

HON'BLE SRI JUSTICE S.V. BHATT

Writ Petition No.28360 of 2009

ORDER:

Heard Mr. Ramana for petitioner and Mr. S.M. Subhan for respondents 1 to 4.

2. The Depot Manager, APSRTC Paderu, Visakhapatnam, challenges the award dated 31.01.2009 passed in ID No.137 of 2006 by 5th respondent to the extent of reinstatement, continuity of service and payment of back wages, as illegal and unsustainable.

3. The parties do not dispute the circumstances leading to the filing of industrial dispute. Further, no submission is made on the correctness in narrating the events or circumstances by 5th respondent. Hence, for brevity, I prefer to refer to the following circumstances. One P. Eswara Rao/ 1st respondent herein was working as driver in APSRTC, Paderu Depot. On 04.10.2007 he died and respondents 2 to 4 have been brought on record and as cause of action survived, the industrial dispute was heard and disposed of in the presence of legal representatives of 1st respondent.

4. The 1st respondent joined in the Corporation as driver in the year 1990. On 02.03.2004 the petitioner issued charge sheet and the charges framed against the 1st respondent read as follows:

“i) “For having consumed alcohol and gone to the staff rest room at Paderu and caused disturbance to the staff at about 20.00 Hrs. on 05.02.2004, who were taking rest in the staff rest room for their next duty, which constitutes misconduct under Regulation 28(xxvii) & (xxviii) of APSRTC Employees (Conduct) Regulations, 1963”.

ii) “For having shouted loudly and created a nuisance in the staff rest room at about 20.00 Hrs. on 05.02.2004 in spite of asking by Sri W.S.Rao, E 465311, driver who was disturbed while sleeping at that time, which constitutes misconduct under

Regulation 28 (xxxi) & (xxxii) of APSRTC Employees (Conduct) Regulations, 1963.”

5. The 1st respondent filed explanation, not being satisfied with the explanation, domestic enquiry was conducted and finally through proceedings dated 03.08.2004, the 1st respondent was removed from service. The 1st respondent was unsuccessful both in appeal and revision available under Service Regulations. The 1st respondent raised dispute under Section 2A(2) of the Industrial Disputes Act, 1947 (for short ‘the Act’) before 5th respondent. The 5th respondent after considering the charges, taking note of the fact that the respondents 2 to 4 filed Memo accepting the legality of domestic enquiry and thereafter considered the proof of misconduct and what is linking miss in the entire episode.

6. According to the petitioner, on 05.02.2004 at 20.00 hours, the 1st respondent after consuming alcohol, went to staff restroom at Paderu Depot, caused disturbance to the staff, who are taking rest for their next duty. The sequence of events without referring to statement of imputation is that 1st respondent was intoxicated, went to staff room and caused disturbance to the staff. Further, the 1st respondent shouted loudly and created nuisance in the staff rest room. The 5th respondent examined the dispute by specifically referring to Section 11-A of the Act. The 5th respondent in paras 10 to 13 of the award impugned in the writ petition, held as follows:

“Be that as it may, the court/ Tribunal is empowered to reassess the evidence if there is improper appreciation of evidence by the disciplinary authority while imposing the punishment. Whatever statement given by the complainant Mr. Rao or the security guard or the other staff members during the preliminary enquiry cannot be made use of against the workman in the domestic enquiry, because those statements are not recorded in his presence. The security guard is not examined in the enquiry. Mr. Rao gave evidence but he has stated that he do

not know whether the workman was under intoxication. But he confined his evidence to the heated conversation between himself and the workman and nothing more. Therefore, what the complainant had deposed before the enquiry officer, making himself available for cross-examination by the workman alone has to be taken into consideration for recording a finding of misconduct against the workman. But it is wrong to take into consideration the complaint given by Mr. Rao initially. Furthermore, the department did not declare Mr. Rao hostile, and confronting him with his earlier complaint. In the absence of any such step taken by the department in the domestic enquiry, there is no positive proof about the allegation of workman consuming alcohol while entering the staff room on 5.2.2004 at 20.00 hrs. So the basis of misconduct shall fail.

What the evidence available in the enquiry would reveal is that the workman demanded Mr. Rao to repay the hand loan of Rs.100/- and in that context there was a heated argument between the two during the course of which the workmen must have raised the voice and shouted at Mr. Rao. To that extent only the opinion of the domestic Tribunal as well as the disciplinary authority is correct, but the theory of intoxication is not proved.

In the context of the above material, the question is, whether a 'serious misconduct' warranting dismissal is established against the workman. Reg.9 of APSRTC (CCA) Regulations, 1967 deals with the penalties. Sub-clause (1) of Reg.9 is relating to dismissal on certain grounds, including a serious misconduct. Note No.2 defines what is a serious misconduct. It includes *inter alia* certain acts of misconduct defined as (1) to (17). None of those clauses did contain the creation of nuisance while not on duty by an employee is a serious misconduct. When it is not a serious misconduct as per the evidence established against the workman in the considered opinion of this Tribunal, imposing a major penalty like removal from service is shockingly disproportionate.

Therefore, I hold on point No.1 that the petitioner is guilty of a misconduct but not a serious misconduct. On point No.2 this Tribunal records a finding that removal of the workman from service is disproportionate. These points are answered in favour of the workman and against the respondent/management."

7. Thereafter, while answering point No.3, the order of removal is set aside and punishment is modified by directing deferment of one annual increment without cumulative effect. The workman is deemed to have been reinstated into service till he died on 04.10.2007. The period between the date of dismissal and 04.10.2007 shall be treated as on duty and 50% of back wages shall be paid.

8. Mr. Ramana appearing for petitioner contends that once the legality of domestic enquiry is accepted by Respondents 2 to 4, examining the evidence, drawing presumptions and recording independent findings by 5th respondent, is illegal and beyond its jurisdiction. Therefore, though he is not on the question of setting aside the order of removal, he challenges the discretion exercised by 5th respondent in awarding 50% back wages from the date of removal, till the date of reinstatement.

9. *Per contra*, Mr. Subhan contends that understanding of petitioner as to acceptance of legality of domestic enquiry in paragraph 5 of the award is completely untenable and illegal. According to him, the respondents are not precluded from challenging the findings in a dispute raised under Section 2A(2) of the Act. Even if the domestic enquiry is accepted as legal, Section 11A of the Act gives ample power, discretion and jurisdiction to Labour Court in this behalf. In the case on hand, the 5th respondent has rightly picked up the sequence of events and has recorded a finding that the main basis for the charges i.e., intoxication, raising voice and quarrelling with the staff could not and is not brought home. Therefore, the findings are tenable and no exception can be taken.

10. He relies upon the decision of this court in 'Divisional Manager, APSRTC vs E. Raja Reddy¹' wherein it was held as follows:

“The Labour Court is entitled to re-appreciate the evidence and substitute its own finding for that of the disciplinary authority. Such a re-appreciation of the evidence and the material on record is permissible even in cases where the Labour Court is required to consider the matter in exercise of its power under [Section 11-A](#) of the Act. The Labour Court is entitled to go into the whole question afresh even in cases where there is an admission as to the validity of the domestic enquiry. The domestic inquiry may have been held in accordance with the principles of natural justice, but that does not mean that the workman cannot raise any dispute with regard to the findings arrived at by the disciplinary authority.”

11. I have taken note of the submissions and perused the award impugned in the writ petition. The 1st respondent has put in 14 years of service when he was subjected to charge sheet dated 02.03.2004. The charges against the 1st respondent are that in an intoxicated state of mind, he entered rest room, shouted at the staff, then created disturbance to the staff who are preparing for duty. The 5th respondent has considered the evidence brought on record on all these crucial aspects and as already noted for cogent reasons recorded findings on the charges framed against 1st respondent. The finding recorded by 5th respondent is that the petitioner failed to place evidence on record on crucial aspects of the charge. To hold that there has been objective appreciation of the evidence available on record, this court holds that to the extent what is proved can be a minor abrasion in the conduct of an employee. The 5th respondent exercised discretion, imposed punishment i.e., deferment of one annual increment without cumulative effect and denied 50% of the back wages also. The petitioner could not satisfy this court that the re-appreciation of evidence suffers from perversity and

¹ 1995(5) ALD 735

exceeded jurisdiction under Section 11-A of the Act. Hence, I am satisfied that the petitioner failed to make out any case for interference in the award impugned in the writ petition.

12. The writ petition fails and is accordingly dismissed. No order as to costs. Pending miscellaneous petitions if any in this writ petition shall stand dismissed in consequence.

Date: 03.08.2017
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S.V.BHATT, J



HON' BLE SRI JUSTICE S.V. BHATT

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