

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P. No.26493 OF 2019

Between:

Rahemat Ali

... Petitioner

And

**The Southern Power Distribution Co.
Of Telangana Ltd. and others**

... Respondents

JUDGMENT PRONOUNCED ON: 31.01.2023

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : yes
3. Whether Their Lordships wish to
see the fair copy of the Judgment? : yes

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

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> Head Note:

! Counsel for the Petitioner : Smt Ch.Sujatha

^Counsel for Respondents : Sri R.Vinod Reddy
Standing counsel for TSSPDCL

? Cases Referred:

1. (2012) 3 SCC 178
2. (2004) 4 SCC 560
3. AIR 1996 SC 484

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No. 26493 of 2019**

Heard the Learned Counsel for the Petitioner.

Heard the Learned Counsel on behalf of the Respondents.

2. This writ petition is filed to issue an appropriate order or direction more particularly a writ of Mandamus by declaring the orders passed by the 3rd respondent vide memo No.DEE/OP/HBG/ADM/ JAO/D.No.417, dated 10.05.2018 and confirmation order passed by 2nd respondent in the appeal vide memo No.SE/OP/HBG/DE(T)/PO/JAO/Admn/F.25/D.No.12/19 dated 19.01.2019 in removing the petitioner from service on the ground of unauthorised absence without considering the earlier orders passed by this Court as illegal, arbitrary, abuse of process of law and violation of principles of natural justice and contrary to rules and disproportionate to the gravity of the charges and set aside the orders passed by respondents 3 and 2 dated 10.05.2018 and 19.01.2019 by further directing the respondents to reinstate the petitioner into service with all consequential benefits.

3. **The case of the petitioner, in brief, is as follows:**

a) The petitioner was initially appointed as Watchman in the erstwhile APSEB in the year 1982. Basing on his seniority and eligibility, petitioner was promoted as Junior Lineman and later promoted as Assistant Lineman and the petitioner has rendered service in various capacities.

b) The petitioner applied for leave from 12.08.2001 to 22.08.2021 to visit holy place of Hazrat Ali Baba with his family members. The petitioner fell sick during his journey. Therefore, the petitioner's wife had taken him to his in-laws house at sangareddy, where the petitioner took treatment for Koun's Abdomen.

c) After recovering from ill-health, the petitioner made a representation on 18.08.2003 expressing his willingness to join duty by enclosing medical certificates. But the petitioner was not permitted to join duty for nearly three months.

d) The respondents instead of issuing reposting orders, issued a charge sheet dated 19.11.2003. On receipt of the said charge sheet, the petitioner submitted reply.

e) The enquiry officer submitted report on 12.04.2004, basing on which show cause notice dated 15.05.2004 was

issued. The petitioner submitted explanation to that effect. The 3rd respondent without considering the petitioner's requests issued orders on 20.08.2004 imposing penalty as deemed to have been resigned from service and seized to be in board employment under Regulation 28(3) of the then APSEB Service Regulation-I as adopted by TRANSCO/CPDCL. Thereafter, consequential orders were passed on 25.09.2004 communicating the imposition of penalty. Aggrieved by the said orders, the petitioner raised Industrial vide ID No.117 of 2009 before the Labour Court III, Hyderabad. But the Labour Court without considering the petitioner's contentions dismissed ID by award dated 03.02.2010.

f) The petitioner filed W.P.No.4049 of 2011 before the High Court and the same was allowed in part on 07.03.2017 holding that the petitioner is not entitled for any benefits for the period of absence i.e. 23.08.2017 to 13.08.2003 and the said period of absence is directed to be treated as dies non and further directed the forfeiture of back wages for the entire period of out of service.

g) Aggrieved by the same, the petitioner preferred W.A.No.1056 of 2017 before the Division Bench and the

Division Bench set aside the order dated 07.03.2017 passed in W.P.No.4049 of 2011 directing the respondents to reinstate petitioner into service with certain conditions and further permitted the department to initiate fresh disciplinary proceedings, de hors regulation 28(3) of the Regulations and complete the same within three months.

h) The Enquiry Officer was appointed and filed report. The 3rd respondent without considering the explanation of the petitioner issued final orders on 10.05.2018 removing the petitioner from service. Aggrieved by the same, the petitioner filed appeal and the same was rejected on 19.01.2019. Hence, this writ petition.

PERUSED THE RECORD :

4. The last 3 paras of the Memo No. DEE/OP/HBG/ADM/JAQ/D.No.417, dt. 10.05.2018 read as under :

Unauthorised absence is misconduct and it breeds indiscipline and causes serious inconvenience and hardship to the organization, such acts cannot be viewed lightly. He ignored the instructions of the higher authorities and continued in the same manner. Thus it constitutes habituation of unauthorized absence. This act of the incumbent, the organization is affected in collection of revenue and affects the services to prospective consumers. The said employee is negligent and careless to do the public service/employment.

After careful examination of the entire facts of the case, with the available records along with the explanation submitted by the delinquent employee to the show cause notice, it is found that the explanation submitted by Sri. Rahamath Ali, Ex-ALM is not up to the mark of satisfaction to consider his request. Therefore the undersigned has come to the final conclusion to impose the punishment as proposed in the show cause notice. Accordingly, his case has been referred to the concurrence committee for their concurrence vide reference 14th cited to implement the punishment as proposed in the show cause notice being a major penalty.

The concurrence committee after due verification of the case file Sri Rahamath Ali, Ex-ALM has come to a conclusion and issued report vide reference 15th cited, to concur with the decision of the Divisional Engineer Elec./OP/Habsiguda to impose the punishment of Removal from service against Sri. Rahamath Ali, Ex-ALM in terms of Regulation (Vii) of APSEB Discipline and Appeal Regulations as adopted by TSSPDCL for his unauthorized absence from duty w.e.f 01.08.2001 for a continuous period of more than one year.

Accordingly, it is hereby ordered that Sri. Rahamath Ali, Ex-ALM is Removed from Service in terms of Regulation 5 (vii) of APSEB Discipline and Appeal Regulations as adopted by TSSPDCL for his unauthorized absence from duties w.e.f 01.08.2001 for a continuous period of more than one year.

5. The final orders vide Memo No. SE/Op/HRG /DE(T)/PO/IAO/Adm/F.25/D.No.12/19, dated 19.01.2019 of the Superintendent Engineer (FAC) Operation Circle, Habsiguda, para 15 reads as under :

Para 15 : Unauthorized absence is misconduct and it breeds indiscipline and causes serious inconvenience and hardship to the organization, such acts cannot be viewed lightly. He ignored the instructions of the higher authorities and continued in the same manner many times in his entire service of 18 years. Thus it constitutes habituation of unauthorized absence. This act of the incumbent, the organization is affected in collection of revenue and affects the services to prospective consumers. The said employee is negligent and careless to do the public service/employment.

Hence, the undersigned has decided not to interfere with the orders passed by Disciplinary Authority in the case of Sri Rahamath Ali, Ex ALM as there are no merits in Appeal for consideration.

Accordingly, it is ordered that the Appeal preferred by Sri Rahamath Ali, ALM against the final orders is hereby rejected.

6. Enquiry Officer is appointed on 16.09.2017 vide Memo No.SE/Op/HBG/PO/Adm/F147(c)/D No.1155 /17. The charge framed against the Petitioner as extracted in the final orders dt. 10.05.2018 reads as under :

Sri Rahamath Ali, Ex-ALM is reported to have indulged in absconding from duties unauthorizedly w.e.f. 01.08.2001 onwards without taking prior permission or proper sanction of leave from the competent authority, which causes misconduct and there by contravened Regulation 4 (XXIV)(a) of APSEB Employees Conduct Regulations as adopted by TRANSCO/Discoms."

7. The enquiry report dt. 10.11.2017 refers to the deposition of Sri M.Laxminarayana, Ex Asst. Civil Surgeon/Government Hospital, Sangareddy, who during his oral enquiry deposed as follows :

"I, M.Laxminarayana, Ex-Asst. Civil Surgeon (Now Retired), regarding the allegation against Sri Rahamath Ali, I submit the following. From 23.08.2011 to 11.08.2003 for about 2 years treatment was given to Sri Rahamath Ali for Koch's Abdomen, which was complicated with hepatitis and Poly arthritis. Entire treatment was carried as out patient at his father in law's house, Sangareddy. After recovery on 11.08.2003, he was issued with fitness certificate as fit for duty from 12.08.2003 onwards, which was counter signed by Civil Surgeon, Dr K.Devaraj, District TB Officer."

8. The conclusion arrived at by the Enquiry Officer in the enquiry report that the charge of unauthorised absence with effect from 01.08.2001 onwards was established and proved and also concluded that after 18 years of regular service Petitioner's long absconding from duties from 01.08.2001 onwards is not intentional but non-intimation to the Department thereof was ignorance of law. The conclusion arrived at in the said enquiry report the Divisional Engineer/Enquiry Officer, TSSPTCL, Hyderabad reads as under :

"Conclusion :

*Sri Rahmath Ali, E.-Asst. Lineman of operation Division Habsiguda is reported to have indulged in absconding from duties unauthorizedly from 01.08.2001 onwards on medical grounds construed which caused misconduct and there by contravened regulation 4(xxiv)(a) of APSEB Employees conduct regulations as adopted by Transco/Discoms is established and therefore held proved. After a lapse of two years from 01.08.2001, on 18.08.2003 he approached the office headquarters and submitted his willingness dated 13.08.2003 along with a copy of medical certificate showing treatment period from 23.08.2001 to 11.08.2003 and a copy of fitness certificate showing his fitness from following day for re-admission into duty. As per departmental procedure, an enquiry was conducted on 29.03.2004 and was concluded on 13.04.2004 The D.E concerned issued a show cause notice dated 15.05.2004. The Delinquent replied to the notice on 25.06.2004 duly enclosing medical certificate and fitness certificate in original which was obtained from the Govt. Hospital Sangareddy. The DE/Operation/Habsiguda (Competent authority) issued final orders dated 20.08.2004 against Sri Rahmath Ali, Ex-ALM under service regulation 28(3) of APSEB employees Part-I and was acknowledged by him. **After 18 years of regular service, his long absconding from duties from 01.08.2001 onwards is not intentional but non intimation to the Department there of is ignorance of law.***

- 9. The paras 12 and 13 of the counter affidavit filed by Respondent No.3 read as under :**

Para 12 :

It is submitted that the unauthorized absence is misconduct and it breeds indiscipline and causes serious inconvenience and hardship to the organization, such acts cannot be viewed lightly. The petitioner ignored the instructions of the higher authorities and continued in the same manner. Thus it amount to habitual of unauthorized absence. The petitioner is negligent and careless in discharging his duties diligently. Accordingly

duly following the departmental procedure and after observing the above all aspects in detail and taking into consideration of merit and demerits of the case the unauthorised absence is held to be wilful and thus came to the final conclusion to impose the punishment of removal from service in terms of regulation 5 (vii) of APSEB Discipline and Appeal Regulations as adopted by TSSPDCL and the misconduct was held proved which attracts Regulation 6 (Xlvii) of APSEB Discipline and Appeal Regulations in the same manner. Accordingly final orders have been issued vide Memo No.417, dated 10.05.2018.

Para 13

In reply to para 9 it is submitted that aggrieved by the final orders dated 10.05.2018 the petitioner submitted appeal before the immediate appellate authority i.e. 2nd respondent. The appellate authority after taking into consideration all aspects with record available and service records of the petitioner held that unauthorised absence is misconduct and it breeds indiscipline and causes inconvenience and hardship to the organisation and hence, such acts cannot be viewed lightly. It was also held that the petitioner ignored the instructions of the higher authorities and continued to abscond many times in his entire service of 18 years which constitutes habitual unauthorised absence."

DISCUSSION AND REASONING :

10. A bare perusal of the charge as per the final orders dt. 10.05.2018 of the 3rd Respondent herein indicates that the Petitioner is absconding from duty unauthorizedly with effect from 01.08.2001, but curiously the impugned final orders dt. 10.05.2018 elaborately at page 8 and 9 refers to the unauthorized

absence of the Petitioner prior to 2001 ie., during certain days during the period 01.08.1987 onwards to 27.02.2000 for which admittedly as borne on record no charge had been framed against the Petitioner.

11. This Court opines that in the present case the Disciplinary Authority failed to prove that the absence is wilful since absence from duty without any application or prior permission may amount to unauthorized absence but it does not always mean wilful. There may be different eventualities due to which the employee may abstain from duty including compelling circumstances beyond his control like illness, accident, hospitalization, etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of government servant. In a Departmental proceeding, if allegation of unauthorized absence from duty is made, the Disciplinary Authority is required to prove that absence is wilful, in the absence of such finding the absence will not amount to misconduct. A bare perusal of the final orders dt. 10.05.2018 of the 3rd

Respondent herein clearly indicate that the Disciplinary Authority travelled beyond the charge and referred to the alleged absence of the Petitioner during certain days prior to the period 2001, in particular the period from 01.08.1987 to 27.02.2000, without there being any specific charge framed against the Petitioner for the Petitioner's alleged unauthorized absence prior to 01.08.2001, and concluded unilaterally that the Petitioner is habitual of unauthorized absence. The said conclusion arrived at is totally without any basis, without conducting any enquiry, without the Disciplinary Authority having arrived at a finding that the absence of the Petitioner is wilful during the period from 01.08.1987 to 27.02.2000 nor arriving at a finding that the absence of the petitioner is wilful from 01.08.2001 as per the charge.

12. A bare perusal of the conclusion arrived at by the enquiry officer in the enquiry report dt. 10.11.2017 very clearly held and observed that after 18 years of Petitioner's regular service Petitioner's long absconding from duties, from 01.08.2000 onwards is not

intentional but non-intimation to the department thereof is ignorance of law and therefore by virtue of the conclusion arrived at by the enquiry officer in his report it is very clear that the absence of the Petitioner is not wilful since the enquiry officer very clearly observed Petitioner's regular service of 18 years in his enquiry report and the Disciplinary Authority referring to Petitioner's alleged absence on certain days during the period from 01.08.1987 to 27.02.2000 without any specific charge framed against the Petitioner for Petitioner's alleged unauthorized absence during the said period passed the impugned orders and the same tantamounts to the Disciplinary Authority arriving at a unilateral conclusion without conducting any enquiry, in clear violation of principles of natural justice, that the Petitioner is habitual of unauthorized absence and the same is totally without any basis. Without any finding arrived at on merits by the Disciplinary Authority that the Petitioner's absence is wilful from the period 01.08.2001 and the Petitioner indulged in absconding from duties unauthorizedly with effect from

01.08.2001 onwards without taking prior permission or proper sanction of leave from the competent authority which causes misconduct, apparently the Disciplinary Authority went beyond the enquiry report dt. 10.11.2017.

13. This Court opines that the Appellate Authority i.e., the 2nd Respondent herein without application of mind independently, mechanically and unilaterally concluded that the petitioner is habitual of unauthorized absence vide its orders dt. 19.01.2019, simply reiterating the final orders of 10.05.2018 of the 3rd Respondent herein.

14. A bare perusal of the enquiry report also indicates that Sri M.Laxminarayana, Ex.Asst. Civil Surgeon, as having orally deposed that the petitioner underwent two years treatment from 23.08.2001 to 11.08.2003 for Koch's abdomen, which was complicated with Hepatitis and Poly Arthritis and further that the entire treatment was carried out as out patient at Petitioner's father-in-laws's house at Sangareddy and after recovery on 11.08.2003 the Petitioner was issued with Fitness

Certificate as fit for duty from 12.08.2003 onwards which was counter signed by Civil Surgeon Dr. K.Devaraj, District T.B. Officer. This Court opines curiously however, the Disciplinary Authority totally ignored the above referred oral enquiry and the deposition of Sri M.Laxminarayana.

15. The Apex Court in a Judgement reported in (2012) 3 SCC 178 in Krushnakanth B. Parmar Vs. Union of India & Another Paras 16, 17, 18, 19, 20, 21 and para 25 observed as under :

16. In the case of appellant referring to unauthorised absence the disciplinary authority alleged that he failed to maintain devotion of duty and his behaviour was unbecoming of a Government servant. The question whether 'unauthorised absence from duty' amounts to failure of devotion to duty or behaviour unbecoming of a Government servant cannot be decided without deciding the question whether absence is wilful or because of compelling circumstances.

17. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence can not be held to be wilful. Absence from duty without any application or prior permission may amount to unauthorised absence, but it does not always mean wilful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalisation, etc., but in such case the employee cannot be held

guilty of failure of devotion to duty or behaviour unbecoming of a Government servant.

18. In a Departmental proceeding, if allegation of unauthorised absence from duty is made, the disciplinary authority is required to prove that the absence is wilful, in absence of such finding, the absence will not amount to misconduct.

19. In the present case the Inquiry Officer on appreciation of evidence though held that the appellant was unauthorisedly absent from duty but failed to hold the absence is wilful; the disciplinary authority as also the Appellate Authority, failed to appreciate the same and wrongly held the appellant guilty.

20. The question relating to jurisdiction of the Court in judicial review in a Departmental proceeding fell for consideration before this Court in M.B. Bijlani vs. Union of India and others reported in (2006) 5 SCC 88 wherein this Court held:

"25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi- criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with."

21. In the present case, the disciplinary authority failed to prove that the absence from duty was wilful, no such

finding has been given by the Inquiry Officer or the Appellate Authority.

25. Taking into consideration the fact that the Charged Officer has suffered a lot since the proceeding was drawn in 1996 for absence from duty for a certain period, we are not remitting the proceeding to the disciplinary authority for any further action. Further, keeping in view the fact that the appellant has not worked for a long time we direct that the appellant be paid 50% of the back wages but there shall be no order as to costs.

16. The Apex Court in a Judgement reported in (2004) 4 SCC 560 in Sri Bagwan Lal Arya Vs. Commissioner of Police, Delhi & Others, in particular paras 12 and 14

observed as under :

PARA 12

The disciplinary authority without caring to examine the medical aspect of the absence awarded to him the punishment of removal from service since their earlier order of termination of appellant's service under Temporary Service Rules did not materialise. No reasonable disciplinary authority would term absence on medical grounds with proper medical certificates from government Doctors as grave misconduct in terms of Delhi Police (Punishment & Appeal Rules, 1980). Non-application of mind by quasi-judicial authorities can be seen in this case. The very fact that respondents have asked the appellant for re-medical clearly establishes that they had received applicant's application with medical certificate. This can never be termed as wilful absence without any information to competent authority and can never be termed as grave misconduct.

Para 14

Thus, the present one is a case wherein we are satisfied that the punishment of removal from service imposed on the appellant is not only highly excessive and disproportionate but is also one which was not permissible to be imposed as per the Service Rules. Ordinarily we would have set aside the punishment and sent the matter back to the disciplinary authority for passing the order of punishment afresh in accordance with law and consistently with the principles laid down in the judgment. However, that would further lengthen the life of litigation. In view of the time already lost, we deem it proper to set aside the punishment of removal from service and instead direct the appellant to be reinstated in service subject to the condition that the period during which the appellant remained absent from duty and the period calculated upto the date on which the appellant reports back to duty pursuant to this judgment shall not be counted as a period spent on duty. The appellant shall not be entitled to any service benefits for this period. Looking at the nature of partial relief allowed hereby to the appellant, it is now not necessary to pass any order of punishment in the departmental proceedings in lieu of the punishment of removal from service which has been set aside. The appellant must report on duty within a period of six weeks from today to take benefit of this judgment.

17. **The Apex Court in a judgment reported in AIR 1996 SC 484 between B.C.Chaturvedi vs. Union of India [(three Judges Bench)] observed as under:**

The question posed for consideration was as to whether the High Court/Tribunal can direct the authorities to reconsider punishment with cogent reasons in support thereof or reconsider themselves to shorten the litigation. In this case, at para 18, this Court has observed as under: -

"A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact- finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

18. Taking into consideration the law laid down by the Apex Court in the judgements referred to and discussed above (extracted above) and also taking into consideration the facts and circumstances of the present case which clearly indicate that the Petitioner had been removed from service unilaterally and the said punishment of removal from service imposed on the Petitioner is not only highly excessive and disproportionate but manifestly, arbitrary since the same had been inflicted upon the Petitioner without conducting any enquiry and without arriving at a

finding that the Petitioner absconded from duties unauthorizedly w.e.f., 01.08.2001 onwards wilfully as per the charge framed and issued to the Petitioner, the Writ Petition is allowed duly setting aside the orders passed by the 3rd Respondent vide Memo No.DEE/OP/HBG/ADM/JAO/D.No.417, dt. 10.05.2018 and confirmation order passed by the 2nd Respondent in Appeal vide Memo No.SE/Op/HBG/DE(T)/PO/JAO /Admn/F.25/D.No.12/19, dated 19.01.2019 and the Respondents are directed to reinstate the Petitioner into service with all consequential benefits within a period of one month from the date of receipt of the copy of the order. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stands closed.

SUREPALLI NANDA, J

Date: 31.01.2023

Note: L.R. copy to be marked

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