

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

W.P.No.20502 of 2006

ORDER:

Heard Sri V.Narasimha Goud, learned counsel for the petitioner and Sri N.Vasudeva Reddy, learned Standing Counsel for Respondent Corporation.

2. The petitioner herein filed I.D.No.8 of 2002 on the file of the Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad (for short 'the Tribunal') under Section 2A(2) of the Industrial Disputes Act, 1947 (for short 'the Act') assailing the order of removal passed by the Depot Manager-1st respondent herein.

3. The Tribunal, on the basis of the material available, framed the following points for consideration.

(1) Whether the petitioner has right to raise the industrial dispute under Section 2-A(2) of I.D. Act after having accepted the orders passed in revision appointing as a fresh conductor?

(2) Whether the petitioner is entitled for reinstatement into service as a regular conductor, with continuity of service, back wages and attendant benefits?

(3) To what relief the petitioner is entitled to?

4. The Tribunal, by way of award under challenge, dismissed the I.D. raised by the petitioner herein.

5. Broadly, there are two contentions raised by the petitioner in this writ petition. They are; (1) The Tribunal grossly erred in holding in favour of non-maintainability of the I.D. in view of the decision of the Full Bench of this Court in W.P.Nos.7952 of 2008 and batch dated 14.7.2011; and (2) Having

held in favour of non-maintainability of the I.D., the Tribunal ought not to have gone into the merits of the matter.

6. With regard to first contention, it is to be noted that the Tribunal passed the impugned order, following the law laid down by the Division Bench of this Court in W.A.No.345 of 2004 dated 1.3.2004. In fact, the said question of maintainability was referred to Full Bench in W.P.Nos.7952 of 2008 and batch. While answering the issue in the said judgment, the Full Bench 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 failing 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 failing clearly within the purview of Section 2(A)(2) of the 1947 Act.

On the facts of the cases presented in these writ petitions therefore no occasion is presented for consideration whether an order other than an order of discharge, dismissal, retrenchment, removal or termination constitutes any other dispute or difference ‘connected with’ or ‘arising out of’ such discharge, dismissal, retrenchment or termination”.

7. In view of the law laid down in the above referred full bench judgment, the finding of the Tribunal as to maintainability of the Industrial Dispute cannot be sustained in the eye of law. This Court also finds sufficient force in the submission of the learned counsel for the petitioner that having found in favour of non-maintainability of I.D., the Tribunal ought not to have gone into the merits of the matter. Therefore, in the considered opinion of

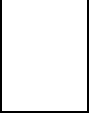
this Court, the matter requires reconsideration by the Tribunal and it is open for the parties to the litigation to raise all the pleas.

8. For the aforesaid reasons, the writ petition is allowed, setting aside the Award dated 23.2.2005 in I.D.No.8 of 2002 passed by the Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad and consequently I.D.No.8 of 2002 stands restored to file for consideration of the same strictly in accordance with law after giving notice to all the stakeholders. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

Date: 1.11.2017
DA

A.V.SESHA SAI, J





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