

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.10114 OF 2011

DATED : 09.09.2016

Between :

M/s.Madanapalle Spinning Mills Limited,
C.T.M.Madanapalle-517326,
Chittoor District,
Rep., by its General Manager, C.V.Ramana Murthy.
.. Petitioner

And

Industrial Tribunal-cum-Labour Court,
Rep., by its Presiding Officer, Ananthapur & another.
.. Respondents



This court made the following :

THE HON'BLE SRI JUSTICE P.NAVEEN RAO**WRIT PETITION No.10114 of 2011****ORDER :**

Petitioner challenges the Award dated 19.10.2010 passed by the Industrial Tribunal-cum-Labour Court, Anantapur (for short 'the Tribunal') in I.D.No.80 of 2006.

2. The facts in brief are as under :

The 2nd respondent-workman in the employment of petitioner absented from duties from 16.12.2002. A charge sheet dated 18.04.2003 was issued calling upon the 2nd respondent to submit his explanation on the allegation of long unauthorized absence. Since there was no response, paper publication of show cause notice was issued on 23.06.2003. On 21.08.2003 enquiry notice and order of suspension pending enquiry was issued and enquiry was conducted. 2nd respondent attended before the Enquiry Officer and pleaded that he fell sick. Therefore, he could not attend the duties. In support of his contention that he was sick petitioner produced medical report. Rejecting the contention of the 2nd respondent and the cause for absence, Enquiry Officer held the charge as proved. Based on the findings of the Enquiry Officer, 2nd respondent was imposed with punishment of removal from service by order dated 23.08.2004. The said order was published in the newspaper on 07.10.2004. Aggrieved by the order of termination from service, petitioner raised industrial dispute in I.D.No.80 of 2006. The Tribunal held that enquiry was not properly conducted and further held that punishment of removal

was excessive and issued further orders. Aggrieved thereby this writ petition is filed.

3. Heard Sri Vedula Srinivas, learned counsel for the petitioner. Neither the 2nd respondent is present in person nor appearance is entered on his behalf.

4. Learned counsel for the petitioner contends that unless the Tribunal holds that the disciplinary proceedings were not properly conducted and there was illegality in the disciplinary proceedings, the Tribunal cannot proceed with reference to the dispute against termination. In the instant case, the Tribunal did not hold that the enquiry was not properly conducted. However, the Tribunal went into the merits of the enquiry officer's report and made observations which are not borne out of record. No reasons are assigned by the Tribunal in support of its decision that the enquiry was not properly conducted and no reasons are assigned in support of its decision that the punishment awarded is excessive. He would further submit that while holding that the punishment is modified, no modified punishment was imposed and directed reinstatement with continuity of service and attendant benefits but back wages were denied. He therefore, submits that the Award of the Tribunal is not sustainable in law and is liable to be set aside.

5. The Tribunal in Para No.10 of the Award observes that " as seen from the enquiry proceedings, it is noticed that at the time of enquiry proceedings Union Office Members created Galata (Disturbance). A duty is cast upon the Management to conduct enquiry in a congenial atmosphere but the enquiry proceedings were in disturbed way so proceedings of 20.09.2003 were

deferred.” The Tribunal further observes that 2nd respondent submitted medical certificate for his ill-health but the said certificate is not found place in the records of the Management.

6. As seen from the Award no witnesses were examined. The Tribunal has not assigned reasons as to how it has come to a conclusion that Union Office members created disturbance and that enquiry was postponed in the absence of congenial atmosphere.

7. A perusal of the enquiry report does not disclose any such developments. On 21.08.2003 notice of enquiry was issued to workmen to attend before the enquiry officer on 20.09.2003 but on that day the petitioner did not attend. The enquiry was conducted on 20.09.2003, 01.11.2003, 15.11.2003 and 06.03.2004. Thus, the observations of the Tribunal that there was disturbance and the enquiry was postponed is not based on record.

8. As rightly pointed out by the learned counsel for petitioner the Tribunal did not record a finding that the proceedings initiated against the 2nd respondent were not in accordance with law and therefore, termination is illegal. The Tribunal proceeds further and holds that the punishment imposed is excessive.

9. On the aspect of observations of the Tribunal that the punishment was excessive and disproportionate, learned counsel for the petitioner submits that petitioner-factory sustained huge losses and hence stopped operations. At that stage there was a settlement between workmen and the petitioner-factory. As per the settlement, the workers agreed to work with reduced wages and also agreed to cooperate in giving better output. Around 450

workers left service who were not willing to work on the terms agreed upon. He would further submit that absence of workmen caused lot of inconvenience to the petitioner and in order to attend to the work of factory, petitioner had to resort to engage badli workers on payment of high remuneration. When the factory was sustaining losses, it cannot afford to pay higher wages to others in the absence of a regular employee. In view of the peculiar circumstances, long absence of the 2nd respondent was viewed as a grave misconduct, more so, when there was a settlement arrived at and workers have agreed to work sincerely to give better output.

10. This stand of the petitioner management is not controverted. The Tribunal has not assigned reasons in support of its observations that punishment of removal is excessive.

11. In a given case, unauthorised absence can result in imposing of punishment of removal. In the facts of this case, as contended by learned counsel for the petitioner that the factory was sustaining losses, absence for four months before issuing charge sheet and by the time he was placed under suspension it was more than eight months, cannot be said as a minor lapse on the part of the 2nd respondent and it cannot be said that the punishment of removal is excessive. The Tribunal also erred in not even imposing less severe punishment, but straight away ordered for reinstatement with continuity of service and attendant benefits which would mean that all the benefits were granted to the 2nd respondent except denying the back wages for the period of out of service.

12. This Court passed orders on 15.04.2011 suspending the Award passed by the Tribunal subject to compliance of Section 17 (b) of the Industrial Disputes Act. Learned counsel for the petitioner submits that the 2nd respondent did not file affidavit as required. Therefore, the wages were also not paid. 2nd respondent has never reported before the petitioner and his whereabouts are also not known. Thus, 2nd respondent is neither receiving wages nor working with petitioner.

13. For all the aforesaid reasons, the Award of the Tribunal is not sustainable and is liable to be set aside. Accordingly, the writ petition is allowed setting aside the Award dated 19.10.2010 passed by the Tribunal in I.D.No.80 of 2006. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

9th September, 2016
Rds

P.NAVEEN RAO,J