

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.45884 OF 2016

Dated:21.02.2017

Between:

The Andhra Pradesh State Road Transport Corporation, rep., by its Managing Director,
Bus Bhavan, RTC X Road, Hyderabad
and others

.. Petitioners

And

The Presiding Officer, Labour Court – III,
Hyderabad and others

.. Respondents



The Court made the following:

THE HON'BLE SRI JUSTICE P. NAVEEN RAO**WRIT PETITION No.45884 OF 2016****ORDER:**

Petitioner – the Andhra Pradesh State Road Transport Corporation (Corporation) challenges the award passed by the Labour Court – III, Hyderabad in I.D.No.16 of 2012, dated 23.02.2016, notified by the Government in G.O.Rt.No.631, dated 08.09.2016.

2. Briefly the facts are as under:

Sri K. Komuraiah was working as Conductor with the petitioner - Corporation. Alleging that Komuraiah indulged in cash and ticket irregularities, disciplinary proceedings were initiated against him. That resulted in imposing punishment of removal from service by order, dated 24.04.2010. The appeal preferred by the employee was also rejected. The employee raised industrial dispute in I.D.No.16 of 2012 on the file of the Labour Court – III, Hyderabad. On detailed analysis of the evidence on record, the Labour Court held removal of the employee from service as illegal and directed to treat the workman had worked from the date of suspension till his death and his dependents were directed to be paid all the benefits, including attendant benefits and all terminal benefits, as if the deceased workman was in continuous service. Be it noted that during the pendency of the Industrial Dispute, Komuraiah died and his legal heirs prosecuted the dispute. Hence, this Writ Petition.

3. Heard learned counsel for the petitioners and Sri V. Narasimha Goud, learned counsel for appearing for respondents 2 to 5.

4.1 Learned counsel for the petitioner - Corporation contend that a detailed enquiry was conducted, after affording due opportunity and based on the findings recorded by the enquiry officer and on consideration of the explanation, the disciplinary authority passed orders of removal from service. He submits that when the entire gamut of disciplinary action was strictly observed and due opportunity was afforded, the Labour Court ought not to have interfered with the punishment imposed and granted reliefs in favour of respondents 2 to 5.

4.2 He further submits that the findings recorded by the Labour Court are contrary to Regulations and therefore the Labour Court grossly erred in passing such order and on that ground the award of the Labour Court is liable to be set aside.

4.3 He further submits that the Labour Court erred in interfering with the punishment imposed and on that ground it amounts to exceeding the jurisdiction vested in the Labour Court.

4.4 As the late employee was found to have committed cash and ticket irregularities causing huge loss to the petitioner - Corporation, the punishment of removal was validly imposed.

4.5 In support of the his contentions, Sri B. Mayur Reddy, learned counsel for the petitioner - Corporation, placed reliance on

the decision of the Supreme Court in ***State Bank of Bikaner and Jaipur v. Nemi Chand Nalwaya***¹.

5.1 Sri V. Narasimha Goud, learned counsel for respondents 2 to 5, submits that on detailed evaluation of evidence on record brought before the Labour Court, the Labour Court has recorded categorical findings that the disciplinary enquiry was not properly conducted and that a story was cooked up only to implicate the late employee and having come to such conclusion and having found that the material on record would point out illegal procedure followed by the petitioner – Corporation in holding the late employee as guilty and imposing the punishment, has rightly come to the conclusion that the punishment is not sustainable.

5.2 He would submit that once the punishment is held as unsustainable, the deceased employee and his dependants are entitled to all the reliefs as if the employee was in service and working. Therefore, granting of reliefs was in valid exercise of jurisdiction vested in the Labour Court.

5.3 He would further submit that the Labour Court is competent to go into the merits of the allegations made, evaluate the evidence brought on record and record its independent findings and merely because a domestic enquiry was conducted and findings were recorded does not take away the competency of the Labour Court in evaluating the evidence and record its own findings. The material on record would show that a farcical exercise was conducted to remove the late employee causing hardship to him

¹ (2011) 4 SCC 584

and his family members. He would therefore support the decision of the Labour Court.

5.4 He further contends that the writ Court, in exercise of power of judicial review under Article 226 of the Constitution of India, cannot re-evaluate/re-appreciate the evidence on record and upset the findings of the Labour Court. The jurisdiction of the writ Court against an award passed by the Labour Court is very limited. In matters of this nature, judicial review does not lie and the Writ Petition is liable to be dismissed as not maintainable.

5.5 In support of his contention, he placed reliance on the decisions of this Court in ***Divisional Manager, APSRTC and another v. E. Raja Reddy and another***² and in ***A.P.S.R.T.C. and others v. N.V. Subbaiah and another***³.

6. The award of the Labour Court would show that the Labour Court has evaluated the entire evidence on record. On behalf of the respondents before the Labour Court, 37 documents were marked. All these documents were considered by the Labour Court and having scanned through the evidence on record, the Labour Court found laches on the part of Assistant Depot Manager, at whose instance disciplinary proceedings were initiated against the late employee. Charge memo was prepared and served on the petitioner on the allegation that the petitioner has wrongly issued Rs.100/- denomination tickets. The Labour Court pointed out that though late employee was on duty on 14.06.2009, and the

² 1999 (5) ALD 735

³ 2016 (3) ALD 517

documents filed by the petitioner - Corporation before the Labour Court clearly point out that actually duty was performed by late employee on 14.06.2009, whereas the report prepared by the Assistant Manager (T) shows that late employee conducted duty on 15.06.2009. The Labour Court also found that Corporation has not filed cash register and has not made any endorsement on the right side top corner of the S.R. about the same. It pointed out that late employee submitted the STAR document and remitted the cash till 15.06.2009 and the Corporation has not found about the irregularities of the previous days STAR document.

7. Labour Court then went on to observe as under:

“... These facts clearly show that the respondent has miserably failed to prove that the 1st petitioner made alterations in the STAR documents to suit his claim is not correct as the 1st petitioner has not altered any serial numbers of the tickets in any of the STAR documents and only on the top of the STAR documents some alterations were made.”

...

...

“Admittedly, the STAR documents are with the ADC and he has not given any notice to the 1st petitioner within 7 days of the receipt of the STAR documents about the shortage or excess of any money and the irregularities found by him in the STAR documents.”

...

...

“It clearly shows that the respondent has miserably failed to prove that the petitioner has altered the STAR document. If really the petitioner is having intention to alter the STAR document he might have altered the serial numbers of the tickets mentioned in the STAR document but the petitioner has done so. One can easily compare the total number of tickets sold by the petitioner by seeing the serial numbers

of the tickets sold. Therefore, the respondent has miserably failed to prove that the deceased workman has altered the STAR document.”

...

...

“Admittedly, it is the duty of the respondent to prove the irregularity committed by the petitioner, but the case on hand the respondent completely ignoring the Circular issued by the respondent failed to appreciate the evidence on record and the enquiry officer also failed to follow the circular of the APSRTC and held that the charges are proved ignoring the duties of the ADC.”

“In view of the above discussion, the respondent has miserably failed to prove that petitioner made alterations in the STAR document and the documents filed by the respondent clearly shows that they issued charge memo dt.15.06.2009 and Ex.M3 clearly shows that the Asst. Manager (T) has submitted a report to the Depot Manager with false dates which is contrary to the charge memo issued by the respondent. These facts clearly show that the respondent to safeguard the ADC filed a false case against the deceased workman.”

8. Having recorded the above findings, the Labour Court observed that it is the duty of the Corporation to prove the irregularities committed by the late employee, but on complete ignorance of the circular issued by the Corporation, failed to appreciate the evidence on record and the enquiry officer also failed to follow the circular of the Corporation and held the charges as proved ignoring the duties of the ADC.

9. The decision in **State Bank of Bikaner** (1 supra) does not come to the rescue of learned counsel for petitioner – Corporation. Hon’ble Supreme Court delineated the scope of power of writ Court at paragraph No.7 as under:

“It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with the findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous consideration.”

10. Labour Court has thoroughly analyzed the material on record and on evaluating the evidence on record, came to the conclusion that findings recorded in the domestic enquiry were not made in a *bona fide* manner and, therefore, held the punishment as illegal. It cannot be said that Labour Court is not competent to evaluate the evidence brought before the Labour Court and come to independent conclusion to hold that the charges levelled against the ex-employee as not valid. It is too late in the day to hold that Labour Court cannot re-appreciate evidence and come to independent conclusion based on material on record. If such contention is accepted, it would amount to scuttling the right of legal remedy vested by Industrial Disputes Act in a workman against illegal dismissal from service by employer. The competence of Labour Court to re-appreciate the evidence was considered by

learned single Judge of this Court in **N.V. Subbaiah** (3 supra). On review of the entire case law held as under:

“14. The above is the line of argument adopted by Mr. Deshmukh. He referred us to certain decisions of this Court in support of his contentions that the opportunity that was so far directed to be given to an employer to adduce evidence for the first time before the Tribunal was not by way of recognising a right in an employer but really for the benefit of the workman, who will otherwise be jeopardised by a further enquiry being conducted by the employer after filling up the lacunae that are found in the original enquiry. He pointed out that when the Tribunals have now been clothed with full power to reappraise the evidence adduced in the domestic enquiry, which an employer is under obligation to conduct, and when they have been clothed with powers to hold as unjustified in order of termination because of the enquiry proceeding being defective or on the ground that no enquiry at all was conducted, the basis for giving an employer an opportunity to adduce evidence before the Tribunal no longer survives. Mr. Deshmukh was prepared to accept that even now it is open to the parties to adduce evidence before the Tribunal, strictly limited to the validity or otherwise of a domestic enquiry conducted by an employer. The counsel relied very heavily on the proviso to Section 11-A in support of his contention that it is obligatory now for an employer to conduct a proper and valid enquiry before passing an order of dismissal or discharge.”

11. A reading of the award would also show that there is discussion on every aspect and detailed analysis of the evidence on record. Having come to the above conclusions, the Labour Court held the termination as illegal. The Labour Court is competent to re-appreciate the evidence and record its findings upsetting findings of the disciplinary authority. In **E. Raja Reddy** (2 supra)

this Court held that interference with the discretion exercised by the Labour Court in awarding proper punishment is very limited.

12. It is well settled principle of law that writ Court does not act as an appellate Court against the awards passed by the Labour Court. The writ Court cannot re-appreciate the material on record and come to a different conclusion from the conclusion arrived at by the Labour Court as if sitting in appeal over the decision. Only in case where the findings and the conclusions arrived at by the Labour Court are held to be perverse and *ex-facie* contrary to the material on record, this Court can interfere with the award in exercise of power of judicial review.

13. In the case on hand, neither the findings are perverse nor conclusions arrived at can be said as not based on material on record. On the contrary, as recorded by the Labour Court farcical enquiry was conducted and in order to save some other employee, late employee was dragged. The findings recorded by the Labour Court are not controverted by the petitioner – Corporation. Except contending that the findings recorded by the enquiry officer and the decisions arrived at by the disciplinary authority and the appellate authority ought not to have been interfered with, no other material is brought on record to show that the conclusions arrived at by the Labour Court are perverse. No material irregularity is pointed out vitiating the award passed by the Labour Court.

14. The extracted portions of the award of the Labour Court would show that Labour Court has validly exercised the

jurisdiction in interfering with the punishment imposed against late employee. I therefore see no error much less patent error in the award impugned in the Writ Petition. There is no merit in the Writ Petition and it is liable to be dismissed.

15. The Writ Petition is accordingly dismissed. There shall be no order as to costs.

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

Date:21.02.2017

KH

P. NAVEEN RAO, J

