

HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

WRIT PETITION No. 5326 OF 2008

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed by the Depot Manager the APSRTC against the Award, dated 28.10.2006, passed by the Presiding Officer, Labour Court, Guntur, in I.D.No.228 of 2002.

2. I have heard the submissions of Sri S.V. Ramana, learned Standing counsel for APSRTC appearing for the writ petitioner, and of Sri A.K. Jaya Prakash Rao, learned counsel for the 1st respondent. The 2nd respondent is the Tribunal. I have perused the material record.

3. To begin with it is to be noted that the I.D., was taken on file by the Presiding Officer of the Labour Court, Guntur, on a reference under Section 10.1(c) of the Industrial Disputes Act, 1947, and that the reference reads as follows:

“Whether the action of the Depot Manager, APSRTC, Bhimavaram, W.G. District in not treating the sick period from 23.11.92 to 30.04.94 as duty period and non-payment of salary from dt. 23.11.92 to 30.04.94 and from 31.10.9 to 21.07.95 and imposing the punishment of withholding of annual increment for a period of one year with cumulative effect on Sri KVV Rao, driver, is justified?”

4. The case of the workman-driver is this:

On 23.11.1992, while he was performing his duty, as driver, on bus bearing registration No.AP 9Z 995, on Tuni - Bhimavaram route, at about 7.30 a.m., the bus met with an accident at Timmapuram. In the said accident, the bus dashed against a tree. The driver sustained grievous injuries and suffered permanent disability on account of fractures of bones of right ankle and lower limbs. He was admitted into the hospital and received treatment for six months and was

discharged on 11.06.1993. He was advised not to drive the vehicle. Having submitted fitness certificate to the management, he requested the Regional Manager of the Corporation to provide alternate employment. The Regional Manager directed to utilize the services of the workman-driver as a booking clerk; accordingly, from 01.05.1994 onwards, he discharged duties as booking clerk. When the depot Manager insisted for the medical fitness of the workman as a driver, he approached this Court by filing W.P.No.19125 of 1994. This Court directed the Corporation to utilize his services as a booking clerk. On the ground that he absented from attending to duties during the periods from 23.11.1992 to 30.04.1994 and from 31.10.1994 to 21.07.1995, he was not paid salaries and the punishment of withholding of annual increment for a period of one year with cumulative effect was imposed. His cause was espoused by the union, 1st respondent herein; and, therefore, a reference was made as already noted in the preceding paragraph of this order.

5. The case of the writ petitioner – Corporation is this:

On 05.07.1995 the Chief Inspector reported that the workman failed to attend to duty with effect from 31.10.1994 though he was medically fit to discharge duties. Therefore, the following charge was framed.

“For having absented for your duties w.e.f. 31.10.94 to till date i.e., from the date of found medically fit without any intimation causing much inconvenience to the traveling public besides loss of revenue to the Corporation due to cancellation of certain services/trips which comes under misconduct as per clause (xxvii) of Reg.28 of APSRTC Employees (Conduct) Regulation, 1963.”

The workman acknowledged the charge sheet and gave a representation asking to supply a copy of the report of Chief Inspector and the same was supplied to him. Later, he did not file his written statement. Therefore, penalty was imposed and final orders were passed on 30.09.1997 and the appeal filed against the said orders

was rejected. He did not file any application for revision. He was sick from 23.11.1992 to 18.03.1994. He submitted his representation for allotment of light duties. He was allotted light duties for a period of six months with effect from 27.04.1994 and he reported to duty on 01.05.1994 and performed duties upto 09.06.1994. Later, he reported that he was sick and reported to duty, on 24.07.1994, and produced a sick certificate from RTC clinic, Bhimavaram, for the period from 11.08.1994 to 20.10.1994. He was referred to the Corporation's Tarnaka Hospital, Hyderabad. He brought a fitness certificate from the said hospital stating that he was fit to discharge duties of a driver with effect from 31.10.1994, but, failed to attend to duties from 31.10.1994 to 20.07.1995. Therefore, he is not entitled to any relief.

6. After due enquiry, the Labour Court, by the order impugned in this writ petition, granted relief to the workman/driver by directing the Corporation to release his salary, if not already paid, for the subject periods and also release annual increments.

7. Aggrieved thereof, the Corporation filed this writ petition.

At the hearing, while reiterating the case of the Corporation, which is already stated supra, and further reiterating its contentions advanced before the Labour Court, the learned Standing counsel raised two sets of principal contentions. Firstly, it was urged that the reference itself is bad, as there is no reference in the charge to the sick period from 23.11.1992 to 30.04.1994. Secondly, it was urged that the observations in the award of the Labour Court that 'the fitness certificate does not specifically show that the workman was perfectly fit to discharge the duties of a driver' is incorrect, as the fitness certificate indicates that he is fit for discharging duties from 31.10.1994. It is also submitted

on behalf of the Corporation that the unauthorized absence of the workman-driver from duty caused inconvenience to the public and resulted in loss of revenue to the Corporation.

8. Per contra, learned counsel for the 1st respondent/workman, while supporting the award, submitted that the reference was not challenged on the ground that it is not legally valid or bad and that having participated in the enquiry, the writ petitioner is not entitled to challenge the reference before this Court and that despite the orders of this Court, the workman was not provided with alternative light work and that therefore the Labour Court was right in passing the award, which is impugned in this writ petition.

9. I have bestowed my attention to the facts and submissions.

10. Dealing first with the first aspect as to whether the reference is bad and whether such contention needs to be countenanced by this Court, it is apposite to note that the said question is no longer *res integra* in view of the decision of this Court in **Divisional Manager, APSRTC, Khammam v. Presiding Officer, Industrial Tribunal-cum-Labour Court, Warangal**¹, wherein this Court having analyzed the relevant provisions of law and followed the ratios in the decisions of the Supreme Court in (i) *Jai Bhagwan v. Management, A C Co-Operative Bank Ltd.*,²; (ii) *National Engineering Industries Ltd., v. State of Rajasthan*³; and (iii) *Mahendra L. Jain v. Indore Development Authority*⁴, held that the party, who is aggrieved by the very order of reference, ought to have challenged the same before this Court, rather than participating in the proceedings before the Tribunal and that had the reference been challenged at the appropriate time, the workman would

¹ 2008 (5) ALD 745

² 1983 Lab.&IC 1694

³ 2000 Lab.&IC 260

⁴ (2005) 1 SCC 639

have pursued the alternative remedies available to him under law and that, therefore, the challenge to the reference after the award was made is impermissible and that the Industrial Tribunal or Labour Court is the creation of a Statute and it gets jurisdiction on the basis of reference and it cannot go into the question of validity of reference and that in that view of the matter, the challenge to reference cannot be entertained and accepted. In the above cited decision (3rd Supra), the Supreme Court held that the Industrial Tribunal is a creation of the Statute and it gets jurisdiction on the basis of reference and it cannot go into the question of validity of the reference. In the other decision 4th cited supra the Supreme Court further held thus: "Furthermore, the Labour Court having derived its jurisdiction from the reference made by the State Government, it was bound to act within the four corners thereof. It could not enlarge the scope of the reference nor could deviate there from." The ratios in the decisions squarely apply to the facts of the present case. Accordingly, this Court holds that the first contention of the Corporation that the Labour Court ought not to have entertained the reference is devoid of merit and need not be countenanced by this Court at this stage.

11. Dealing now with the next aspect, it is to be first noted that after the accident, the workman/driver was hospitalized and he could not attend to duties from 23.11.1992 to 30.04.1994 though he was discharged from the hospital on 11.06.1993. The facts borne out from the record show that the workman who is not fit to discharge his duties as a driver was constrained to approach this Court for providing alternative employment and that after the orders of this Court, he was given alternative employment for a limited period and that accordingly he reported to duty, on 01.05.1994, for discharging the duties in the said alternative employment assigned to him. Therefore, there is no justification on the part of the Corporation in treating the said period as a sick leave and in not paying the

salaries during that period. In that view of the matter, the Tribunal was justified in holding that the workman is entitled to the relief insofar as the period from 23.11.1992 to 30.04.1994 is concerned.

11.1 Coming to the second period of absenteeism from 31.10.1994 to 21.07.1995, it is to be noted that the workman was given alternative employment for a limited period i.e., from 01.05.1994 to 09.06.1994. Later, by insisting that he should produce a fitness certificate, he was not provided with the alternative employment. In the face of the orders of this Court that he should be provided alternative employment, there is no justification on the part of the Corporation in insisting upon a fitness certificate or that he should discharge his duties of a driver. Therefore, in the said circumstances, the workman cannot be found fault for not discharging the duties for the period from 31.10.1994 to 05.07.1995, as he was not provided alternative employment despite the orders of this Court. When there is an order of this Court to provide alternative employment, the question of the Corporation again insisting upon the workman to produce a fitness certificate does not arise for consideration and the insistence of the Corporation that the workman has to discharge duties of a driver with effect from 31.10.1994 is unreasonable, unfair and not legally sustainable; and hence, such a contention cannot be approved. Therefore, the consequential failure of the workman to discharge duties during the second limb of the reference i.e., from 31.10.1994 to 21.07.1995 is not on account of his fault. Hence, the Presiding Officer of the Labour Court recorded a finding that the charge itself is defective. It is not out of place to mention that when the orders of this Court were not implemented, the workman also filed an application for contempt and that at that stage the orders of this Court were complied with.

11.2 In the decision in **Union of India v. P. Gunasekaran**⁵ the Supreme Court dealt with the scope of interference of this Court under Articles 226 or 227 of the Constitution of India and held, *inter alia*, as under:

“In disciplinary proceedings High Court is not and cannot act as a second court of first appeal and that the High Court, in exercise of its powers Under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence and that the High Court can only see whether:

- (a) the enquiry is held by a competent authority;**
- (b) the enquiry is held according to the procedure prescribed in that behalf;**
- (c) there is violation of the principles of natural justice in conducting the proceedings;**
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;**
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;**
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;**
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;**
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;**
- (i) the finding of fact is based on no evidence.”**

When once the conclusion arrived at by the presiding officer of the Labour Court is found to be sustainable on facts, this court will not normally substantiate its subjective opinion in the place of the one arrived at by the Chairman of the Tribunal.

⁵ (2015) 2 SCC 610

12. On the above analysis, this Court finds that the award does not warrant interference more particularly, when there is no illegality or irregularity or impropriety in passing the award.

13. In the result, the writ petition is dismissed. No costs.

Miscellaneous petitions, if any, shall also stand dismissed.

M. SEETHARAMA MURTI, J

Date: 02.02.2017
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