

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

Writ Petition No.11685 of 2017

Date : 6.4.2017

W.P.No.11685 of 2017

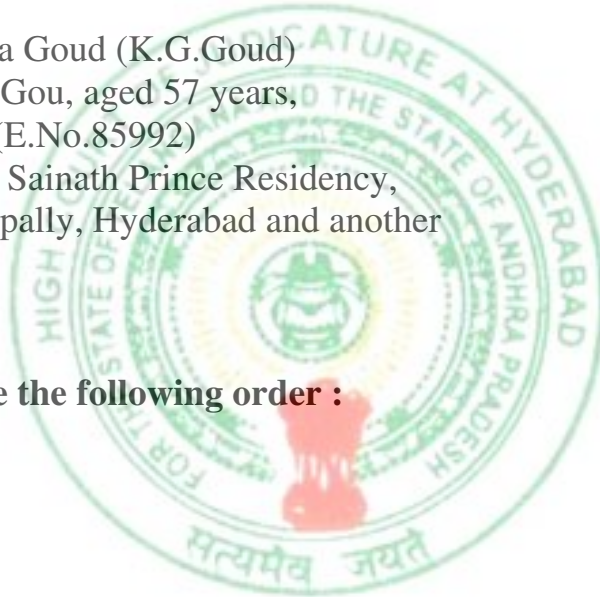
Between :

The Telangana State Road Transport
Corporation (prior to bifurcation known as
Andhra Pradesh State Road Transport Corporation)
Rep. by its managing Director, Bus Bhavan,
RTC 'X' Road, Hyderabad & others .. Petitioners

and

Sri K.Gangadhara Goud (K.G.Goud)
S/o late Chamba Gou, aged 57 years,
Occ : Ex.Driver (E.No.85992)
R/o Plot No.305, Sainath Prince Residency,
Nizampet, Kukatpally, Hyderabad and another .. Respondents

The Court made the following order :



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ORDER :

The 1st respondent was working as Driver in the Petitioner-Corporation. Disciplinary proceedings were initiated against him by referring to the instances occurred on 8.3.2013. The charge-sheet contains two charges. The sum and substance of the allegation of the first charge is the 1st respondent entered into depot premises in intoxicated condition and took rest in the crew rest room. The sum and substance of the allegations of the second charge is the 1st respondent created nuisance and quarreled with G.S.Kumar, Conductor, in intoxicated condition in the crew rest room resulting in much inconvenience to other crew taking rest in the rest room. The disciplinary proceedings resulted in imposing punishment of termination from service by order, dated 27.9.2013. Challenging the termination from service, the petitioner raised Industrial Dispute before the Labour Court-II, Hyderabad in I.D.No.7 of 2014.

2. The Labour Court, on detailed consideration of the material available on record, has held the termination of the 1st respondent as illegal and directed reinstatement of the 1st respondent into service with continuity of service and attendant benefits with backwages. The award passed by the Labour Court is under challenge in this Writ Petition by the Petitioner-Corporation.

3. Heard the learned counsel for petitioners and the learned counsel for the 1st respondent.

4. Learned counsel for petitioners contends that detailed domestic enquiry was conducted, due opportunity was afforded to the 1st respondent and on evaluation of the material available on record and after affording due opportunity based on the findings recorded by the enquiry authority, punishment was imposed. There was no procedural irregularity or illegality in conducting the disciplinary proceedings and punishment is imposed based on the material available on record. Learned counsel, therefore, contends it is wholly illegal on the part of the Labour Court to re-appreciate the evidence on record, record its own findings and set aside the punishment imposed by the petitioner. The said action of the Labour Court is in excess of its jurisdiction and is perverse.

5. In response, the counsel for the 1st respondent submits that on thorough analysis of the evidence on record, the Labour Court has come to correct conclusion. There is no error committed by the Labour Court. He further submits that the Labour Court is competent to re-evaluate the evidence on record and come to conclusion different from the conclusion arrived at by the disciplinary authority based on material available on record and there is no illegality committed by the Labour Court in recording finding in favour of 1st respondent and setting aside the punishment.

6. Learned counsel further emphasized that the jurisdiction of the writ court in matters arising from the awards passed by the Labour Court is limited and contends that this case does not come within the exceptional

category where the Court can interfere either on findings recorded or on discretion exercised by the Labour court.

7. On careful consideration of the respective submissions and going through the award passed by the Labour Court, it is seen that Labour Court analyzed the material available on record. The Labour Court has noticed that the 1st respondent was subjected to breath analyzer test. There are two means of analyzing the breath; one will give beep sound and other will give measurement of intoxication. The 1st respondent categorically asserted that he did not consume liquor but consumed medicine. The Labour Court observed that having regard to this stand of the 1st respondent, the 1st respondent ought to have been referred to the medical examination to find out the intoxicated condition and admittedly he was not subjected to medical examination. The Labour Court held that the burden lies on the employer to prove that the 1st respondent attended office in intoxicated condition and this burden is not discharged. On the second charge, the Labour Court found that the allegation that 1st respondent quarreled with one G.S.Kumar was not proved as the said G.S. Kumar did not support the management version. Having regard to these findings, the Labour Court held punishment is illegal.

8. In matters arising out of awards passed by the Labour Court, the jurisdiction of this Court under Article 226 is limited. This Court does not act as appellate Court to re-appreciate and come to a different conclusion upsetting the finding recorded by the Labour Court. Further, Labour Court is competent to take note of evidence adduced before it, re-appreciate the evidence on record and come to independent conclusion on allegations

leveled and punishment imposed. Principle of law on this issue is well settled.

9. In *State Bank of Bikaner and Jaipur v. Nemi Chand Nalwaya* ¹

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. 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 leveled against the ex-employee are not proved. 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.

¹ (2011) 4 SCC 584

11. The competence of Labour Court to re-appreciate the evidence was considered by learned single Judge of this Court in *A.P.S.R.T.C and Others v. N.V.Subbaiah and another*². On review of the entire case law on the subject learned single Judge held as under :

“In the case on hand, neither the findings are perverse no 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, later 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.”

12. Having regard to the facts of the case, Labour Court, having declared that the disciplinary action is wholly illegal, came to the conclusion that the 1st respondent is entitled to consequential benefits.

13. Thus, I do not see any illegality or perversity in the award passed by the Labour Court warranting interference.

14. The Writ Petition is accordingly dismissed. No order as to costs.

15. Miscellaneous petitions, if any, pending in this writ petition shall stand disposed of.

JUSTICE P.NAVEEN RAO

06th April, 2017

skmr

² 2016 (3) ALD 517