

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.27993 OF 2017

ORDER:

This writ petition is filed seeking writ of certiorari to quash the impugned punishment order No.02/95(18)/15-KLKY, dated 14.09.2015 passed by the 3rd respondent and also order of the 2nd respondent in his Proc.No.PA/675(10)/2016-ED(O), dated 18.11.2016 in so far as imposing punishment and denial of other consequential benefits as illegal and arbitrary and consequently to direct the respondents to restore the deferred increment duly treating the removal period as on duty along with all consequential benefits.

2. It is the case of the petitioner that he joined the services of the respondents' Corporation as Conductor in the year 2000 in regular vacancy and his services were regularized with effect from 01.08.2001. According to the petitioner, he was removed from service by the 3rd respondent on 14.09.2015 on the allegation that he was involved in cash and ticket irregularities case while conducting the bus service on 23.02.2015 from Kalwakurthy to Hyderabad. Aggrieved by the same, he filed appeal and revision, which were rejected vide orders dated 03.03.2016 and 24.03.2016 respectively. Subsequently he preferred review under Reg.30 of APSRTC Regulations 1967 before the 2nd respondent, who in turn was pleased to pass an order dated 18.11.2016 reinstating him into service with the following punishments i.e., reduction of pay by two incremental stages permanently and that the period in

between the date of removal from service and date of reinstatement shall be treated as not on duty for the purpose of gratuity, increments, leave, wages and seniority. By virtue of above proceedings, petitioner is working in the 4th respondent depot from 30.11.2016. Aggrieved by the order of removal dated 14.09.2015 passed by 3rd respondent and also order of 2nd respondent in his proceedings No.PA/675(10)/2016-ED(O), dated 18.11.2016, the present writ petition is filed.

3. Heard Sri V. Narasimha Goud, learned counsel for the petitioner and Sri B. Mayur Reddy, learned Standing Counsel for the respondent Corporation.

4. Learned counsel for the petitioner, while reiterating the averments in the affidavit filed in support of the writ petition, vehemently contended that the order of punishment imposed by the Depot Manager as well as order dated 18.11.2016 passed by the 2nd respondent is harsh and same is inflicted without considering the explanation submitted by the petitioner. He submits that major penalty cannot be imposed for minor misconduct. He submits that the punishment must be proportionate and reasonable with reference to the misconduct committed by the petitioner and not a major punishment. He submits that availability of an alternate remedy is not a bar for entertaining the writ petition under Article 226 of the Constitution of India. In support of his contentions, he relied on the judgment reported in **TSRTC, Hyderabad v. Janaki Ramudu¹, M.Rajaiah and**

¹ 2017 (1) ALD 254 (DB)

others v. State Bank of India², A.V.Venkateswaran, Collector of Customs v. Ramchand Sobhraj Wadhwani³, State of Uttar Pradesh v. Mohammad Nooh⁴, Himmatlal Harilal Mehta v. the State of Madhya Pradesh⁵.

5. On the other hand, Sri B. Mayur Reddy, learned Standing Counsel for the respondent Corporation submits that although the powers conferred upon this court under Article 226 of the constitution are very wide and there is no express limitation on exercise of such power, but this Court will not normally entertain writ, when petitioner has an alternate and efficacious remedy under Section 10(c) of the Industrial Disputes Act, 1947. In support of his contentions, he relied on the judgments reported in **United Bank of India v. Satyawatitondon and others⁶, Rajeev Kumar v. Hemraj Singh Chauhan⁷ and Whirlpool Corporation v. Registrar of Trade Marks, Mumbai⁸.**

6. Before considering the rival contentions of both parties, it is necessary to extract relevant provisions of the Industrial Disputes Act, 1947.

[2-A.Dismissal, etc., of an individual workman to be deemed to be an Industrial Dispute:- 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 forty-five days from the date he has made the application to the Conciliation

² 1998 (2) ALD 180

³ AIR 1961 SC 1506

⁴ AIR 1958 SC 86

⁵ AIR 1954 SC 403

⁶ (2010) 8 Supreme Court Cases 110

⁷ (2010) 4 Supreme Court Cases 554

⁸ (1998) 8 SCC 1

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)].”

7. In view of State Amendment, Section 2-A (2) was inserted as per the amendment of A.P.Act 32 of 1987 with effect from 27.07.1987, which reads as follows:

“(2) Notwithstanding anything in Section 10, any such workman as is specified in sub-section (1) may, make an application in the prescribed manner direct to the Labour Court for adjudication of the dispute referred to therein; and on receipt of such application the Labour Court shall have jurisdiction to adjudicate upon any matter in the dispute, as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act; and accordingly all the provisions of this Act, shall apply in relation to such dispute as they apply in relation to any other industrial dispute.”

In view of the said State Amendment to Section 2-A sub-section (2), a workman can directly make an application to the Labour Court for adjudication of disputes referred to in sub-section (1) of Section 2-A of the Act. The aforesaid amendment by way of introduction of sub-section 2 of the State Amendment, carves out an exception to the general Rule under Section 10 (c). Section 10 (c) of the Act reads as follows:

“10. Reference of disputes to Boards, Courts or Tribunals:- (1)
[Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time] by order in writing-

(a).....

(b).....

(c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or

(d) refer the dispute or any matter appearing to be connected with or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication:

The SECOND SCHEDULE reads as follows:

Matters within the jurisdiction of Labour Courts.

1. The propriety or legality of an order passed by an employer under the standing orders;
2. The application and interpretation of standing orders;
3. Discharge or dismissal of workmen including re-instatement of, or grant of relief to workmen wrongfully dismissed;
4. Withdrawal of any customary concession or privilege.
5. Illegality or otherwise of a strike or lock-out; and
6. All matters other than those specified in the third Schedule.

8. It is to be seen that earlier to the State Amendment to the Act of 1947, even in respect of matters falling under Section 2-A (1) of the Act, wherever the appropriate Government is of opinion that any industrial dispute is apprehended, it may at any time, refer the dispute to the Labour Court for adjudication in respect of matters specified in Second Schedule as per Section 10(c) of the Act. But, by virtue of an amendment to Section 2-A, the workman can approach the Labour Court directly in respect of matters falling under sub-section (1) of Section 2-A of the Act.

9. In the present case, the petitioner was initially removed from service by an order dated 14.09.2015 by the 3rd respondent on the allegation that he was involved in cash and ticket irregularities while conducting the bus service on 23.02.2015 from Kalwakurthy to Hyderabad. Aggrieved by the same, petitioner preferred appeal and revision, which were rejected on 03.03.2016 and 24.03.2016 respectively. Thereafter, petitioner filed Mercy Petition before the 2nd respondent and the 2nd respondent passed an order on 18.11.2016 reinstating petitioner into service with the punishments i.e., 1) pay is reduced by two incremental stages permanently 2) the period in between the date of removal from

service and date of reinstatement shall be treated as not on duty for the purpose of gratuity, increments, leave, wages and seniority. After considering the Mercy Petition filed by the petitioner, the 2nd respondent passed the aforesaid order in the said petition but not in the Review Petition, as contended by the learned counsel for the petitioner. Though the 2nd respondent passed orders on the Mercy Petition, still the petitioner has remedy under Section 10 (c) of the Act. If respondents fails to act in accordance with Section 10(c) of the Act, petitioner has remedy by way of writ petition.

10. In **Telco Convoy Drivers Mazdoor Sangh v. State of Bihar**⁹, the Hon'ble Supreme Court held that when government's refusal to make reference of dispute is found to be unjustified, court can direct the government to make a reference to appropriate Tribunal.

11. In **Sankari Cement Alai Thozhilalar Munnetra Sangam v. Government of Tamil Nadu**¹⁰, wherein the Hon'ble Supreme Court held that where Government refuses to make reference on irrelevant grounds, Supreme Court in appeal can direct it to perform its statutory duty of making reference.

12. In **Nutrine Confectionery Co., Ltd., Chittoor v. Government of A.P**¹¹, this Court held as follows:

“7. Under the Act, if an industrial dispute exists and is apprehended, the Government is competent to make a reference to the Labour Court. Normally, the dispute regarding an individual workman is not treated as an industrial dispute unless the union to which he or a group of workmen belongs sponsors it. Therefore, Section 2-A was introduced under which an individual dispute between a workman and an employer relating to discharge, dismissal, retrenchment or termination is deemed to be an industrial dispute notwithstanding that it has not been espoused

⁹ (1989) 3 Supreme Court Cases 271

¹⁰ (1983) 1 Supreme Court Cases 304

¹¹ 1999 (6) ALD 618 (DB)

by the union or other workmen. In other words, under [Section 2-A](#) of the Act an individual dispute is treated as an industrial dispute. Sub-section (2) is an amendment introduced by the State of Andhra Pradesh enabling the individual workman to directly approach the Labour Court for adjudication of the industrial dispute referred to in [Section 2-A](#) of the Act. Therefore, though it is an individual dispute it became an industrial dispute and under [Section 2-A\(2\)](#) an individual workman is permitted to approach the Labour Court directly if an industrial dispute exists. The industrial dispute referred to under [Section 2-A](#) relates to the discharge, dismissal, retrenchment or termination. Therefore, if the services of a workman are terminated or the workman is dismissed from service, since it is an industrial dispute, he is entitled to approach the Labour Court directly without seeking a reference under [Section 10](#) of the Act. It is true that under [Section 10](#) of the Act it is only the Government which is competent to make a reference to the Labour Court if an industrial dispute exists. In our view, the fact that it is only the Government which is competent to make a reference under [Section 10](#) of the Act if an industrial dispute exists, does not make the new provision inconsistent with the said provision. [Section 10](#) as well as sub-section (2) of [Section 2-A](#) of the Act operate in different fields under different circumstances. [Section 10](#) of the Act operates where the union or other workmen espouse the cause of a workman while [Section 2-A\(2\)](#) of the Act operates in cases where the union does not espouse the cause of an individual workman. Further, it is only in a case where the workman is discharged or dismissed or retrenched from his service or terminated, [Section 2-A](#) and [Section 2-A\(2\)](#) of the Act apply. In all other cases, [Section 10](#) of the Act applies. If a workman has been wrongly terminated or in a case where wrongful dismissal or retrenchment without following the provisions of the Act or discharge of a workman was illegal, if the Government does not make a reference on the ground that it has not been espoused by the union, the workman will be left without any remedy. Therefore, to meet such situations, the State of Andhra Pradesh incorporated [Section 2-A\(2\)](#) of the Act in order to protect the interest of an individual workman whose services were terminated wrongfully and where an industrial dispute exists. It is, therefore, clear that in all other cases other than those cases covered by [Section 2-A\(2\)](#) of the Act [Section 10](#) applies. Hence, there is no substance in the argument of the learned Counsel for the petitioner that [Section 10](#) of the Act becomes meaningless in view of sub-section (2) of [Section 2-A](#) of the Act.

13. A perusal of the affidavit filed in support of the writ petition goes to show that nowhere it is mentioned that petitioner has made an application for espousing cause. Instead of making an application to a particular union to which he belongs, for espousing of his cause as per the provisions of this Act, petitioner straight away filed writ petition. There is no dispute about the fact that under [Section 10\(c\)](#) of the Act it is only the Government

which is competent to make a reference to the Labour Court if there exists an industrial dispute. [Section 10](#) of the Act provides where the union or other workmen espouse the cause of a workman whereas [Section 2-A\(2\)](#) of the Act comes into operation in cases falling under [Section 2-A\(1\)](#) of the Act. Therefore, it can be safely concluded that in a case where the workman is discharged or dismissed or retrenched from his service or terminated, [Section 2-A](#) and [Section 2-A\(2\)](#) of the Act is applicable and in all other cases, [Section 10](#) of the Act is applicable.

14. In **A.V.Venkateswaran, Collector of Customs v. Ramchand Sobhraj Wadhvani** (supra), the Hon'ble Supreme Court held as follows:

"10. There is no difference between the above and the formulation by Das, C. J., in [The State of Uttar Pradesh v. Mohammad Nooh](#) (2), where he observed:

"..... It must be borne in mind that there is no rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy. It is well established that, provided the requisite grounds exist, certiorari will lie although a right of appeal has been conferred by statute. The fact that the aggrieved party has another and adequate remedy may be taken into consideration by the superior court in arriving at a conclusion as to whether it should, in exercise of its discretion, issue a writ of certiorari to quash the proceedings and decisions of inferior courts subordinate to it and ordinarily the superior court will decline to interfere until the aggrieved party has exhausted his other statutory remedies, if any. But this rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy, convenience and discretion rather than a rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies."

11. After referring to a few cases in which the existence of an alternative remedy had been held not to bar the issue of a prerogative writ, the learned Chief Justice added:

"It has also been held that a litigant who has lost his right of appeal or has failed to perfect an appeal by no fault of his own may in a proper case obtain a review by certiorari."

12. In the result this Court held that the existence of other legal remedies was not per se a bar to the issue Of a writ of certiorari

and that the Court was not bound to relegate the petitioner to the other legal remedies available to him.

15. In **the State of Uttar Pradesh v. Mohammed Nooh**

(supra), the Hon'ble Supreme Court held as follows:

“15. On the authorities referred to above it appears to us that there may conceivably be cases-and the instant case is in point-where the error, irregularity or illegality touching jurisdiction or procedure committed by an inferior court or tribunal of first instance is so patent and loudly obtrusive that it leaves on its decision an indelible stamp of infirmity or vice which cannot be obliterated or cured on appeal or revision. If an inferior court or tribunal of first instance acts wholly without jurisdiction or patently in excess of jurisdiction or manifestly conducts the proceedings before it in a manner which is contrary to the rules of natural justice and all accepted rules of procedure and which offends the superior court's sense of fair play the superior court may, we think, quite properly exercise its power to issue the prerogative writ of certiorari to correct the error of the court or tribunal of first instance, even if an appeal to another inferior court or tribunal was available and recourse was not had to it or if recourse was had to it confirmed what ex facie was a nullity for reasons aforementioned. This would be so all the more if the tribunals holding the original trial and the tribunals hearing the appeal or revision were merely departmental tribunals composed of persons belonging to the departmental hierarchy without adequate legal training and background and whose glaring lapses occasionally come to our notice. The superior court will ordinarily decline to interfere by issuing certiorari and all we say is that in a proper case of the kind mentioned above it has the power to do so and may and should exercise it. We say no more than that.”

Learned counsel for the petitioner placed his reliance on the judgments referred to supra stating that availability of alternate remedy is not a bar for this Court to entertain a Writ Petition. In the aforesaid judgments, it is held that when the alternate remedy is ineffective or entails such delay that the petitioner would be irreparably prejudiced or subjected to lengthy proceedings or unnecessary harassment, mere existence of an alternate remedy is not an absolute bar to the relief under Article 226 of the Constitution of India and it does not take away the jurisdiction of the Court to grant the relief in exceptional circumstances. In the aforesaid judgments, the Hon'ble Supreme Court as well as this Court held that in spite of availability of alternate remedy, writ

petition is maintainable. But at the same time, Courts have unanimously held that normally this Court will not entertain the writ petition when the petitioner has alternate remedy, but it does not mean that this Court is powerless to entertain the writ petition or the Writ Petition is not maintainable. It is a consistent view expressed in all the aforesaid decisions that when the impugned order is in violation of principles of natural justice, without jurisdiction or patently illegal, this Court can certainly entertain the writ petition by exercising the power under Article 226 of the Constitution of India. As per the aforesaid decisions referred to supra, it is only a self imposed restriction not to entertain writ petitions, when petitioner has effective alternate remedy, subject to certain exceptions as stated supra. The decisions relied on by the learned counsel for the petitioner are rendered in different factual and legal background. But in the present case, the appeal and review petitions filed by the petitioners were rejected and that only on the Mercy Petition filed by the petition, petitioner was reinstated into service with certain punishments. It is not the case of the petitioner that the order passed by the respondents against petitioner is without jurisdiction or in violation of principles of natural justice, for exercising writ jurisdiction straight away.

16. Be that as it may, when once the petitioner has alternative remedy of espousing his cause through Union, he has not even made a representation to the Employees Union espousing his cause. As such, it cannot be said that petitioner has no alternate remedy of espousing his cause under the provisions of this Act.

17. In view of above, this Court is not inclined to entertain the writ petition since the petitioner has effective alternate remedy under Section 10(c) of the Act.

In view of above facts and circumstances, this Writ Petition is liable to be dismissed and accordingly, same is dismissed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending, shall stand dismissed.

31.01.2018
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A.RAJASHEKER REDDY, J



HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

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