

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.17440 OF 2001

ORDER:

Petitioner is a State-owned company and it is before this Court challenging the Award in I.D.No.3 of 2000, dated 01.05.2001 of the Industrial Tribunal cum Labour Court (in short "the Tribunal").

2) The Tribunal, after taking into consideration the material on record, found the dismissal of the respondent-workman as totally unreasonable *vis-a-vis* the misconduct alleged to have been committed by him and directed his reinstatement within one month from the date of publication of the Award, with continuity of service, however, without back wages. The dismissal order of the petitioner was accordingly set aside.

3) Sri J.Sreenivasa Rao, learned counsel appearing for the petitioner company submits that the finding of the disciplinary authority that the respondent-workman has involved in strike and thereby, violated the Standing Orders of the company, not being in dispute, the Presiding Officer of the Tribunal ought not to have interfered with the punishment awarded by the disciplinary authority. Any punishment other than the dismissal is not appropriate in cases where a workman resorts to illegal strikes and without following the mandatory process prescribed under the company's Standing Orders. In those circumstances, the Award of the Tribunal directing reinstatement cannot be sustained. Learned counsel for the petitioner company further submits that the disciplinary authority had taken into consideration the charges

levelled against the respondent-workman and also the fact that he is in the habit of instigating strikes and further indecently behaving with the Mines Manager. He would also urge that the order being a non-speaking order, without discussing any of the questions raised by the management, as is evident from the counter-affidavit filed by the petitioner company before the Tribunal, the matter may be remanded back for its consideration afresh.

4) On the other hand, learned counsel appearing for the respondent-workman points out that the participation in the alleged strike is only for a day, in a shift, and the respondent-workman alone has been victimised while letting-off all other workmen, who had participated in the strike on the fateful day i.e., 23.06.1999. All these aspects were considered by the Tribunal,, though not expressed in many words, while exercising its discretion under Section 11 A of the Industrial Disputes Act (in short “the Act”) and had come to a conclusion that it is a case of harsh punishment and in those circumstances, directed the reinstatement while denying the back wages. Hence, the order of the Tribunal does not require any interference.

5) Having considered the respective submissions and having gone through the material placed before the Court, the question which falls for consideration is “Whether the order of the Tribunal, particularly, in imposing lesser punishment is required to be interfered with?”

6) A perusal of the order of the Tribunal leaves no manner of doubt that the Tribunal had failed to consider any of the grounds

raised by the petitioner. It may also be noted that the Tribunal had, in fact, recorded a finding that the inquiry is not vitiated and the procedure that is required to be followed has been followed and also given a finding that the charges levelled against the respondent-workman that he had participated in an illegal strike stands proved. However, the Tribunal found that the punishment of dismissal to be disproportionate. Though, in the case on hand, the Tribunal, the last fact finding body, is required to be considered all the grounds that have been raised by the petitioner in their defence, it has not done so, but however, recorded the findings without there being any reasoning. Though there is a discretion vested with the Tribunal with regard to interfering with the measure of punishment as disproportionate, there is a duty cast on the Tribunal also to ensure the punishment is adequate, which would also deter the petitioner and other similarly erring workmen from repeating their acts of misconduct. In normal circumstances, this Court would have remanded the case to the Tribunal for fresh disposal, however, considering the fervent appeal made by the learned counsel for the respondent-workman, this Court may modify the punishment, as deems fit. Considering the fact that the respondent-workman has already been paid wages under Section 17-B of the Act, the order of punishment is modified as under:

- 1) The respondent-workman shall be forthwith reinstated with notional benefits and paid salary henceforth as applicable to the post.
- 2) The respondent-workman shall be paid last drawn wages upto the date of reinstatement after deducting the statutory

deductions and amounts already paid in compliance with
Section 17-B of the Act.

7) Subject to the above modification to the impugned order, the
Writ Petition is disposed of.

8) Miscellaneous Petitions pending, if any, in this Writ Petition
shall stand closed.

CHALLA KODANDA RAM, J

Date:06.09.2017.

Note: Issue C.C. forthwith.
B/o
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