

HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

Writ Petition No.21959 of 2007

ORDER:

As none appeared for the 2nd respondent-workman on 11.11.2016, the Writ Petition was directed to be listed 'for orders' today. Even today, neither is the learned counsel for the 2nd respondent-workman present nor is there any representation on his behalf. Heard Sri R.Vinod Reddy, Learned Counsel for the petitioner.

This Writ Petition is filed against the award passed, by the Industrial Tribunal-cum-Labour Court, Warangal, in Industrial Dispute No.74 of 2005 dated 23.11.2006. The 2nd respondent-workman invoked the jurisdiction of the Tribunal under Section 2-A(2) of the Industrial Disputes Act, 1947 ("the Act" for short), questioning the punishment of removal from service imposed on him by his employer by order dated 28.12.2004. He requested the Tribunal to direct the respondents to reinstate him into service with continuity of service, back wages and all other consequential benefits. The charges levelled against the 2nd respondent-workman, pursuant to his being placed under suspension on 11.09.2003, were that he had laid an unauthorized "S" phase LT line of 5 poles to one Sri Ch. Raghavaiah from the existing "S" phase transformer (15 KVA) line, and had received a bribe of Rs.2,000/- for shifting of his service. An enquiry officer was appointed and a charge memo dated 28.11.2003 was issued to him. An enquiry was

conducted, and the enquiry officer in his report held the 2nd respondent-workman guilty of the charge. The 2nd respondent-workman was ultimately removed from service on 28.12.2004. He sought a review of the order, but to no avail. He, therefore, invoked the jurisdiction of the Tribunal.

While the petitioner herein claims to have entered appearance, they were set *ex parte* as no counter-affidavit was filed till 25.11.2005. The matter was thereafter posted for the 2nd respondent-workman's evidence, he was examined through affidavit, Exs.W-1 to W-8 were marked, and the Industrial Dispute was adjudicated on merits.

Section 11-A of the Act stipulates that, where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Tribunal for adjudication, and, in the course of adjudication proceedings, the Tribunal is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct re-instatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require.

The procedure prescribed under Section 11-A of the Act ought to have been followed by the Tribunal. The procedure contemplates a preliminary adjudication of the validity of the domestic enquiry; and it is only after the validity of the domestic

enquiry is decided, and the enquiry proceedings are held to be vitiated for violation of principles of natural justice, can the Tribunal, in the exercise of its power under Section 11-A of the Act, permit the workman to adduce evidence afresh; and it is open for the Tribunal, thereafter, to re-appreciate the evidence on record, and determine the appropriate punishment to be imposed on the workman. A bare perusal of the award shows that the Tribunal failed to adjudicate the validity of the domestic enquiry pursuant to which the 2nd respondent-workman was removed from service. I consider it appropriate, in such circumstances, to set aside the award of the Tribunal, and remand the matter for its consideration afresh and in accordance with law.

As the dispute relates to the year 2005, and more than eleven years have since elapsed, the Tribunal shall hear and decide the Industrial Dispute with utmost expedition, and pass an award afresh in accordance with law at the earliest and, in any event, within four months from the date of receipt of a copy of this order.

While admitting the Writ Petition on 12.07.2007, the petitioner herein was directed to comply with the provisions of Section 17-B of the Act. The petitioner shall, till an award is passed afresh by the Industrial Tribunal, continue payment of wages under Section 17-B of the Act to the 2nd respondent-workman.

The Writ Petition is, accordingly, disposed of. The miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

RAMESH RANGANATHAN, ACJ.

Date:25.11.2016.

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