

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
HYDERABAD**

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HONOURABLE SRI JUSTICE E.V.VENUGOPAL

WRIT PETITION No.11801 of 2017

&

WRIT PETITION No.10183 of 2018

Between:

WRIT PETITION No.11801 of 2017

T.Divya & Another

Petitioners

VERSUS

TSRTC, Rep. by its Managing Director
Bus Bhavan, Musherabad, Hyderabad
And Two Others.

Respondents

WRIT PETITION No.10183 of 2018

T.Prudhvi & Another

Petitioners

VERSUS

TSRTC, Rep. by its Managing Director
Bus Bhavan, Musherabad, Hyderabad
And Two Others.

Respondents

JUDGMENT PRONOUNCED ON: 28.02.2023

THE HON'BLE SRI JUSTICE E.V.VENUGOPAL

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be Marked to Law Reporters/Journals? : Yes
3. Whether His Lordship wishes to see the fair copy of the Judgment? : **Yes**

E.V.VENUGOPAL, J

*** THE HON'BLE SRI JUSTICE E.V.VENUGOPAL**

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Respondents

! Counsel for Petitioner : Sri V.Narasimha Goud

^ Counsel for the respondents : Sri Thoom Srinivas

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> HEAD NOTE:

? Cases referred

¹ 1994 Supp (3) SCC 755

² MANU/BH/2814/2018 dated 23.02.2018

HONOURABLE SRI JUSTICE E.V.VENUGOPAL

WRIT PETITION No.11801 of 2017

&

WRIT PETITION No.10183 of 2018

COMMON ORDER:

1 Heard Sri V.Narasimha Goud, learned counsel for the petitioner and Sri Thoom Srinivas, learned standing counsel for the respondents.

2 Since the point involved in both the writ petitions is intertwined, these two writ petitions are being disposed of by this common order.

3 W.P.No.11801 of 2017 is filed seeking to declare the impugned order dated 16.04.2015 and also the order dated 14.10.2015 treating the removal period as not on duty and deferring annual increment for a period of one year with cumulative effect as arbitrary. A consequential direction was also sought for granting all consequential benefits for the period from the date of removal till the date of death i.e. 16.04.2015 to 23.09.2015 by treating him as on duty.

4 W.P.No.10183 of 2018 is filed to declare the proceeding dated 04.11.2017 of the second respondent rejecting the case of the petitioner for appointment on compassionate grounds as illegal and arbitrary and consequently to direct the respondents to provide employment to the petitioner on compassionate grounds.

5 The learned counsel for the petitioner submits that the father of the petitioner by name T.Narsimulu was working in the respondents' Corporation as Conductor on regular basis from 27.05.1998. While being so, he was removed from service by order dated 16.04.2015 on the charge that he was absent for duties on 19.08.2014, 20.08.2014, 23.08.2014 to 25.08.2014, 03.09.2014, 06.09.2014 to 08.09.2014. Aggrieved by the said order dated 16.04.2015, Narsimulu preferred an appeal before the second respondent which was said to have been considered but the details were not available. While so, said Narsimulu died on 23.09.2015 leaving the petitioner and his sister as his legal heirs as the mother of the petitioner had expired in the year 2010. The petitioner made an application under Right to Information Act on 07.09.2016 before the Divisional Manager, Sanathnagar Division for the proceedings dated 14.10.2015. The Divisional Manager issued proceedings dated 01.10.2016 stating that no order copy dated 14.10.2015 is available. Thereupon, the petitioners filed W.P.No.43441 of 2016 and during the course of proceedings in that writ petition, the counsel for the respondents produced a copy of the order said to have been passed by the second respondent dated 14.10.2015, whereunder the punishment of removal imposed on the father of the petitioner was modified to the extent that he shall be reinstated into service but imposed the penalty of deferment of the annual increment for a period of one year with

cumulative effect, he should pay fresh security deposit and produce valid Conductor license. It was further directed that the period from the date of removal to the date of performance of first duty by him on reinstatement at the depot to which he is posted shall be treated as discontinuity in service for all purposes.

6 The learned counsel for the petitioner further submitted that in view of the above order dated 14.10.2015, W.P.No.43441 of 2016 was dismissed as withdrawn with liberty to file a fresh writ petition questioning the order dated 14.10.2015 passed by the second respondent and thereafter the present writ petition has been filed.

7 The learned counsel for the petitioner further submitted that the father of the petitioner sustained injury due to which he was constrained to be absent to duty and for the said injury he was treated in RTC hospital at Tarnaka and from there he was referred to NIMS hospital, Hyderabad. Thereafter he had undergone a surgery and he was treated as inpatient from 19.03.2015 to 04.04.2015. Hence he was on leave even during the charged period of nine days.

8 The learned counsel for the petitioner further submitted that while passing the impugned order, the third respondent has taken into consideration that the father of the petitioner was absent for 75 days during the year 2014 and that he was again absent even after issuing the final show cause notice of removal from service.

But for the said periods, the third respondent has not issued any charge sheet nor given any opportunity to explain the reasons as to why his father could not attend the duty on those days. Hence, the impugned order was in violation of principles of natural justice.

9 The predominant contention of the learned counsel for the petitioner is that the third respondent ought to have granted the continuity of service and other benefits for removal period instead of treating it as not on duty. It is his further contention that the period from 31.01.2015 to 07.05.2015 during which the father of the petitioner was sick was considered for removal from service but that period was not subject matter of charge memo. The charge memo hardly comes to 9 days only and for which no employer would impose the punishment of removal from service. The learned counsel for the petitioner relied on a decision of the Hon'ble apex Court in ***Union of India vs. Giriraj Sharma***¹ in support of his contentions. He also relied on the judgment of a Division Bench of the erstwhile High Court of Andhra Pradesh in W.A.No.1126 of 2009 dated 12.11.2009.

10 He further submitted that in view of the proceedings of the second respondent dated 14.10.2015 ordering reinstatement of the father of the petitioner into service, the petitioner in W.P.No.10183 of 2018 is entitled to employment on compassionate grounds.

¹ 1994 Supp (3) SCC 755

11 On the other hand, Sri Thoom Srinivas, the learned standing counsel for the respondents, would submit that the father of the petitioner was unauthorisedly absent to duty on 19.08.2014, 20.08.2014, 23.08.2014 to 25.08.2014, 03.09.2014, 06.09.2014 to 08.09.2014 without any intimation or prior sanction of leave, resulting in dislocation of operations and loss of revenue to the Corporation besides inconvenience to the travelling public. Hence a charge was framed in that regard to which he submitted his explanation. A departmental enquiry was conducted in accordance with law but he did not submit any sick certificate for the above period. Thereafter, the charge was held proved and hence he was removed from service by order dated 16.04.2015. The appeal preferred by the father of the petitioner was rejected by the Divisional Manager by order dated 03.08.2015. The father of the petitioner preferred a Review Petition dated 22.08.2015 before the second respondent. The second respondent, by order dated 14.10.2015, keeping in view the past service rendered by the father of the petitioner, took lenient view and ordered reinstatement but by duly imposing the penalty of deferment of annual increment cumulatively and that the period from the date of removal to the date of performance of first duty by him on reinstatement at the depot to which he is posted shall be treated as discontinuity in service for all purposes.

12 The vehement contention of the learned standing counsel is that since the father of the petitioner died during the pendency of the review proceedings, and since the second respondent passed the order without knowing the fact that the father of the petitioner died during the pendency of the review proceedings, the order dated 14.10.2015 of the second respondent could not be implemented and the said proceedings are ineffective and abated. In view of the same, reinstatement of the employee would not arise since the proceedings are passed against a dead person. He further submits that as the orders in the review petition could not be implemented the order of removal passed by the third respondent dated 16.04.2015 is subsisting.

13 The learned standing counsel further submitted that the petitioner ought to have approached the Labour Court for redressal of his grievance and since he has not availed such opportunity, the writ petition is liable to be dismissed.

14 He further submitted that since the father of the petitioner was removed from service, children of the removed employee are not eligible for the compassionate employment in the respondent Corporation. Hence the petitioner in W.P.No.10183 of 2018 is not entitled to the relief sought for.

15 In **Giriraj Sharma** case (1 supra) relied upon by the learned counsel for the petitioner, the Hon'ble Court at Para Nos.2 and 3 held as under:

2. Mr. Jain the learned Counsel for the appellant Union of India contended that the interpretation placed on Section 11(1) of the Central Reserve Police Force Act, 1949 (hereinafter called 'the Act') is not correct and it is on account of this erroneous understanding of the provision that the High Court quashed the order of dismissal. In support of his contention he invited our attention to a decision of the Rajasthan High Court reported in AIR 1965 Raj 140. He also relied on certain other decisions but it is sufficient to state that according to him the learned Judges of the High Court had committed an error in interpreting the said Sub-section. In our opinion it is not necessary for us to construe Sub-section (1) of Section 11 of the Act in the backdrop of the facts of the present case. Assuming Mr. Jain is right, we are of the opinion that so far as the present case is concerned the allegation is in regard to the incumbent having over-stayed the period of leave by 12 days. The incumbent while admitting the fact that he had over-stayed the period of leave had explained the circumstances in which it was inevitable for him to continue on leave as he was forced to do so on account of unexpected circumstances. We are of the opinion that the punishment of dismissal for over-staying the period of 12 days in the said circumstances which have not been contravened in the counter is harsh since the circumstances show that it was not his intention to willfully flout the order, but the circumstances force him to do so. In that view of the matter the learned Counsel for the respondent has fairly conceded that it was open to the authorities to visit him with a minor penalty. If they so desired, but a major penalty of dismissal from service was not called for. We agree with this submission.

3. In the result we see no merit in this appeal but we would modify the order of the High Court by stating that while we affirm the High Court's order quashing the order of dismissal and directing reinstatement in service with monetary benefits, it will be open to the department, if it so desires, to visit the respondent petitioner with a minor punishment. The appeal will stand disposed of accordingly with no order as to costs. If the reinstatement has not taken place thus far the department should reinstate him latest within two weeks from today.

16 In **State of Bihar Vs. Shanti Kumari**
{MANU/BH/2814/2018 dated 23.02.2018} the Patna High Court
 held as follows:

In our opinion while there would be no contest with the legal position in case where the death of a delinquent takes place in the midst of the disciplinary proceeding which would abate the disciplinary proceeding, but if the death takes place after the enquiry is concluded in the disciplinary proceeding and the matter is posted for orders or at the appellate stage, then the situation is different and there cannot be an abatement of disciplinary proceedings which has already attained finality. In such cases the right to sue survives and the legal heirs who wish to contest the finding of guilt in the punishment order passed by the Disciplinary Authority can pursue the appeal if already filed by the deceased delinquent or file appeal, in case he has deceased after passing of the order of penalty. In case while pursuing the appellate remedy the legal heirs are able to show that the matter would require reconsideration at the original stage of the disciplinary authority by remand, then the proceedings can be held abated, otherwise not.

The legal position as it stands is, that if a matter requires a remand to the Disciplinary Authority for proceeding afresh in the matter but the delinquent has deceased in the meanwhile, the disciplinary proceeding would abate as a whole. But if there is no procedural default by the Disciplinary Authority, the delinquent has been given opportunity to examine the evidence, both oral and documentary; and the order of penalty is to be tested on its merits by the Appellate Authority, then the death of the delinquent would not lead to abatement because the disciplinary proceeding has attained finality.

The provisions of Order 22 rule 1 of the Code of Civil Procedure read with Rule 11 thereof as well as section 394 of the Code of Criminal Procedure, are self-eloquent of the right to sue, subsisting in the legal heirs who are fully entitled to pursue the cause at the appellate stage for testing the legality and validity of the order passed by the original authority i.e. the Disciplinary Authority, in the present context."

17 Reverting to the facts of the case on hand, the father of the petitioner died during the pendency of the review proceedings. Since the factum of death of the father of the petitioner was not brought to the notice of the reviewing authority i.e. second

respondent herein, the second respondent passed the order dated 14.10.2015 as extracted hereinabove.

18 The facts of the case are identical to the facts and circumstances stated in Shanti Kumari case (supra). The proceedings before the disciplinary authority were culminated. Aggrieved by the same, the father of the petitioner preferred review before the appellate authority. Therefore, the contention of the learned standing counsel that the proceedings are abated would stand negated and the order of the second respondent would deem to be in force and issue of abatement does not arise and that the petitioners herein who are the legal representatives of the deceased T.Narsimulu are certainly entitled to pursue the proceedings.

19 The order of the disciplinary authority was modified to the extent that he shall be reinstated into service but imposed the penalty of deferment of the annual increment for a period of one year with cumulative effect; he should pay fresh security deposit and produce valid Conductor license. It was further directed that the period from the date of removal to the date of performance of first duty by him on reinstatement at the depot to which he is posted shall be treated as discontinuity in service for all purposes.

20 The contention of the learned counsel for the petitioner is that while passing the impugned order, the third respondent has taken into consideration that the father of the petitioner was

absent for 75 days during the year 2014 and that he was again absent even after issuing the final show cause notice of removal from service. But for the said periods, the third respondent has not issued any charge sheet nor given any opportunity to explain the reasons as to why his father could not attend the duty on those days as was observed in **Giriraj Sharma** case (1 supra). Hence, the impugned order was in violation of principles of natural justice and against the settled principles of law.

21 Article 311 (2) of the Constitution of India says that no such person shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed.

22 It is manifest that the father of the petitioner was not subjected to any disciplinary proceedings or inquiry with regard to the alleged unauthorized absence of 75 days, but an adverse inference has been drawn against him. It is not open to the disciplinary authority to take into account the previous unauthorized absence, which was not put to the employee and it was not made the subject matter of enquiry before relying upon the

same in the matter of imposition of punishment. Such procedure is in violation of principles of natural justice.

23 In that view of the matter, since the punishment inflicted upon the father of the petitioner was based upon absent to duty for certain period to which he was not put on charge, this Court is of the view that the respondents have no authority to impose such penalty on him without affording reasonable opportunity to him to defend or to establish his case. Further, the second respondent also passed the impugned order basing upon the order of the disciplinary authority.

24 In a situation where the delinquent dies, as in the present case, the issue is whether the doctrine of disproportionate punishment or which shocks the conscience of the Court can be invoked? Seen from the perspective of the dependents of a delinquent who died while pursuing his remedy, in my opinion, if the effect of any such punishment imposed on the delinquent is devastating in nature to the surviving members of the family, such a punishment can be said to be disproportionate and shocking to the conscience of the Court *qua*, the surviving family members of the delinquent.

25 The penalty imposed must be commensurate with the gravity of the misconduct, and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the

Constitution of India. Since in the present case the father of the petitioner though was reinstated into service, was imposed the penalties stated supra, which in my considered opinion are harsh and disproportionate to the gravity of the charge. The circumstances show that it was not his intention to willfully flout the order, but the circumstances force him to do so because of his ill-health.

26 Hence the matter requires reconsideration. However, since the father of the petitioner is no more, this Court deems it fit and proper to direct the respondents to treat the period from the date of removal to the date of reinstatement to be on duty for all purposes since had he been alive, he would have been entitled to all such benefits. Therefore, W.P.No.11801 of 2017 deserves to be allowed.

27 In view of the foregoing discussion, inasmuch a direction has been given for reinstatement of the father of the petitioner into service and since the father of the petitioner had expired presumably while in service, the petitioner in W.P.No.10183 of 2018 is entitled to employment on compassionate grounds.

28 Therefore, the proceedings dated 04.11.2017 of the second respondent rejecting the case of the petitioner for appointment on compassionate grounds is hereby set aside and the respondents are hereby directed to consider providing employment to the

petitioner in W.P.No.10183 of 2018 on compassionate grounds in terms of the regulations of the Corporation.

29 Accordingly, both the writ petitions are allowed. However, in the circumstances, there shall be no order as to costs.

30 Miscellaneous petitions if any pending in these two writ petitions shall stand closed.

E.V.VENUGOPAL, J.

Date: 28.02.2023

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