

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE G.SHYAM PRASAD

**Writ Appeal Nos.1059, 1067 and
1119 of 2015 and 1348 of 2016**

Common Judgment: *(per V.Ramasubramanian, J.)*

All these 4 writ appeals are filed against a common order passed by the learned single Judge in a batch of 4 writ petition, which arose out of the awards passed by the Labour Court-I, Hyderabad.

2. We have heard Mr. N.Jaya Surya, learned counsel representing Sri T.Venkat Raju Goud, learned counsel appearing for the Management of the Andhra Pradesh State Handloom Weavers Cooperative Society Limited, Hyderabad, which is the appellant in two writ appeals (W.A.Nos.1059 of 2015 and 1348 of 2016) and Mr. M.Pitchaiah, learned counsel appearing for the Workman, who is the appellant in two writ appeals (W.A.Nos.1067 and 1119 of 2015).

3. Since the 2 writ appeals are by the Management and 2 writ appeals are by the Workman, we shall refer to the parties only as workman and the management rather than as appellant or respondent.

4. The workman was employed as the Assistant Manager in the A.P. State Handloom Weavers Cooperative Society Ltd. On 14-11-1991, a charge memo was issued, containing 5 charges which read as follows:

“Charge No.1: That he has caused deficit in stocks to the extent of Rs.4,02,973.10 at Vijayawada Sales Emporium No.2 and misappropriated the funds of the Apex Society along with other staff of the Sales emporium, thereby committed gross misconduct under special Bye-Law No.45(XI).

Charge No.2: That he has disobeyed the lawful and reasonable orders of the Managing Director of the Apex Society by absenting himself from duty during stock verification.

Charge No.3: That he has acted prejudicially to the interest of the Apex Society by giving relief letter on 31.8.1990 addressed to the Divisional Marketing Officer, Vijayawada under copy to Sri Rambabu, Asst. Salesman whose leave application is dt.1.9.1990.

Charge No.4: That due to his organized action, the Apex Society sustained huge loss.

Charge No.5: That he has misused the powers entrusted to the post of the Asst. Manager, Vijayawada S.E. No.2 by keeping huge stocks.”

5. An enquiry followed in which the workman was held guilty of the charges. Therefore, by an order dated 18-9-1994, a punishment of dismissal was imposed.

6. The workman raised an industrial dispute in I.D.No. 33 of 1997 on the file of the Labour Court-I, Hyderabad. The Labour Court, recorded a preliminary finding on 9-2-1999 that the domestic enquiry was vitiated. Therefore, both sides were permitted to adduce evidence.

7. The workman examined himself as WW-1 and filed 6 documents including the judgment of the criminal court and the judgment in criminal appeal as Exx.W-1 and W-2. The

management examined a Senior Assistant as MW-1 and filed 10 documents.

8. Thereafter, the Labour Court passed an award dated 27-7-2000, holding that charge-1 which is grave in nature cannot be held proved for want of specific details regarding apportionment of responsibility between 4 employees, all of whom were alleged by the management to be guilty of the charge. But the Court held charges 2, 3 4 and 5 to have been proved by the fresh evidence let in by the management. Since charges 2 to 5 were less serious in nature, the Labour court, in exercise of the powers conferred by section 11-A of the Industrial Disputes Act, 1947, set aside the punishment of dismissal from service and imposed the punishment of postponement of 5 annual increments for 5 consecutive years with cumulative effect.

9. Challenging the award, the management filed a writ petition in W.P.No.26585 of 2000 and the workman filed W.P.No.1700 of 2001. By a judgment dated -4-2010, a learned Judge of this Court allowed the writ petitions and set aside the award of the Labour Court, on the short ground that the Labour Court was wrong in relying upon the very same domestic enquiry report that was earlier held to be vitiated, to come to the conclusion that charges 2 to 5 were proved. Therefore, the learned Judge remanded the matter back to the Labour Court for a fresh consideration, after making it clear that the record relating to the defective

domestic enquiry including the enquiry report should be eschewed.

10. After remand, the Labour Court framed 3 issues as arising for consideration, namely (1) whether the workman was guilty of the charges levelled, (2) whether the punishment of dismissal was appropriate and (3) to what relief the workman will be entitled.

11. Thereafter, the Labour Court went through the evidence on record and came to the conclusion that though the workman appeared to be guilty of the charges, the Criminal Court had acquitted him and that therefore the charge has to be held as not proved. As a consequence, the Labour Court held that the workman will be entitled to reinstatement with continuity of service and 75% of the back wages.

12. Aggrieved by the said order, the management filed one writ petition in W.P.No.10729 of 2011. Aggrieved by the denial of 25% of the back wages by the Labour Court, the workman filed W.P.No.23040 of 2015. In addition, the workman also filed one more writ petition in W.P.No.18900 of 2015 seeking a *mandamus* to direct the respondents to pay back wages as per the award of the Labour Court.

13. All the 3 writ petitions were taken up together by the learned Judge and the learned Judge concluded that once the workman had been acquitted of the charge under Section 409 IPC, the workman was not liable to be punished

in the departmental proceedings on the basis of lesser evidence. However, the learned Judge found that the award of 75% of the back wages was reasonable. Therefore, both the writ petitions of the management and the workman challenging the award of the Labour Court were dismissed by the learned Judge. However, the 2nd writ petition filed by the workman in W.P.No.18900 of 2015 for disbursement of retirement benefits was allowed by the learned Judge.

14. Aggrieved (1) by the direction of the learned Judge in W.P.No.18900 of 2015 to pay the terminal benefits and (2) by the confirmation of the award of the Labour Court, the management has come up with 2 writ appeals. Similarly, the workman has come up with 2 writ appeals, one against the refusal of the learned Judge to enhance the back wages from 75% to 100% and another as against the failure of the learned Judge to award interest on the retirement benefits.

15. The grievance of the management as against the order of the learned Judge is that on the basis of the judgment of the Criminal Court, the learned Judge ought not to have set aside the findings of the Labour Court. It is the contention of the learned counsel for the management that the finding of guilt recorded by the Labour Court, on the basis of the evidence, cannot be set at naught, on the basis of the acquittal by the Criminal Court.

16. To some extent the grievance of the management is justified, in view of what the learned Judge has opined in

paragraphs 11 and 12 of his judgment. In paragraphs 11 and 12 of his judgment, the learned Judge compared the evidence let in before the Labour Court and the evidence let in before the Criminal Court and came to the conclusion that the workman was not liable to be punished in departmental proceedings on the basis of the lesser evidence than the evidence let in before the Criminal Court. But such a view could not have been taken by the learned Judge, since the proceedings before the Labour Court are completely independent of the criminal proceedings.

17. Interestingly, the Labour Court also fell into the same error by recording a finding that though he would hold charge No.1 as proved, he was not doing so only on account of the findings recorded by the Criminal Court. The relevant portion of the findings of the Labour Court where the Labour Court fell into such an error of law, is extracted for easy appreciation as follows:

“.....In the present case, the evidence of MW-1 showing that the petitioner and 3 others were only the employees of the show room at Vijayawada was not denied and the shortage of stock in the show room was also not denied, so there cannot be any other person than the above said 4 persons responsible for the stocks. The petitioner also nowhere in his evidence and in the cross-examination of MW-1 pointed out that he was not jointly responsible for the stocks in the show room while working. So, taking into consideration of all the circumstances, it shows that the petitioner and other employees were jointly guilty as alleged under the charge No.1. But, when the Hon’ble High Court of A.P. in C.A.No.975/94 gave finding that the findings of the lower

court in C.C.No.516/94 cannot be entirely and effectively dislodged or demolished and as such the findings do not warrant any interference, due weight has to be given to the said observation. So considering all the above said circumstances and giving due weight to the observations of the Hon'ble High Court in C.A.No.975/95 and as the I.D. Act being a welfare legislation, by giving benefit of doubt, hold that charge No.1 levelled against the petitioner was not proved.....”

18. In other words, in the opinion of the Labour Court, the first charge was actually proved, but the Labour Court was not holding so, only because of the findings recorded by the Criminal Court. This approach of the Labour Court was actually perverse. The learned single Judge seems to have realised this, as seen from the opening remark made by the learned Judge in para 12 of his judgment to the following effect:

“Though this Court is not satisfied with the approach of the Labour Court, as the end result of the industrial dispute is in consonance with the findings recorded by the criminal court after full-fledged trial, and applying the ratio in M. Paul Anthony (1 supra), I am of the opinion that the respondent No.1, who was acquitted in the criminal case after full dressed trial, and the acquittal having been confirmed by this Court in Criminal Appeal No.975 of 1994, is not liable to be punished in departmental proceedings based on far lesser evidence adduced before the Labour Court than that placed before the Criminal Court.”

19. Therefore, it is clear that an error of law has occasioned at two stages, first before the Labour Court and then before the learned single Judge. The error of law committed by the Labour Court is that after coming to the

conclusion that the first charge was proved, the Labour Court held the opposite, solely in view of the judgment of the criminal Court. The error of law committed by the learned single Judge is that after finding fault with the approach of the Labour Court, the learned Judge confirmed the final conclusion.

20. But unfortunately both the Labour Court and the learned Judge have lost sight of the two important aspects. They are:

(1) that in the award originally passed on 27-07-2000, the Labour Court held the first charge not proved and charges 2 to 5. This award of the Labour Court was set aside by a learned Judge in two writ petitions in W.P.Nos.26585 of 2000 and 1700 of 2001 by a judgment dated -4-2010 on the short ground that the Labour Court erred in relying upon the very same domestic enquiry report that was held to be vitiated, for holding the charges 2 to 5 as proved.

21. As a consequence, when the industrial dispute got remanded back by the judgment of a learned single judge dated April, 2010, there was no scope for the Labour Court to hold the first charge proved and charges 2 to 5 not proved. As a matter of fact, the first charge was one of the misappropriation to prove this charge, the management examined only a Senior Assistant as MW-1 and relied upon a preliminary enquiry report. Even if the preliminary enquiry report is held to be true on facts what was found therein was

a shortage of stock for which 4 employees were held accountable. The shortage of stock is not the same as misappropriation. Therefore, the Labour Court need not even have to fall back upon the judgment of the criminal Court to hold the first charge as proved. Even if the judgment of the criminal court is completely ignored, there was no evidence on the file of the Labour Court to hold charge No.1 as proved. The oral evidence of MW-1 and the preliminary enquiry report went nowhere mere the charge of misappropriation.

22. Therefore, the case on hand was a case of no evidence to hold the first charged proved.

23. In so far as charges 2 to 5 are concerned, charges 4 and 5 are consequential to the other charges. Charges 2 and 3 relate to the abstention of the workman during stock verification and his disobedience of the orders of the superiors. In so far as these two charges are concerned, MW.1 did not even speak about them. However, Ex.M3 which was the preliminary enquiry report showed that the workman applied for leave from 01-09-1990 and continued to be on leave till 02-11-1990. As per the circular instructions of the Central Office dated 6-10-1990, relied upon in the preliminary enquiry report, the employees were not entitled to go on leave, when the stock verification takes place. But the workman remained absent during the period of stock verification.

24. Interestingly, the workman who examined himself as WW-1 did not even dwell upon why he was absent when the stock verification took place.

25. But unfortunately, the Labour Court held that the charges 2 to 5 were not proved. The learned Judge also did not deal with these aspects.

26. In the light of the series of mistakes that have crept into the award of the Labour Court as well as the judgment of the learned Judge, both are liable to be set aside and the matter remanded back.

27. But we do not wish to do so. The order of dismissal, is dated 18-09-1994. The period of 22 years has now passed. The first award of the Labour Court passed on 27-07-2000 was set aside by a learned Judge of this Court and the first order of remand was passed in April, 2010. If we pass a second order of remand, the entire matter will go once again for a fresh round of litigation. This is the reason why we have chosen to examine all the aspects independently in greater detail, as could be seen from the discussion in the preceding paragraphs.

28. We have already indicated that the charge No.1 could not have been held proved even independent of the judgment of the criminal Court. We have also pointed out how charges 2 and 3 were apparently proved, even on admitted facts as reflected in the preliminary enquiry marked as Ex.M3. It was only the domestic enquiry report and not a

preliminary enquiry report that was held by the Labour Court by its preliminary award dated 09-02-1999 to be vitiated. Therefore, there was no bar in looking into Ex.M.3 in the light of the oral evidence of MW-1.

29. If so done, there is possibility to hold charges 2 and 3 as proved. If we do so, the award of reinstatement with 75% of the back wages, could be an appropriate award. The judgment of the workman (1) for the balance 25% of the back wages; and (2) for interest on the back wages, is wholly unjustified in view of finding that the charges 2 and 3 could be held proved. Therefore, both the writ appeals filed by the Management as well as both the writ appeals filed by the workman are liable to be dismissed and the order of the learned Judge is liable to be confirmed, despite our disagreement with the reasoning of the learned Judge.

30. In view of the above, all the writ appeals are dismissed and the order of the learned single Judge is confirmed. There will be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V.RAMASUBRAMANIAN, J

G.SHYAM PRASAD, J

Date: -12-2016

Ak/Ksn

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AND
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1119 of 2015 and 1348 of 2016**

(per VRS, J.)

16th December, 2016.
(Ksn)