

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.18808 OF 2006

ORDER:

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Heard and perused the records.

The present Writ Petition came to be filed seeking to call for records relating to the award in I.D.No.151 of 2003, dated 31.07.2004 on the file of labour Court, Godavarikhani and qash the same.

The short question that arises for consideration is whether the officer sub-ordinate to the complainant can conduct enquiry?

The facts in issue are as under:

The petitioner therein was appointed as driver in the year 1987 and his services were regularized on 01.07.1988. One Sri Nissar Ahmed, driver of Utnoor depot was booked to operate between Utnoor-Karimnagar-Hyderabad Hi-Tech service. On 24.03.2001 he along with Sri P.P.Singh, Conductor of bus bearing No.AP10Z9799, reached Karimnagar. There the petitioner took change over from Sri Nissar Ahmed, driver of Utnoor depot. While proceeding towards Hyderabad, it was observed that the petitioner was driving the bus in a zig-zag manner due to intoxication. A report was given by the Depot Manager, who was traveling in the bus to the Regional Manager, Adilabad which was marked as Ex.M2. The second respondent therein placed the petitioner under suspension and issued charge sheet. After conducting detailed enquiry, the petitioner was removed from service by an officer inferior to the complainant. The issue that was canvassed before the labour Court was that the enquiry conducted by the Assistant Manager, RM Officer, Adilabad, who is junior to the prime witness and the complainant is illegal and invalid.

The issue identical to the case on hand came before the Division Bench of the Kerala High Court in ***V.Abusali and Commandant and others***. In the said case, while dealing with an identical issue, a Division Bench while setting aside the judgment of the Single Bench, held as under:

“Following the aforesaid decision of the Supreme Court, we hold that the learned Single Judge was wrong in coming to the conclusion that the writ petitioner could not be permitted to raised the question of real likelihood of bias, as he did not raise the same during the course of the enquiry proceedings. Admittedly, the Inspector, who conducted the enquiry, was the immediate subordinate of the complainant in the case. The real likelihood of bias is writ large on the face of the enquiry. We, therefore, disagree with the view of the learned Single Judge and hold that the entire enquiry was vitiated. Therefore, W.A.No.811 of 1993 is allowed and the entire enquiry proceedings, including the penalty are quashed. This, however, will not preclude the authorities, if they so desire, to have a fresh enquiry conducted in accordance with law by a competent enquiry officer. While doing so, they will, however, consider whether at this distance of time, a fresh enquiry is to be conducted or not.”

In view of the judgment referred above, while holding the domestic enquiry as invalid, the labour Court referred the case to the respondents therein to conduct a fresh enquiry by appointing senior officer of the other depot than the principal witness.

Having regard to the facts in issue and in view of the judgment referred above, I see no reason to interfere with the findings arrived at by the labour Court. Infact, at the time of hearing, it has been brought to the notice of the Court that in the year 2009, another enquiry officer was appointed for conducting enquiry proceedings. Confirming the findings of the labour Court, the present Writ Petition is dismissed. No costs.

Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

26.11.2015

vhb