

***THE HONOURABLE SRI JUSTICE P. NAVEEN RAO**

+WRIT PETITION No.7111 of 2011

% 08.09.2016

P. Purnachandra Rao, s/o. Showraiah, Aged about 46 years,
occ:Driver, E.No.384046, R/o.Venkatappaiah Colony, Lalapuram
Road, 3rd Lane, Guntur, Guntur District.

.. Petitioner

AND

The Labour Court, Guntur, represented by its Presiding Officer and
others.

.. Respondents

!Counsel for the Petitioner : Sri G. Ravi Mohan.
Counsel for Respondent No.1: GP for Labour (AP)
Counsel for Respondent Nos.2 and 3: SC for APSRTC.

<Gist :

>Head Note:

? Cases referred:

¹ 2006 (4) ALT 280 (DB)

² 2006(2) ALD 353

³ 2006(4) ALD 507 (DB)

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

**FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

**THURSDAY, THE EIGHTH DAY OF SEPTEMBER,
TWO THOUSAND AND SIXTEEN**

**Present
HON'BLE SRI JUSTICE P.NAVEEN RAO**

Writ Petition No.7111 of 2011

Between:

P. Purnachandra Rao, s/o. Showraiah, Aged about 46 years,
occ:Driver, E.No.384046, R/o.Venkatappaiah Colony, Lalapuram
Road, 3rd Lane, Guntur, Guntur District.

.. Petitioner

AND

The Labour Court, Guntur, represented by its Presiding Officer and
others.

.. Respondents



The Court made the following:

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.7111 of 2011

ORDER

Petitioner was initially appointed as a Driver in the year 1990. He was served with charge memo dated 29.11.1997 alleging that he was intentionally did not operate the bus on two occasions, causing lot of inconvenience to the passengers and disrepute to the respondent-Corporation. The disciplinary proceedings were initiated imposing punishment of termination from service in the year 1998. The appeal filed by the petitioner was rejected. In the review, the reviewing authority upheld the disciplinary action, but modified the punishment imposed on the petitioner to that of a fresh candidate and all other service benefits were denied. Aggrieved thereby, the petitioner raised Industrial Dispute in the labour Court, Guntur and the same was registered as I.D.No. 267 of 2001. The ID was rejected on the ground that the labour Court has no jurisdiction to entertain the claim directly under Section 2-A (2) of the Industrial Dispute Act, 1947 (for short 'the Act'). According to the labour Court, the termination order no more subsists as it was modified by the order of reviewing authority to that of fresh appointment and therefore, Section 2-A (2) of the Act is not attracted. The labour Court also observed that the reviewing authority is competent to issue order of fresh appointment. In support of the findings of the labour Court that the claim under Section 2-A (2) of the Act is not maintainable, the labour Court relies on the decision of the Division

Bench of this Court in **B.Vidyasagar vs. Depot Manager, APSRTC, Karimnagar and others**¹.

2. Heard learned counsel for the petitioner Sri G. Ravi Mohan and learned Government pleader for Labour for respondent No.1 and Sri P. Durga Prasad, learned Standing Counsel for respondents 2 and 3.

3. Having regard to the fact that the Labour Court refused to entertain the dispute raised by the petitioner holding that no dispute can be raised by the workman under Section 2-A(2) of the Act on the ground that the order of dismissal/removal no more subsists, whether such decision is legal and valid and whether the Labour Court erred in not entertaining and adjudicating the dispute on merits, is the issue for consideration. The arguments are advanced by learned counsel on this point only.

4.1. Learned counsel for petitioner Sri G. Ravi Mohan contended that in accordance with the provisions contained in Section 2-A (2) of the Act, claim made by the petitioner is valid and the Labour Court erred in not entertaining the claim. He would submit that the terminology used in Section 2-A of the Act is very wide and comprehensive and it thus encompasses the situation and the nature arising in this writ petition. He would submit that the Act itself is being a welfare legislation and the provision under Section 2-A(2) of the Act is specifically incorporated to enable the workman to seek legal remedy against the orders of dismissal/removal and issues

¹ 2006 (4) ALT 280 (DB)

arising therewith and connected to, an order of appointment as fresh candidate, thus fall within the scope of this provision and therefore, the dispute raised by the petitioner ought to have been entertained and adjudicated on merits by the Labour Court.

4.2. In support of his contention, Sri G. Ravi Mohan, placed reliance on the decision of this Court in **K. Karunakar v. APSRTC, Hyderabad**²; **B. Vidyasagar v. Depot Manager, APSRTC, Karimnagar and others**³; the order in W.P.Nos.7952 of 2008 and 14220 of 2007, dated 08.09.2008; and the decision of Full Bench in W.P.Nos.7952 of 2008, 14220 and 6259 of 2007, dated 14.07.2011.

5.1. Learned Standing Counsel for respondent Corporation submits that in view of the subsequent order of the revisional authority, granting appointment to the petitioner as fresh candidate, petitioner cannot resort to provision under Section 2-A(2) of the Act, and directly invoke the jurisdiction of the Labour Court raising industrial dispute and he ought to have availed the recourse available under Section 10 of the Act, and unless conciliation proceedings were taken up and a reference was made by the Government on failure of conciliation proceedings, the Labour Court cannot entertain and adjudicate the dispute. He would therefore submit that the Labour Court has come to correct conclusion in the order under challenge.

² 2006(2) ALD 353

³ 2006(4) ALD 507 (DB)

5.2. The provision in Section 2-A(2) of the Act being an exception, it has to be understood in the limited context of vesting such a right and therefore, all other persons have to go through the normal process of raising a dispute and Labour Court can entertain a dispute only after a reference is made by the Government. He would submit that the provision under Section 2-A(2) of the Act has to be understood in the limited context of granting legal remedy to a person, who is dismissed/removed from service, directly raising the dispute before the Labour Court without waiting for completion of conciliation process and reference thereon, as such employee, on account of dismissal/removal, is without employment and need some early resolution of dispute.

6.1. The brief recapitulation of the facts can make the point in issue clear. It is not in dispute that the petitioner was removed from service by an order of the disciplinary authority and the same was confirmed by the appellate authority. When he filed a review, the revisional authority upheld the disciplinary action taken against petitioner by the disciplinary authority as well as appellate authority, but took a lenient view with reference to punishment, having regard to the gravity of the offence committed by the petitioner, his length of service in the organization and directs appointment as fresh driver in Grade-II.

6.2. To appreciate the contentions, it is useful to extract the relevant portion of the order of the revisional authority, which reads as under:

“Reviewed the concerned subject case along with other evidences available on record. During the course of enquiry the charges leveled against the petitioner were proved beyond reasonable doubt. Hence, the action taken by DM/Guntur-I is order and proper.

However, I am taking a lenient view keeping in view the gravity of offence committed by the petitioner and his length of service in the organization, it is hereby ordered that Sri P. Poornachandra Rao, E.384046, Ex.Driver of Guntur-I depot is appointed afresh as Driver Grade-II and posted to Macherla depot”.

A bare reading of this order would show that the revisional authority has upheld the order of removal as affirmed by the appellate authority. After upholding the order of removal, it passed further orders to grant fresh appointment to the petitioner. Thus, the order of removal was staring at the petitioner even after he was granted fresh appointment. On account of grant of fresh appointment, the entire service rendered by him was wiped out for all other service benefits.

7.1. In **K. Karunakar**, the appellate authority allowed the appeal in part setting aside the order of removal and directed appointment of petitioner as a fresh candidate. The industrial dispute raised by the petitioner by directly invoking the jurisdiction of the Labour Court invoking the provision under Section 2-A(2) of the Act was dismissed on the ground that the remedy under Section 2-A(2) of the Act was not available to the petitioner therein. .

7.2 In **K. Karunakar**, a learned Single Judge of this Court construed the relevant provisions of the Act and held as under:

“It is true that, by the time the petitioner presented the dispute before the Labour Court, the order of removal passed against him, ceased to exist. However, the relief granted to him by the appellate authority was very limited, in its purport. A perusal of Section 2-A of the Act discloses that the facility extended thereunder is not limited to the instances of discharge, dismissal, retrenchment, or termination alone. The provision proceeds further, to take in its fold, “any dispute or difference”, which is “connected with, or arising out of” such discharge, dismissal, retrenchment or termination. The denial of the benefit of past service and wages for the period of suspension are not only connected with, but also arise out of, the order of removal passed against the petitioner, and thereby, it constitutes a “dispute or difference”, referred to, in this provision. It is a different thing, as to whether the petitioner can be granted such relief; and that would depend upon the appreciation of the facts, relating to the case”

8. The scope of Section 2-A(2) of the Act has fallen for consideration before the Division Bench of this Court in **B. Vidyasagar**. In the said case, the conductor was removed from service. On appeal, considering the past good record of service, the appellate authority took a lenient view and modified the punishment of removal into deferment of annual increment for a period of two years with cumulative effect. The period of absence was treated as not on duty. The workman therein invoked the provision under Section 2-A(2) of the Act by raising the dispute before the Labour Court directly. The Labour Court set aside the order of the appellate authority, restored the increments of the appellant and directed to treat the period of absence as on duty. The said decision of the Labour Court was challenged by the APSRTC. The learned single

Judge of this Court held that the remedy under Section 2-A(2) of the Act was not available to the workman and upheld the contention of the APSRTC. On appeal, the Division Bench held that the original order of punishment would no longer exist and only the later order of the appellate authority would survive. The Division Bench further held that by applying the principle of merger, the order of termination passed by the original authority would stand merged with the lesser punishment imposed by the appellate authority and therefore, the grievance made out against such lesser punishment imposed cannot, in any way, be connected with or arising out of such punishment imposed by the primary authority. The Division Bench, therefore, upheld the decision of the single Judge.

9.1. This very issue has again come up for consideration before this Court in W.P.Nos.7952 of 2008 and 14220 of 2007. From the facts as noted in the reference order dated 08.09.2008, it appears that while setting aside the order of removal, the revisional authority appointed the workman as a fresh conductor. Aggrieved thereby, industrial dispute was raised by invoking the provision under Section 2-A(2) of the Act. The Labour Court allowed the claim and relief was granted. The APSRTC challenges the award of the Labour Court and primary ground urged was that remedy under Section 2-A(2) of the Act was not available on account of subsequent orders of the revisional authority.

9.2. On detailed consideration of the earlier decisions of this Court and on true construction of the provision under Section 2-A(2) of the

Act, the Division Bench disagreed with the view taken by the earlier Division Bench in **B. Vidyasagar** and referred the issue to the Full Bench. The Division Bench was of the opinion that against the order of appellate authority modifying the order of removal/termination/dismissal and imposing a different punishment, a reference under Section 2-A(2) of the Act is maintainable.

10. On a reference, the Full Bench, by its judgment dated 14.07.2011, held as under:

"It requires to be noticed that in all the three writ petitions above, the order of removal from service passed against the workman by the primary authority which amounts to a termination of service falling within the purview of Section 2-A(2) **were not modified in appeal or revision and the orders of termination from service were upheld, in appeal or revision as the case may be. The Appellate or the Revisional Authority, as the case may be, permitted the workman to be appointed afresh to the service of the employer.** Therefore, the application filed before the Tribunal or the Labour Court, is stricto sensu against an order of discharge, dismissal, retrenchment or termination falling clearly within the purview of Section 2-A(2) of the 1947 Act".

11. As noted by the Division Bench of this Court in W.P.Nos.7952 of 2008 and 14220 of 2007, the Act is a beneficial legislation and intended to protect the workmen against the employer in matters of regulation of their service conditions. Ordinarily a workman can seek legal redressal before the Labour Court only after a reference is made by the competent Government. However, exception is carved out by incorporating the provision in Section 2-A(2) of the Act, by way of State amendment, which enables a workman, who is dismissed/removed from service, to directly invoke the jurisdiction of

Labour Court assailing dismissal/removal without recourse to conciliation mechanism and a reference by the Government. The provision, as enacted under Section 2-A(2) of the Act, as noted by the Division Bench in W.P.Nos.7952 of 2008 and 14220 of 2007 and affirmed by the Full Bench, is comprehensive and encompasses all issues which are **“connected with”, “arising out of”** and **“in relation to dismissal/removal”**.

12. In the instant case, the subsequent order of the reviewing authority is **‘arising out of’** the original order of the disciplinary authority as confirmed by the appellate authority. Therefore, it is permissible for a workman, aggrieved by the subsequent orders of the revisional authority in directly raising the dispute before the concerned Labour Court.

13. The extracted portion of the reviewing authority order would show that it upheld the punishment imposed against the petitioner, but passed further orders appointing the petitioner as fresh driver. Thus, the punishment of removal as imposed by the disciplinary authority and upheld by the appellate authority stands. Thus, the only course available to petitioner to claim earlier service is by challenging the order of removal. Unless the order of removal is set aside, the petitioner cannot claim to count the past service for the purpose of service benefits and he would gain the service benefits only from the date of subsequent appointment in pursuance to the order of the revisional authority. Thus, when the order of removal

stares at the petitioner, petitioner can avail the remedy as provided to him under Section 2-A(2) of the Act.

14. On the above analysis, the Labour Court erred in rejecting the dispute raised by the petitioner and the same is liable to be set aside and is accordingly set aside. The industrial dispute is restored to the file of Labour Court. Having regard to the fact that the order of dismissal/removal relates to the year 1998 and the dispute was raised in the year 2001, the Labour Court is directed to dispose of I.D.No.267 of 2001 as expeditiously as possible, preferably, within a period of six months from the date of receipt of a copy of this order.

15. The Writ Petition is accordingly allowed. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.



P. NAVEEN RAO, J

8th September, 2016

sj

L.R.copy to be marked.