

THE HON'BLE SRI JUSTICE S.V.BHATT

W.P.No.3701 of 2006

ORDER:

The petitioner prays for Writ of Certiorari to call for the records leading up to and inclusive of Award, dated 24-08-2005 in I.D.No.315 of 2002 on the file of the Industrial Tribunal-cum-Labour Court, Ananthapur and quash the same as illegal.

Depot Manager, APSRTC, Kalyanadurg, Ananthapur District is the petitioner. The 2nd respondent, at the time of termination of his services, was working as Cleaner in the petitioner depot. The cause of action for terminating 2nd respondent from service is for alleged unauthorized absence between 01-02-2000 and 21-02-2000. On 21-07-2000, petitioner terminated the services of 2nd respondent as Cleaner. The 2nd respondent raised dispute under Section 2-A (2) of the Industrial Disputes Act, 1947, challenging the termination proceedings, dated 21-07-2000. The Tribunal allowed the application directing reinstatement into service and allowed continuity of service but confined the relief of backwage to 50%. Hence, the writ petition.

Mr.A.Rama Rao appearing for petitioner challenges the award impugned in the writ petition on the ground that the order of reinstatement is illegal, as the Tribunal has not taken note of Exs.M-3 to M-10 particularly failure to consider the admission of 2nd respondent on absence to duty renders the award perverse

and liable to be set aside. He places reliance upon *DIVISIONAL CONTROLLER, N.E.K.R.T.C. Vs. H.A.M.A.R.E.S.H*¹.

Counsel appearing for 2nd respondent contends that the evidence, if any, can be looked into by the competent authority, if the enquiry is conducted by a person having authority to do so and in the case on hand, the enquiry was conducted by Superintendent and the statement contained in Ex.M-5 was recorded by Superintendent. However, the domestic enquiry was ordered to be conducted by the Superintendent (Personnel). The finding of fact recorded by the Tribunal is that there is no proof of recording statement Ex.M-6 in the presence of 2nd respondent or opportunity was afforded to 2nd respondent to cross-examine the deponent. The enquiry officer's report was not submitted to 2nd respondent. The enquiry, if any, is not in accordance with the procedure stipulated in this behalf. It is required to be noted that these submissions of 2nd respondent are substantially based upon the plea raised before the Industrial Tribunal, which found favour with the Industrial Tribunal while passing the award impugned in the writ petition.

I have perused the award impugned in the writ petition and made note of the contentions urged by learned counsel appearing for both parties.

On 28-02-2006, this court granted stay of back wages and counsel for petitioner submits that 2nd respondent has already reinstated into service.

¹ (2006) 6 Supreme Court Cases 187

The challenge to Award impugned in the writ petition is not re-stated, for brevity, it would suffice to note that the challenge to award impugned in the writ petition is prima facie untenable, for the findings recorded by the Tribunal are on the lack of authority to conduct enquiry and the procedure followed by the Enquiry Officer in conducting disciplinary enquiry was illegal. The further finding is whether the enquiry officer's report was communicated to 2nd respondent or not. As the petitioner could not and did not point out any infirmity, much less perversity on the findings recorded by the Tribunal, this court considers it convenient to extract the reasoning and findings of the Labour Court from the award impugned in the writ petition.

6) There is no record whether the respondent had ordered for conducting domestic enquiry by the Superintendent (Personnel) but Ex.M-5 statement reveals that the statement of the petitioner was recorded by the said Superintendent. There is also another statement of the said Assistant Mechanical Foreman Ex.M-6 which does not show that it was recorded in the presence of the petitioner and that the later was given any opportunity to cross examine him.

7) After the said Superintendent submitted enquiry report Ex.M-7 dated 26-06-2000, the petitioner was not given any opportunity to submit any remarks/objections much less there is record that the copy of the said enquiry report was furnished to the petitioner. The said enquiry itself appears without any procedure being adopted and there is also no record that a enquiry notice was sent to the petitioner calling upon him to attend that Enquiry. The Enquiry itself is illegal besides the principles of natural justice denied to him. There was no fair play in conducting the enquiry and also

denied the opportunity to put forth his defence before the Enquiry Officer.

8) The respondent also has not produced the leave record of the petitioner to verify whether the petitioner had exercised any leave or any leave is available to his credit. When the petitioner was absent to his duties due to ill-health as found in his explanation Ex.M-2 and if found genuine case, ought to have been granted leave, instead straight away issued charge sheet for the absence for 20 days.

9) Under the above circumstances since held the domestic enquiry as without procedure, no principles of natural justice applied and no sufficient opportunity given to the petitioner besides no fair play to the order of removal of the petitioner from service issued by the respondent has to be set aside and ordered for reinstatement into service with continuity of service, attendant benefits and also 50% of backwages. The reason for not granting the other 50% of backwages is due to the reason that he was out of service may be it so due to the removal order issued by the respondent.

10) In the result, the petition is allowed partly. The order of removal of the petitioner from service issued by the respondent in his proceedings dated 21-07-2000 as confirmed by the Deputy Chief Mechanical Engineer and Regional Manager respectively is hereby set aside. The petitioner is ordered to be reinstated into service by the respondent within one month from the date of publication of the Award. He shall be entitled for continuity of service, attendant benefits and 50% of backwages and the said backwages shall be paid by the respondent to the petitioner within same period of one month. Award is passed accordingly."

After perusing the findings recorded by the Tribunal, this court is of the view that the challenge to the award impugned in the writ petition is not based on factual consideration, which was

accepted by the Tribunal. It is no doubt true that if a charge is not only proved before the disciplinary enquiry, but is also established before the Tribunal, and still if reinstatement is ordered, then the decision relied upon by the petitioner can be considered and examined.

But, in the case on hand, the findings recorded by the Tribunal are that the petitioner failed to prima facie show that the authority, who conducted disciplinary enquiry was not the authority authorized by the petitioner and that the statement under Ex.M-5 was recorded in the presence of 2nd respondent and opportunity was afforded to 2nd respondent to cross-examine the said witness etc. Unless and until illegality or patent irregularity is pointed out on the findings recorded by the Tribunal, this Court is of the view that challenge to award is unsustainable. The decision relied upon by petitioner is distinguishable and the distinguishing circumstances are already adverted to.

The writ prayer fails and, accordingly, the writ petition is dismissed. No order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

S. V. BHATT, J

Dt: 22-08-2016
Prv

THE HON'BLE SRI JUSTICE S.V.BHATT



WRIT PETITION No.3701 of 2006

22-08-2016

Prv

