation bill amount has been subsequently ratified by the Company.

5.3.1 It has been proved under issue "A" above that the violation of rules and procedure by C.S.E. while issuing stock to FACT dealer M/s. Venkateswara & Co. who was also Transport Contractor of the Company against pending transportation bill amount has been subsequently ratified by the Company. Therefore, he is not guilty of misconduct under Rule 7(a) of the FACT C.D.A. Rules.

20. The enquiry officer, however, concerning the other charges, held against the petitioner. Treating the petitioner's employment with the Government of A.P., as unauthorized absence vis-a-vis the respondent company, the enquiry officer has held that the petitioner was guilty of the misconduct of prolonged absence without leave.

21. When the resignation was sent on 18.12.2002, for the first time on 20.03.2003, the respondent company sent a communication to the present employer of the petitioner stating that his resignation had not been accepted since the petitioner had not cleared the outstanding dues in the territory under his control. In any event, the enquiry officer has clearly held that the said amount was duly adjusted from the receivables due to the said dealer. Thus, it emerges that the only reason for not accepting the resignation of the petitioner is that he had the duty of collecting the dues from the dealer, before recourse could be taken to adjusting the amounts from and out of the deposits of the dealer. The fact, however, remains that there is no pecuniary loss caused to the respondent company.

22. As has been adverted to earlier, the Disciplinary Authority has differed with the findings of the enquiry officer and held that even the first charge was proved. For the said purpose he has supplied the reason that the recovery of the amounts by set off or adjustment is the last resort and that that in itself would not absolve the petitioner of his duty to recover. In other words, once the very petitioner has admitted that he permitted the dealer to draw stock over and

above the sanctioned limit, it is per se misconduct. It is not, however, the case of the respondent company that the petitioner allowed the dealer to draw the stock in excess of the sanctioned limit with a mala fide or at least with a venal intention. The value of excess stock is said to be to a tune of about Rs. 4,00,000/-. The petitioner was conscious, as it emerged from the record, that by the time the stock was drawn the company itself owed certain amounts - more than the value of the excess stock - to the dealer. At any rate, usually the accounts of the dealers with the company are continuing in nature and any minor variations in stock position are usually adjusted conterminous with the financial year when the stock taking takes place.

23. As has already been adverted to, the sole reason that weighed with the respondent company not to accept the resignation - as an afterthought, I am afraid - was that certain amounts were due from the dealer and that the petitioner had a duty to recover them. Once it is established that the dues had already been recovered the said objection would not survive. Without any mala fide intention, perhaps with a view to promoting the business, if the petitioner had allowed the particular dealer to overdraw the stock very marginally, it could at best be treated as minor misconduct. In any event it is a peccadillo worthy of non-consideration.

24. The other contention that is to be addressed is whether the resignation has actually been accepted either expressly or by implication. In this regard, it is worth quoting the letter dated 04.02.2003 addressed to the petitioner by the respondent company. The said communication reads as follows:

Dear Sir,

This is to inform you that while forwarding your resignation letter S.R.M./Nellore had stated that there is an outstanding dues of Rs. 6.46 lakhs in your territory which is totally unsecured. The dues is not settled till this date by the party.

Hence you are requested to follow up with the dealer and arrange to collect the dues immediately. Please clear the dues of Rs. 6.46 lakhs before 20th February, 2003 failing which we will be constrained to take the matter with your present employer.

(emphasis added)

25. All along the respondent management has been aware that the petitioner has been working in the Government of A.P. After notifying the petitioner of its demand for collection of the outstanding amount from the dealer, the respondent company warns the petitioner that it would take up the matter with his present employer, if he failed to respond positively. Having acknowledged that the Government of A.P., is the petitioner's present employer, the respondent management betrays sufficiently clear indication that the resignation was accepted, at least by implication. It is a case of estoppel by conduct. In so far as the respondent company is concerned, the petitioner resigned from his post and

has been working with the Government of A.P. The respondent company has addressed its communication to the Government of A.P., i.e., the present employer of the petitioner. It even threatened the petitioner that it would take up issue against the petitioner with his present employer, if he failed to recover the dues.

26. Having stated thus, it still cannot be brushed aside that the petitioner indeed acted in a hasty manner. He has indeed had a self-declaration of resignation that it would come into force immediately on the very same day. As seen from the material available on record, it is clear that in the letter of resignation, the petitioner has candidly admitted that he has to put the respondent company on advance notice or in lieu thereof, he should compensate the company with three months' salary. He has in fact requested the management to adjust the said amount from and out of the terminal benefits due to him.

27. At this juncture, before proceeding further, it is apposite to consider the authorities the petitioner has placed reliance on. In *Vedaprakash Sarma (supra)*, the Supreme Court has stated that under the contract of service the issue of resignation is a right conferred on the employee, which is not dependent on the management's goodwill, and that the management cannot come into picture as the right is absolute on the expiry of 30 days, by which date the relationship comes to an end. I am afraid on the facts of the present case the ratio laid down in *Vedaprakash Sarma (supra)* may not have any relevance. In terms of the appointment letter and also Rule 35.A, the resignation is not automatic.

28. In *Krishna Murgai (supra)*, the Hon'ble Supreme Court has held as follows:

59. It is well settled that employee covenants should be carefully scrutinized because there is inequality of bargaining power between the parties; indeed no bargaining power may occur because the employee is presented with a standard form of contract to accept or reject. At the time of the agreement, the employee may have given little thought to the restriction because of his eagerness for a job; such contracts "tempt improvident persons, for the sake of present gain, to deprive themselves of the power to make future acquisitions, and expose them to imposition and oppression.

29. In fact, in the above judgment, the Hon'ble Supreme Court has taken judicial note of the fact that the employee always has a weak bargaining power and that he may be tempted, for the sake of the present gain, to deprive himself of the freedom of contract. Accordingly, their Lordships have concluded that the employee covenant should be carefully scrutinised. In other words, any benefit of doubt in its interpretation, should go to the employee.

30. Though resignation is deemed to have been accepted by the respondent company by implication, this Court is still of the opinion that the petitioner shall pay to the respondent company the notice pay, i.e., three months' salary in lieu of the advance notice.

31. For the aforesaid reasons, this court is of the considered opinion that the order of dismissal dated 02.07.2004 passed by the second respondent, as well as the order dated 09.01.2006 passed by the appellate authority confirming the order of disciplinary authority, is hereby set aside. Consequently, it is further declared that the petitioner resigned from his post on 18.12.2002 and the same stood accepted by the respondent company. Since the resignation was submitted without complying with the clause 4 of the appointment letter dated 18.12.2002, the respondent company is entitled to adjust or set off three months' salary from and out of the terminal benefits due to the petitioner. If for any reason the amount due to the petitioner is not sufficient for the said purpose, the balance amount, if any, should be paid by the petitioner as soon as a demand is made in that regard by the respondent company.

32. With the above observations, the writ petition stands allowed. No order as to costs. As a sequel, miscellaneous petitions, if any pending in this writ petition, shall stand closed.