

**\*THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI**

**AND**

**THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO**

**+WRIT APPEAL No.581 OF 2023**

% 13-03-2024

# The Southern Power Distribution Company of Telangana Ltd.,  
and others

....Appellants

Vs.

\$ Rahemat Ali

.... Respondent

!Counsel for the appellants : Sri R. Vinod Reddy

Counsel for the respondent : Smt. CH. Sujatha

<Gist :

>Head Note:

? Cases referred:

<sup>1</sup> 2008 (8) SCC 469

<sup>2</sup> 2012(3) SCC 178

IN THE HIGH COURT FOR THE STATE OF TELANGANA  
HYDERABAD

\* \* \* \*

**WRIT APPEAL No.581 OF 2023**

Between:

The Southern Power Distribution Company of Telangana Ltd.,  
and others

....Appellants

Vs.

Rahemat Ali

.... Respondent

**JUDGMENT PRONOUNCED ON: 13.03.2024**

**THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO**

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

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**NAMAVARAPU RAJESHWAR RAO, J**

**THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI**  
**AND**  
**THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO**  
**WRIT APPEAL No.581 OF 2023**

**JUDGMENT:** *(Per Hon'ble Sri Justice Namavarapu Rajeshwar Rao)*

This Writ Appeal is filed aggrieved by the order passed by the learned Single Judge in W.P.No.26493 of 2019, dated 31.03.2023.

2. Heard Sri G. Vidya Sagar, learned Senior counsel, representing Sri R. Vinod Reddy, learned Standing Counsel appearing for the appellants and CH. Sujatha, learned counsel appearing for the respondent.

3. The brief facts of the case are as follows:-

i) The respondent herein joined the then Andhra Pradesh State Electricity Board as a Watchman on 08.10.1982, and was promoted to the post of a helper and further promoted to the post of Assistant Lineman on 17.08.1998. While so, the respondent was absent from duties from 01.08.2001. As he was continuously absent for more than one year, an enquiry was ordered vide Memo dated 14.11.2003. The Enquiry Officer after conducting enquiry, submitted his report holding that the charges are established. The Disciplinary Authority, vide order dated 20.08.2004 imposed punishment of deemed resignation from duties and ceased to be in the Board employment

w.e.f. 01.08.2001 as per Regulation 28(3) of APSEB Service Regulations Part-I. Aggrieved by the same, the respondent preferred an Industrial Dispute vide I.D.No.48 of 2007, which was renumbered as I.D.No.117 of 2009 on the file of Labour Court-III, Hyderabad, and the same was dismissed vide Award dated 03.02.2010 by confirming the final orders passed by the Disciplinary Authority. The respondent challenged the Award in I.D. No.117 of 2009, by filing W.P.No.4049 of 2011 before this Court.

ii) During the pendency of the Writ Petition, the respondent filed an affidavit stating that he would forego the back wages. Recording the same, this Court, vide order dated 07.03.2017 in W.P.No.4049 of 2011, directed the appellants herein to treat the period of absence i.e. 23.08.2001 to 13.08.2003 as *dies non* and his entire service, except the period from 23.08.2001 to 13.08.2003, to be counted for pension, gratuity and notional increments, and if any junior is promoted, the competent authority shall assess the suitability of the respondent for promotion, including his eligibility for grant of retrospective promotion, and if found suitable, he shall be granted other consequential benefits arising out of such retrospective promotion. Aggrieved by the same, the appellants filed W.A.No.1056 of 2017.

iii) The Division Bench of this Court, duly recording that unauthorised absence breeds indiscipline and causes serious

inconvenience and hardship to the organisation, set aside the part of the order of the learned Single Judge directing to reinstate the respondent with certain conditions. This Court further permitted the appellants to initiate fresh disciplinary proceedings *de hors* Regulation 28(3) of the Andhra Pradesh State Electricity Board Service Regulations (for short, 'the Regulations') and complete the same within three months from the date of receipt of a copy of the order. Pursuant to the same, the respondent was issued with a Memo dated 16.09.2017 and he submitted his explanation denying the charges. Thereafter, a departmental enquiry was conducted. Five witnesses were examined in support of the charges. The delinquent employee submitted his explanation to the charge sheet and no further points were added in his defence. The Enquiry Officer submitted his report on 10.11.2017, holding that the charge of absconding from duties unauthorizedly from 01.08.2001 onwards is in contravention of Regulation 4(xxiv)(a) of APSEB Employees Conduct Regulations, as adopted by the DISCOMs, is established and proved.

iv) Based on the said enquiry report a show cause notice, dated 02.02.2018, was issued proposing the punishment of 'removal from service', enclosing a copy of the enquiry report. The respondent was directed to submit his explanation within 15 days. He submitted his explanation on 19.02.2018. Thereafter, the Disciplinary Authority

i.e. Divisional Engineer (Elec.) (Operations), Habsiguda, by an order, dated 10.05.2018 imposed the punishment of removal from service under Regulation 5(vii) of APSEB Discipline & Appeal Regulations. Against the same, the respondent preferred an appeal, dated 05.07.2018. The appeal was rejected by the Superintending Engineer (O) Circle, Habsiguda, vide, order dated 19.01.2019. Challenging the orders of punishment, dated 10.05.2018, the respondent filed the present Writ Petition No.26493 of 2019 and this Court by an order, dated 31.01.2023 set aside the orders of the punishment of Appellate Authority and directed the appellants to reinstate the petitioner into service with all consequential benefits. Aggrieved thereby, the present appeal is filed by the appellants/S.P.D.C.L.

4. Learned Standing Counsel for the appellants contended that the learned Single Judge failed to appreciate the fact that absence from the duty is misconduct under the Conduct Regulations of the Appellant organisation and that the delinquent employee in his explanation to the charge sheet, admitted that he had applied for Earned Leave from 12.08.2001 to 22.08.2001 to visit holy place of Hazarat Hazi Ali Baba with his family and he fell sick and that he was under medical treatment and that he submitted his willingness to join duty on 13.08.2003. The explanation does not refer to any sanction of leave for the period from 12.08.2001 to 22.08.2001, or

that he made an application for extension of leave from 22.08.2001 onwards. Thus, the charge of absence from duty without permission is clearly established.

5. Learned Standing Counsel for the appellants further contended that the learned Single Judge failed to appreciate that there is no requirement of recording a finding that long absence is wilful when it is clearly established that the respondent was absent from 12.08.2001 to 13.08.2003 and the respondent did not submit any earned leave application. Further, the learned Single Judge ought to have considered the fact that the Enquiry Officer in his conclusion, held that the charge is established and therefore, held proven.

6. Learned Standing counsel for the appellants further contended that the reference to the statement of Sri. M. Lakshmi Narayana, Ex. Assistant Civil Surgeon, retired Government Civil Surgeon, that he advised the respondent to take treatment from his residence itself, and that the respondent was under treatment from 23.08.2001 to 11.08.2003 for "Koch's Abdomen", has no relevance to the charge alleged and established. Admittedly, the respondent was not admitted to any hospital as an inpatient during the said period for his treatment. Further, the sickness of an employee cannot be termed as a reason for incapacitating him from applying for leave or obtaining sanction of leave. In support of his contentions, learned

Standing counsel for the appellants relied upon the judgment of the Hon'ble Apex Court in ***State Of Punjab vs P.L. Singla***<sup>1</sup>, wherein it was held that unauthorized absence or overstaying beyond leave sanctioned is an act of indiscipline and where the employer treats it as misconduct, holds an enquiry which warrants a punishment, the Disciplinary Authority is empowered to impose the punishment depending on various aspects including the period of absence. The learned Single Judge failed to appreciate that in the present case, it is a proven misconduct of remaining absent to duties from 12.08.2001 to 13.08.2003 as admitted by the respondent in his explanation to the charge sheet, and that if the order of the learned Single Judge is implemented, it would be very burden to the department and the same has to be modified.

7. Learned Standing counsel for the appellants further contended that the learned Single Judge erred in referring to the Judgment of the Hon'ble Supreme Court in ***Krushnakanth B. Parmar vs. Union of India***<sup>2</sup>, and contended that the facts in the said case are different from the facts of the present case. The question which came up for consideration in the above judgment is whether the unauthorized absence from duties did tantamount to 'failure of devotion to duty' or behaviour unbecoming of a Government servant, and the learned

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<sup>1</sup>2008 (8) SCC 469

<sup>2</sup>2012(3) SCC 178



Single Judge failed to appreciate that in the present case, it is a proven case of misconduct, as the respondent admitted to have remained absent from 12.08.2001 to 13.08.2003. As such, the same has no application to the present case. Accordingly, prayed to set aside the order passed by the learned Single Judge in W.P.No.26493 of 2019, dated 31.01.2023, and allow the Writ Appeal.

8. On the other hand, learned counsel appearing for the respondent submits that the learned Single Judge, after hearing both sides and after considering the material on record, had rightly passed the impugned order and there are no reasons to interfere with the same. The learned Single Judge rightly appreciated the fact that the respondent was removed from the service unilaterally and that the punishment is highly excessive and disproportionate, as there is no finding against him that he had absconded from duties unauthorizedly w.e.f. 01.08.2001 onwards, and wilfully.

9. Learned counsel for the respondent further contended that the respondent still has 12 months of service to be rendered before attaining the age of superannuation and that he is willing to go on compulsory retirement, with effect from the date of removal, i.e., 10.05.2018, with all notional benefits, with a view to conclude the litigation process. Hence, there are no merits in the Writ Appeal and the same is liable to be dismissed.

10. This Court, having considered the rival submissions made by the learned counsel for the respective parties, is of the considered view that the respondent, in response to the show-cause notice dated 02.02.2018, stated as follows:

*“It is submitted that I was unable to submit the leave application nor obtained prior sanction of leave during the period of unauthorized absence but which is due to serious illness and there is no other intention behind it. I was not admitted in any hospital for inpatient treatment due to healing of disease takes long time. The treatment was taken as per the advise of the doctor and the doctor who attended the oral enquiry has categorically established this fact. The treatment would generally be taken as per the advise of the doctor and as per the advise, the treatment was taken as outpatient. In case of genuineness of my case it required to be examined, the disciplinary authority ought to have referred my case for genuineness of certificate, but the disciplinary authority has failed to do so and this fact has been brought to record during the oral enquiry by the enquiry officer during his cross examination with doctor.”*

11. Based on the Enquiry Report, it was not for the learned Single Judge to have reinstated the respondent with all consequential benefits, when such a relief was not granted to the respondent even in the first round of litigation, in W.P.No.4049 of 2011. The relevant portion of the said order reads as follows:

*“17. Subject to the treatment of the period mentioned as above as dies non and forfeiture of back wages for the entire period out of service, the petitioner is entitled to all other benefits, (i) pay fixation benefits notionally (ii) entire service of the petitioner except the period from 23.08.2001 to 13.08.2003, shall be counted for pension, gratuity and and notional increments; (iii) in the meantime, if any junior was promoted, as the petitioner had rendered reasonable amount of service prior to the order impugned, on restoration to service in the cadre of Assistant Lineman, the competent authority shall assess the suitability of the petitioner for his promotion including his eligibility for grant of retrospective promotion from the date of promotion of his immediate junior; and (iv) if the competent authority finds the petitioner to be suitable for such promotion, the petitioner is also entitled to claim other consequential benefits flowing out of such retrospective promotion. However, the petitioner is not entitled to any attendant benefits. It is made clear that it is not a case of exoneration of charges levelled against him, but on procedural lapses in taking action after conclusion of the disciplinary enquiry, the impugned order is set aside.”*

12. The learned Single Judge in the above order also categorically held that the relief granted to the respondent herein is merely on the grounds of procedural lapses, and with respect to the fact that the competent authority, as a quasi-judicial authority, cannot pass any other order nor can impose a punishment which is not prescribed in

the Service Regulations and noted that it is not an exoneration of the respondent from the charges framed against him.

13. The Division Bench of this Court, vide order dated 07.08.2017 passed in W.A.1056 of 2017, modified the order of the learned Single Judge in W.P.No.4049 of 2011, by observing as follows:

*“Unauthorised absence breeds indiscipline and causes serious inconvenience and hardship to the organization. Such acts cannot be viewed lightly. If, in the enquiry, it is found that there is no justifiable reason for an employee to be unauthorisedly absent, his services are liable to be terminated. Showing of undue sympathies in favour of such employees would cause serious damage to public interest. Therefore, we hold that the impugned order of the learned single Judge to the extent that it has directed reinstatement of the respondent with certain conditions cannot be sustained. While setting aside this part of the order of the learned single Judge, we permit the appellants to initiate fresh disciplinary proceedings, de hors Regulation-28(3) of the Regulations, against the respondent and complete the same within three months from the date of receipt of a copy of this order.*

*The Writ Appeal is, accordingly, allowed to the extent indicated above.”*

14. It was the categorical observation of the Division Bench that the respondent herein cannot justify his absence from duties for the period after 12.08.2001. Pursuant to the direction of the Division

Bench in the above order, fresh disciplinary proceedings were conducted. The Enquiry Officer held that the charges framed against the respondent were established and therefore, held proved during the enquiry. As a consequence of such enquiry, the appellants herein came to the conclusion that the long absence of the respondent from his duties from 01.08.2001 onwards without intimation to the department, was not intentional but due to ignorance of law.

15. Thus being the case, the learned Single Judge ought not to have reinstated the respondent with all consequential benefits. It is needless to say that the order of the Division Bench dated 07.08.2017 clearly stated that the order of the learned Single Judge in W.P.No.4049 of 2011 reinstating the respondent, cannot be sustained merely because of procedural lapses in taking action after the conclusion of the disciplinary enquiry. It therefore deemed it fit and proper to set aside the order to the extent of reinstatement of the respondent with certain conditions and consequently directed the appellants to conduct a fresh enquiry.

16. It is pertinent to note that the absence of the respondent is not for a period of one or ten days but for nearly two years. The respondent's version that he could not communicate to the department about his ill-health and the treatment which he

underwent, cannot be sustained. However, in view of the fact that the remaining service of the respondent is less than ten months, the ends of justice would be met if the order of the learned Single Judge is modified from reinstating the respondent with all consequential benefits to that of treating the respondent as compulsorily retired, in accordance with law.

17. In light of the aforementioned discussion, this Writ Appeal is liable to be disposed of by modifying the order of the learned Single Judge in W.P.No. 26493 of 2019, dated 31.03.2023 from reinstating the respondent with all consequential benefits to that of treating the respondent as compulsorily retired, in accordance with law.

18. Accordingly, this Writ Appeal is disposed of. No order as to costs.

Miscellaneous Petitions, if any, pending in this Writ Appeal, shall stand closed.

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**ABHINAND KUMAR SHAVILI, J**

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**NAMAVARAPU RAJESHWAR RAO, J**

Date:13.03.2024

**Note:** LR copy is to be marked

B/o  
BDR