

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

WRIT PETITION No.18554 of 2008

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed by the unsuccessful petitioner-workman assailing the Award, dated 29.07.2004, of the learned Presiding Officer of the Labour Court-III, Hyderabad, passed in ID.no.8 of 2002.

2. I have heard the submissions of *Smt. K. Udaya Sri*, learned counsel appearing for the writ petitioner, and of *Sri B. Mayur Reddy*, learned Standing Counsel for TSRTC appearing for the respondents 2 to 4. I have perused the material Court.

3. Considering the narrow compass of the controversy involved, it is necessary to refer to the core facts, which are as follows:

The petitioner, who was working as a Conductor in the respondents-Corporation was served with a charge sheet with charges for absenteeism. A departmental enquiry was duly conducted. And, based on the enquiry report, the petitioner was eventually removed from service by orders, dated 10.03.1997. However, his appeal filed before the appellate authority was allowed and he was reinstated into service as a fresh conductor. Aggrieved thereof, the petitioner raised an industrial dispute and filed a claim petition before the Labour Court. The respondents-Corporation contended that since the petitioner was reinstated into service as a fresh Conductor as per the orders of the appellate authority, the claim petition filed under Section 2 A (2) of the Industrial Disputes Act, 1947 (hereinafter, 'the Act') is not maintainable. Accepting the said contention and having recorded findings to the effect that the termination order was set aside in the appeal and that the termination order is not in existence and that since the petitioner joined the services of the Corporation as a conductor on fresh appointment, the learned

Presiding Officer of the Labour Court held that the claim petition filed under Section 2A(2) of the Act is not maintainable and accordingly dismissed the claim petition. Aggrieved thereof, the petitioner is before this Court.

4. In this background of facts, the only question that falls for consideration is whether the petition filed under Section 2A(2) of the Act by the petitioner is maintainable despite the fact that his appeal was allowed and the removal order was set aside and he was reinstated as a fresh Conductor pursuant to the orders of the appellate authority.

5. The answer to this question is no longer *res integra*. The scope of Section 2A (2) of the Act fell for consideration before this Court earlier. A Division Bench while dealing with W.P.Nos. 7952 of 2008 and 14220 of 2007 having disagreed with the earlier view taken by the earlier Division Bench of this Court in B.Vidyasagar v. Depot Manager, APSRTC, Karimnagar and others [2006(4) ALT 280 (D.B)] referred the issue to a Full Bench of this Court. The Division Bench which made the reference was of the opinion that against the order of appellate authority, modifying the order of removal/termination or dismissal and imposing a different punishment, a reference directly under Section 2A(2) of the Act is maintainable. While answering the reference, the Full Bench of this Court in its judgment, dated 14.07.2011, held as follows:

"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".

Thus, the provision of Section 2-A (2) of the Act, is comprehensive and encompasses all issues which are "connected with", "arising out of" and "in relation" to dismissal/ removal. Further, a learned Single Judge of this Court in the recent decision in P.Purnachandra Rao v. Labour Court, Guntur rep. by its Presiding Officer¹, following the ratio in the Full Bench decision of this Court held that it is permissible for a workman aggrieved by the subsequent order of the revisional authority modifying the punishment of termination from service to that of a fresh appointment to directly raise the dispute before the Labour Court concerned.

6. In the instant case, the appellate authority while upholding the findings of the Enquiry Officer that the charge is proved, however, modified the punishment from removal from service to that of the reinstatement as a fresh Conductor. Thus, the punishment imposed disentitles the workman to claim earlier service & service benefits, back wages and attendant benefits. Thus, the modified punishment imposed is 'connected with' removal from service. The punishment of removal from service though set aside, the modified punishment arises out of and is in relation to the removal from service. Unless the order of removal is set aside, the petitioner cannot claim the benefits of past service, back wages and attendant benefits. Hence, this Court is of the opinion that the petitioner can directly avail the remedy provided to him under Section 2A (2) of the Act.

7. Viewed thus, this Court finds that the Labour Court was in error in rejecting the claim petition of the petitioner/ workman on the ground that the claim petition is not in accordance with law. As a sequel to the finding and as the claim petition is dismissed, without going into the merits of the matter,

¹ 2017(1) ALT 96

this Court is of the considered view that the matter requires to be remitted to the Labour Court for disposal on merits and in accordance with the procedure established by law.

8. In the result, the Writ Petition is allowed and the award, dated 29.07.2004, of the Labour Court, in I.D.No.8 of 2002, is hereby set aside and while holding that the claim petition of the petitioner is maintainable, the matter is remitted to the Labour Court with a direction to dispose of the same on merits and in strict accordance with procedure established by law, as expeditiously as possible and preferably within three months from the date of receipt of a copy of this order.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

7th April, 2017
VJI



M. SEETHARAMA MURTI, J