

THE HON'BLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION No.34501 OF 2011

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ORDER:

This writ petition, filed under Article 226 of the Constitution of India, challenges the award dated 06.09.2011 passed by the Labour Court-III, Hyderabad in I.D.No.45 of 2010.

2. Heard Sri V.Narasimha Goud, learned counsel for the petitioner and Sri A.Ravi Babu, learned Standing Counsel for the respondent – Telangana State Road Transport Corporation.

3. The petitioner herein joined in the respondent Corporation as a Conductor in the year 1996 and his services were regularised with effect from 01.08.1997. The first respondent – Depot Manager issued a charge sheet on 14.10.2009, framing the following charges:

1.“For having collected Rs.42/--021/- each and issued tickets No.244/2301155 to 156 of Rs.19/- den. E.2 and 767/351353 to 356 of Rs.1/- den. E.4 to the passengers boarded the bus at Uppal and found alighting at Y.Gutta, in which the ticket No.244/2301155 & 156 of Rs.19/- deno. Tickets E.2 were earlier sold out in 15.30 trip and accounted in Star document No.069/0411570 against stage No.14 i.e., reissue of used tickets and defrauding the revenues of the Corporation which constitutes misconduct under Reg. 28(vi-a) & (xxxii) of APSRTC Employees (conduct) Reg.1963”.

2. “For having not cooperated with TTIs and provoked the passengers against the TTIs which constitutes misconduct under Reg.28(xxxii) of APSRTC, Employees (Conduct) Reg.1963”.

4. In response to the said charge sheet and the charges contained therein, the petitioner submitted his explanation on 19.10.2009. Thereafter, an Enquiry Officer was appointed and he submitted his report and on 23.07.2010 the first respondent - Disciplinary Authority removed the petitioner from service. After unsuccessfully availing the remedies of appeal and review, the petitioner herein raised Industrial

Dispute No.45 of 2010 on the file of the Labour Court-III, Hyderabad under Section 2-A(2) of the Industrial Disputes Act, 1947. The learned Presiding Officer framed the following two points for consideration basing on the material available.

1. Whether charge No.1 framed against the petitioner with regard to reissue of tickets 244/230155 to 156 of Rs.19/- den. E.2 were earlier sold out in 15.30 hours trip and accounted in STAR document No.069/0411570 against stage No.14 or not?
2. Whether the punishment imposed against the petitioner is disproportionate to the gravity of the offence? If so, to what relief the petitioner is entitled?

5. The Labour Court, by way of an award dated 06.09.2011, dismissed the said industrial dispute. Calling in question the validity and legal sustainability of the said award passed by the Labour Court, the present writ petition came to be filed.

6. It is contended by the learned counsel for the petitioner that the questioned award is erroneous, contrary to law and violative of Article 14 of the Constitution of India besides being opposed to the very spirit and object of the provisions of the Industrial Disputes Act and A.P.S.R.T.C. (C.C.&A.) Regulations, 1967. It is also submitted by the learned counsel that the Labour Court grossly erred in passing the award straightaway without deciding the validity or otherwise of the domestic enquiry as a preliminary issue. It is further contended that without giving any proper opportunity as stipulated under the Regulations and in deviation to the principles of natural justice, the services of the petitioner were dispensed with. In support of his submissions and contentions, learned counsel for the petitioner places reliance on the judgment of the Hon'ble Apex Court in **The Cooper Engineering Ltd. v. P.P.Mundhe**^[1].

7. In the above background, now the issue that emerges for consideration of this Court is whether the impugned award is in

accordance with law and whether the same is sustainable and tenable?

8. As evident from the material available before this Court, the principal contention advanced by the learned counsel for the petitioner is that without deciding the validity of the domestic enquiry, the learned Presiding Officer proceeded with the adjudication of the industrial dispute and passed the impugned award. According to the learned counsel for the petitioner, the same is in contravention of the law laid down by the Hon'ble Apex Court in **The Cooper Engineering Ltd.'s** case (supra). Therefore, it would be appropriate to refer to the principle laid down in the said judgment of the Hon'ble Apex Court. In the said decision, the Hon'ble Apex Court in paragraph No.22 held as under:

“We are, therefore, clearly of opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication the Labour Court should first decide as a preliminary issue whether the domestic enquiry has violated, the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer there will be no difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary issue. On that decision being pronounced it will be for the management to decide whether it will adduce any evidence before the Labour Court. If it chooses not to adduce any evidence. It will not be thereafter permissible in any proceeding to raise line issue. We should also make it clear that there will be no justification for any party to stall the final adjudication of the dispute by the Labour Court by questioning its decision with regard to the preliminary issue when the matter, if worthy, can be agitated even after the final award. It will be also legitimate for the High Court to refuse to intervene at this stage. We are making these observations in our anxiety that there is no undue delay in industrial adjudication.”

9. In the instant case, the application filed before the Labour Court under the provision of Section 2-A(2) of the Industrial Disputes Act, which is placed before this Court as a material paper along with the

writ petition candidly discloses that the petitioner herein disputed the very validity of the enquiry proceedings undertaken by the enquiry officer. As per the law laid in the above referred judgment, it is obligatory and mandatory on the part of the Labour Court to decide the validity of the domestic enquiry as a preliminary issue. In the instant case, such exercise by the Labour Court is conspicuously absent. In view of the same, this Court is of the considered opinion that the adjudication undertaken by the Labour Court without being preceded by any decision on the validity of the domestic enquiry cannot be sustained in the eye of law and as such the matter requires reconsideration.

10. For the aforesaid reasons, the Writ Petition is allowed, setting aside the award dated 06.09.2011 passed by the Labour Court-III, Hyderabad in I.D.No.45 of 2010 as notified vide G.O.Rt.No.1612, Labour Employment Training and Factories (Lab.I) Department, dated 10.10.2011 and consequently I.D.No.45 of 2010 stands restored to file and the Labour Court shall dispose of I.D.No.45 of 2010 in the light of the principles laid down in the above judgment after giving opportunity to all the stakeholders.

11. Miscellaneous petitions pending consideration, if any, in the Writ Petition shall stand closed in consequence. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 22.06.2016
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[\[1\]](#) AIR 1975 SC 1900