

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.4905 of 2006

ORDER:

This writ petition, under Article 226 of the Constitution of India, by the petitioner is directed against the Award, dated 16.02.2005, of the learned Presiding Officer, Labour Court-III, Hyderabad, passed in I.D.No.30 of 2003.

2. I have heard the submissions of *Sri V.Narasimha Goud*, learned counsel for the petitioner-workman (hereinafter, 'workman') and *Sri B.Mayur Reddy*, learned Standing Counsel appearing for the 2nd respondent-APSRTC (hereinafter, 'Corporation'). I have perused the material record.

3. The facts, in a nutshell, are as follows:

The petitioner joined as a Conductor in the Corporation in the year 1987. He was charge sheeted for absenteeism for the period from 08.07.1996 to 22.09.1996. According to the petitioner, he submitted leave application on the ground of ill-health and has gone to his native place. Nonetheless, he submitted his explanation to the charge sheet. A domestic enquiry was conducted and in the said enquiry, the Enquiry Officer held that the charges are proved. Basing on the said report, the Corporation terminated the services of the petitioner, by its order dated 27.03.1997. The appeal of the workman was disposed of by order dated 30.04.1997. However, the appellate authority while modifying the punishment of removal from service directed reinstatement of the workman as a fresh Conductor. The review application of the workman was dismissed. The aggrieved workman raised an industrial dispute invoking Section 2-A (2) of the Industrial Disputes Act, 1947, (hereinafter, the Act') and filed a claim petition. The Corporation resisted the claim petition *inter alia* contending that the claim made by the workman under the said provision of law is invalid and that the Labour Court erred in entertaining the claim petition. However, the claimant contended that in view

of the language employed in the said provision of law, which is very wide and comprehensive, the claim petition is maintainable as the issue raised by him, which is connected with his removal from service, is within the scope and ambit of the said provision of law. However, the Labour Court having noted that on modification of the punishment by the appellate authority by ordering reinstatement afresh as a Conductor after setting aside the order of removal, the order of removal from service is not in existence having merged with the modified order of the appellate authority and that, therefore, the claim petition of the workman under Section 2-A (2) of the Act is not maintainable. Accordingly, the Labour Court dismissed the claim petition of the workman. Having dismissed the claim petition on the said ground, the Labour Court did not record any findings on the merits of the matter.

4. Aggrieved thereof, the workman preferred this writ petition.

5. Before proceeding further, it is pertinent to note that though the appeal and the review petition are dismissed, the workman did not implead the appellate authority and the reviewing authority as parties to his claim petition before the Labour Court.

6. The learned counsel for the workman would contend as follows:

The legislation is a beneficial legislation. Earlier to the amendment and introduction of Section 2-A (2) of the Act, ordinarily, a workman is entitled to seek legal redressal before the Labour Court only after a reference is made by the Government. However, an exception is carved out by the provision in Section 2-A (2) of the Act. The said provision of law enables the workman, who is dismissed or removed from service or retrenched or terminated otherwise, to directly invoke the jurisdiction of the Labour Court without reference to the conciliation mechanism and a reference by the Government. In the case on hand, the gravamen of the charge is absenteeism. In the domestic enquiry, the Enquiry Officer held that the charge is proved. The workman preferred an

appeal. Though the appellate authority held that the charge was proved, the said authority modified the penalty of removal from service and ordered reinstatement of the workman as a fresh Conductor. The review petition of the workman was dismissed. The ultimate penalty imposed is appointment as a Conductor afresh. Thus, the punishment of removal from service that was imposed by the Disciplinary Authority stands. The only course available to the workman is to challenge the order of removal from service. Unless the order of removal from service is challenged, he cannot seek reinstatement with back wages and continuity of service and the benefits of the service. Therefore, the order of removal is staring at the workman. Hence, the Labour Court was in error in holding that the punishment of removal from service does not subsist and that the dispute raised by the workman by invoking the provision of Section 2-A (ii) of the Act is liable for dismissal. The Labour Court instead of holding so ought to have decided the claim on merits.

7. Per contra, the learned Standing Counsel for the Corporation would contend as follows:

As rightly held by the Labour Court, when once the punishment of removal from service is set aside by the appellate authority and the punishment is modified to one of reinstatement of the petitioner as a fresh Conductor, the punishment of removal from service is no longer in existence. In view of the doctrine of merger, the contention that punishment of removal from service is in existence and that the said punishment stares at the petitioner is not correct. The petitioner ought to have challenged the proceedings by seeking a reference. He cannot directly invoke Section 2-A (2) of the Act as the penalty eventually imposed is neither discharge nor dismissal nor removal nor termination otherwise. The purport of the provision under Section 2-A (2) of the Act is very limited. The legislative history and the object behind the introduction of Section 2-A (2) of the Act would clearly make it manifest that the said provision of law, which was introduced, has limited

application and is not wide in its amplitude. Therefore, the said provision of law does not cover the issue raised by the workman. Under Section 2-A (2) of the Act, an individual workman, who was discharged or dismissed or retrenched or whose services were otherwise terminated has a remedy under the said provision of law as the intention of the legislation was that an individual workman placed in such circumstances should be given relief without being any necessity of his case being espoused by a Labour union or by a substantial number of workmen. The provision under the said Section of law is not attracted to the case on hand. Any dispute between an individual workman and the employer is not *per se* an industrial dispute unless and situation is covered by the provision of Section 2-A (2) of the Act. All other disputes not covered by the said provision shall be espoused or taken up by a union or a number of workmen making a common cause with the aggrieved individual workman. Unless a union or a number of workmen sponsor the case of the petitioner, the machinery under the Act is not available to his case and he cannot make a claim by directly invoking the provision of section 2 A (2) of the Act.

8. I have bestowed my attention to the facts and given earnest consideration to the submissions and also the legal position.

9. Before proceeding further, it is necessary to refer to the 'Industrial dispute' as defined in Section 2(k) and also Section 2A of the Act.

(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute

(1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall

be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of three months from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1).

10. The facts of the case are not in dispute. After the Enquiry Officer held that the charge was proved, the Corporation imposed a penalty of removal from service. However, the appeal of the workman was allowed and the punishment was modified by the appellate authority. Accordingly, the punishment of 'removal from service' was set aside and the petitioner was directed to be reinstated as a fresh conductor.

11. Therefore, the short but important question that arises for consideration is as follows:

Whether it is permissible for the petitioner workman, against whom the modified punishment of reinstatement into service as a fresh Conductor was imposed by the appellate authority after setting aside the original penalty of removal from service, to directly invoke the provision under Section 2 A (2) of the Act?

12. In the considered view of this Court, this question is no longer *res integra*. The scope of Section 2A (2) of the Act has fallen 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.

12.1 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.

¹ 2017(1) ALT 96

12.2 Before proceeding further, it is necessary to refer to the decision of the Supreme Court in *Chemicals & Fibres of India v. D.G.Bhoir*² relied upon by the learned Standing Counsel for the Corporation. A careful perusal of the said decision would show that the question that fell for consideration in that cited case was - 'Does the fact that a proceeding is pending before a Labour Court in respect of an individual workman bar the other workers from resorting to a strike? While answering the said question, the Supreme Court referred to Sections 10 and 23 of the Act and also the statement of objects and Reasons of the Bill which resulted in the enactment of the Section 2-A and held that if strikes are to be prohibited merely because the case of an individual workman was pending, whose case had not been espoused by joint body of the workmen, there can never be any strike even for justifiable ground. Therefore, in that context it was held as follows: "We are therefore of opinion that the proper point of view is to give limited application to the fact of the introduction of Section 2A in the Industrial Disputes Act and to hold that the pendency of a dispute between an individual workman as such and the employer does not attract the provisions of Section 23. Therefore, in the considered view of this Court, the facts of the cited case are different and hence, the said decision is not helpful to the Corporation.

13. 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

² (1975) 4 Supreme Court Cases 332

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.

14. Further, the penalty eventually imposed is appointment of the petitioner as a conductor afresh. The Labour Court is required also to examine whether such penalty is one of the penalties enumerated and specifically provided under the regulations and whether or not such penalty can be imposed on the petitioner.

15. 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, and as the petitioner intends to implead the appellate authority and the reviewing authority as parties to the I.D., this Court is of the considered view that the matter requires to be remitted to the trial Court for disposal on merits and in accordance with the procedure established by law.

16. In the result, the Writ Petition is allowed and the award, dated 16.02.2005, of the Labour Court, in I.D.No.30 of 2003, 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 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. It is needless to state that the petitioner is at liberty to take appropriate steps for impleadment of the necessary parties, if he chooses so to do.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

27th February 2017
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