

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

**WRIT PETITION Nos.18548 of 2007, 34928 of 2012 and
38241 of 2012**

COMMON ORDER :

These Writ Petitions arise between the same parties and hence, they are being disposed of by this common order.

2. The 2nd respondent in W.P.No.18548 of 2007 one S.Srinivas (workman) was employed in the Hyderabad Race Club (employer) as a labourer.

3. A charge memo dt.06-07-2002 was issued to the workman alleging that on 30-06-2002 in an inebriated condition he created nuisance by shouting and indulging in an unruly behaviour. He gave an explanation on 09-07-2002 denying the charges. Thereupon an enquiry was conducted and the workman was removed from service on 24-11-2002. He filed I.D.No.122 of 2005 invoking Section 2-A(2) of the Industrial Disputes Act, 1947 (for short "the Act") challenging the same.

4. The Industrial Tribunal held that the workman admitted in Ex.M-5 explanation to the charge memo that he had consumed alcohol, but the evidence on record did not establish that he indulged in riotous or any unruly behaviour. It directed the employer to reinstate the workman into service with continuity of service but

without back wages and further directed stoppage of 2 annual grade increments with cumulative effect.

5. Assailing the same, the employer has filed W.P.No.18548 of 2007. In the affidavit filed in support of the said Writ Petition, it is pointed out that being in an intoxicated condition is contrary to the Service Regulations and the findings of the Industrial Tribunal are not correct and are perverse. It is also contended that the Tribunal erred in exercising its power under Section 11-A of the Act in the facts and circumstances of the case.

6. While it is true that being in an intoxicated condition at the place of employment is a serious issue, when the further allegation that the workman had created nuisance and behaved in an unruly manner is not established, the punishment imposed on the workman by the employer should be proportionate to the misconduct committed by the workman. It is not as if the Industrial Tribunal has totally exonerated the workman, but it has punished him by directing withholding of 2 annual grade increments with cumulative effect, which is a major punishment, and also denied him back wages. Therefore it cannot be said that the award passed by the Tribunal is perverse or that exercise of power under Section 11-A of the Act by the Tribunal is erroneous. Therefore, I do not find any merit in W.P.No.18548 of 2007. It is accordingly dismissed. No costs.

7. W.P.No.34928 of 2012 was filed by the employer challenging the award dt.07-06-2012 in I.D.No.21 of 2011 passed by the Labour Court-I at Hyderabad.

8. The workman had been reinstated into service pursuant to the award dt.30-03-2007 in I.D.No.122 of 2005, which is subject matter of W.P.No.18548 of 2007.

9. Alleging that he was unauthorisedly absent from October, 2009 to September, 2010, a charge memo had been given to him. He submitted a medical certificate stating that he was unwell during this period. Then Enquiry Officer was appointed and he submitted a report on 26-11-2010 that the charge against the workman was proved. On that basis, an order of termination was passed on 31-12-2010 against the workman. He filed I.D.No.21 of 2011 challenging the said order.

10. By award dt.07-06-2012, the Labour Court directed the employer to issue fresh appoint to workman but denied him relief of reinstatement, continuity of service, back wages and attendant benefits. It opined that though Enquiry Officer was appointed, no opportunity was given to the workman to adduce evidence and the Doctor, who issued the certificate to the workman, was not examined. It took a sympathetic view of the matter and passed the above award.

11. Challenging the same, the employer filed W.P.No.34928 of 2012 stating that the grant of fresh appointment is not valid and the workman filed W.P.No.38241 of 2012 seeking the reliefs of reinstatement, continuity of service, back wages and other attendant benefits, which were denied by the Labour Court.

12. A perusal of the award passed by the Labour Court indicates that it had considered the evidence adduced by the parties and had taken note of the workman's plea that he is undergoing treatment. The workman had also submitted a Doctor certificate for the period of absence, but he was denied of opportunity in the enquiry proceedings to examine the Doctor and the Enquiry Officer did not also cause the Doctor to be examined. It also noted that the Enquiry Officer did not assign any reason why medical certificate produced by the workman cannot be accepted.

13. In this view of the matter, taking into account the poverty of the workman and the fact that he had no gainful employment, the Labour Court directed issuance of fresh appointment and denied relief of reinstatement, continuity of service, back wages and attendant benefits.

14. Having regard to the reasons assigned in the award, it cannot be said that the grant of relief of fresh appointment to workman while denying him reinstatement, continuity of service, back wages and

attendant benefits is perverse or based on no evidence or that the power under Section 11-A of the Act has been incorrectly exercised by the Labour Court.

15. Therefore, I do not find any merit in W.P.Nos.34928 of 2012 and 38241 of 2012 either and they are also dismissed. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 22-12-2016

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