

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.16467 of 2001

ORDER:

The petitioner-Management filed this writ petition being aggrieved by the Award in I.D.No.73 of 1997, dated 05.01.2001, passed by the 1st respondent-Industrial Tribunal-cum-Labour Court, Warangal, whereby, the Labour Court set aside the removal order, dated 05.12.1996, passed against the 2nd respondent/workman and ordered reinstatement of the 2nd respondent into service with full back wages, continuity of service and all attendant benefits.

Brief facts of the case are that the 2nd respondent/workman was appointed as Clerk-cum-Typist on 11.07.1987 in the petitioner company- A.P.Rayons Limited. While working as such, the 2nd respondent was issued a show cause notice on 05.07.1996 alleging that he altered the bill amount from Rs.150/- to Rs.1950/- in collusion with Painter Ramesh and one Veerabhadram, who worked as Junior Engineer in the Audit Department of the petitioner company. The 2nd respondent submitted his explanation. However, the Management initiated enquiry and an Enquiry Officer was appointed. The Enquiry Officer, vide charge memo, dated 29.07.1996, framed the following charge against the 2nd respondent.

“That you, with an intention to cause the management to part with Rs.1,750/- altered the original and duplicate copy of the bill by adding figure ‘1’ before figure 5 and 30 in the text of the bill altered the figure 150 to 1950 and further added in words one thousand nine hundred and fifty only and used the said forged document for the purpose of making wrongful gain to yourself and for said purpose forged the original and duplicate copy of the bill as stated above.”

The 2nd respondent submitted his explanation to the above charge. Domestic Enquiry was conducted and the Enquiry Officer submitted his report. Based on the enquiry report, the petitioner/management removed the 2nd respondent from service. Being aggrieved, the 2nd respondent raised an industrial dispute in I.D.No.73/1997 before the 1st respondent-Labour Court. The Labour Court having considered the evidence available before it, passed the impugned award, dated 05.01.2001, setting aside the removal order and directed the petitioner/management to reinstate the 2nd respondent into service with full back wages, continuity of service and all attendant benefits. Questioning the same, the present writ petition is filed.

Sri Bankatlal Mandhani, learned counsel, appearing for the petitioner Management, would contend that the 2nd respondent, while working as a Clerk-cum-Typist in the petitioner's company, altered the bill amount from Rs.150/- to Rs.1950/-, for which, a charge memo was issued to the 2nd respondent. The 2nd respondent submitted his explanation. Having not satisfied with the explanation, the petitioner company initiated enquiry and appointed an Enquiry Officer. The Enquiry Officer conducted the enquiry giving full and proper opportunity to the 2nd respondent. The Enquiry Officer, based on the evidence adduced before him and on examining the documents, marked as Exs.M1 to M7, came to the conclusion that the charge is proved against the 2nd respondent and accordingly, submitted his report. The learned counsel would further contend that based on the Enquiry Officer's report, a show cause notice of removal was issued to the 2nd respondent/workman. The 2nd respondent submitted his explanation. Considering the explanation of the petitioner and the enquiry officer's report, the 2nd respondent was removed from

service. The learned counsel would further contend that there is no illegality and irregularity in removing the 2nd respondent. The learned counsel would further contend that the 2nd respondent/workman raised industrial dispute in I.D.No.73/1997 before the 1st respondent-Labour Court, and the Labour Court erroneously on re-appreciating the evidence before the Enquiry Officer, came to a different conclusion to that of the Enquiry Officer and observed that the charge was not proved against the 2nd respondent.

The learned counsel for the petitioner-Management would further contend that the Labour Court grossly erred in holding that there is no evidence before it and having considering the Xerox copies of the proceedings of the Enquiry Officer, and on the ground that the Management failed to produce the Enquiry Officer's report, original proceedings and documents relating to the domestic enquiry, passed the award, directing reinstatement of the 2nd respondent, which is illegal. The learned counsel has further contended that the Xerox copy of document can be taken as secondary evidence and in support thereof, he relied on a judgment of the Hon'ble Supreme Court in *Bhavnagar Municipal Corpn. V. Jadeja Govubha Chhanubha*¹, wherein the Apex Court held that the Xerox copies, being secondary evidence, marked without any objection, are admissible evidence and strict rules of evidence are not applicable to the proceedings before the Labour Court. There is no dispute with respect to the said legal principle. But the petitioner, except the Xerox copy of enquiry proceedings, no evidence was produced and no Enquiry Officer's report was produced before the Enquiry Officer.

¹ (2014) 16 SCC 130

The learned counsel for the petitioner would further contend that where domestic enquiry is found illegal and improper, the Labour Court ought to have framed a preliminary issue which need determination as to whether the Management can be allowed to prove charge against the 2nd respondent/workman before the Labour Court. The learned counsel would further contend that without framing any preliminary issue, the Labour Court grossly erred in appreciating the evidence before the Enquiry Officer and came to a different conclusion to that of the Enquiry Officer, which is illegal, and in support of this contention, the learned counsel relied on a judgment of the Hon'ble Supreme Court in *Kurukshetra University v. Prithvi Singh*², wherein the Apex Court at paras-17 and 18 held as under:

“17. When we examine the facts of this case in the light of the aforementioned principles of law, we find that the termination of the respondent was by way of punishment because it was based on the adverse findings recorded against the respondent in the domestic enquiry. So the question, which the Labour Court was expected to decide in the first instance as a “preliminary issue”, was whether the domestic enquiry held by the appellant employer was legal and proper. In other words, the question to be decided by the Labour Court was whether the domestic enquiry held by the appellant was conducted following the principles of natural justice or not. If the domestic enquiry was held legal and proper, then the next question which arose for consideration was whether the punishment imposed on the respondent delinquent employee was proportionate to the gravity of the charge leveled against him or it called for any interference to award any lesser punishment by exercising the powers under Section 11-A of the ID Act.

18. If the domestic inquiry was held illegal and improper then the next question, which arose for consideration, was whether to allow the appellant employer to prove the misconduct/charge before the Labour Court on merits by adducing independent evidence against the respondent employee. The appellant was entitled to do so after praying for an

² (2018) 4 SCC 483

opportunity to allow them to lead evidence and pleading the misconduct in the written statement.”

In the present case framing of preliminary issue with regard to the validity of the domestic enquiry does not arise, as the Labour Court found that the enquiry validly conducted based on enquiry proceedings, but found that the finding of the enquiry officer is perverse. Hence, the above decision has no help to the case of the petitioner.

The learned counsel for the petitioner has further contended that the Labour Court has no power to re-appreciate the evidence and come to a complete different conclusion to that of the Enquiry Officer. He further contends that the finding of the Labour Court that there is no sufficient evidence before the enquiry Officer to hold that the charges are proved against the 2nd respondent is erroneous, and the Labour Court could not re-appreciate the evidence and held that the charges are not proved and the punishment of dismissal of the 2nd respondent from service is not commensurate with the charges proved. In support of this contention, the learned counsel for the petitioner has relied on a judgment of the Hon'ble Supreme Court in *BHEL v. M.Mani*³, wherein the Apex Court held that the principle of proportionality theory depends on several factors. This court fully agreed with the said legal principle.

In the present case, the Labour Court has not recorded any fresh evidence in the I.D. By exercising the powers conferred under Section 11-A of the Industrial Disputes Act, the Labour Court has re-appreciated the evidence before the Enquiry Officer and set aside the removal order of the 2nd respondent. Section 11-A of the Industrial Disputes Act reads as under:

³ (2018) 1 SCC 285

“Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen. Where an industrial dispute relating to the discharge or dismissal of a workmen has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal as the case may be, is satisfied that the order of discharge or dismissal was not justified it may, be its award, set aside the order of discharge or dismissal and direct reinstatement of the workmen on such terms and conditions, if any, as it thinks fit, or give such relief to the workmen including the award of any lesser punishment in lieu of discharge or other dismissal as the circumstances of the case may require:

Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.”

The Labour Court, only relying on the material available on record, set aside the removal order of the 2nd respondent, and hence, the judgments relied on by the learned counsel for the petitioner are not applicable to the facts of the present case.

Sri P.Prabhakar Reddy, learned counsel, appearing for the 2nd respondent, would contend that the Labour Court, having discussed the evidence of one painter Ramesh before the Enquiry Officer, who is said to be the prime accused in the charge, and held that the Enquiry Officer solely relying on the oral evidence of Painter Ramesh held that the 2nd respondent colluded with Veerabhadram and misappropriated excess amount of Rs.1760/-. The Tribunal further held that the 2nd respondent totally denied the receipt of the amount from Ramesh in his evidence, that as can be seen from the evidence of Management witnesses, the alterations on the bill and connected documents are not found in the handwriting of the 2nd respondent, and that there is no acceptable legal

evidence to show that the 2nd respondent only made those alterations with a *mala fide* intention in a pre-planned manner to misappropriate the amount in collusion with Veerabhadram, and accordingly, the Labour Court rightly held that the enquiry officer erred in accepting oral evidence of the painter Ramesh to prove the charge against the 2nd respondent. The learned counsel would further contend that the 2nd respondent is not involved in the alteration of the bill and not received any amount, and without considering the explanation of the 2nd respondent to the charge memo and to the show cause notice, and without application of mind, basing on the alleged enquiry report, the 2nd respondent/workman was removed from service. The learned counsel would contend that the Labour Court found that the conclusions of the Enquiry Officer not based on legal evidence are perverse, and on re-appreciating the evidence available, came to the conclusion that the charges are not proved against the 2nd respondent/workman. In support of his contention, the learned counsel has relied on the decision of the Hon'ble Supreme Court in *Samnuggur Jute Factory Company Limited v. Their workmen*⁴, wherein the delinquent employee was dismissed from service based on the enquiry report, but no enquiry report is made, in those circumstances, the Labour Court itself considered the evidence for itself, held that the charges were not proved. In the present case also no enquiry officer's report was placed before it, the Labour Court considered the evidence before it, came to the conclusion that the charge not proved.

The learned counsel for the 2nd respondent has contended that the petitioner willfully not produced the Enquiry Officer's report, original proceedings and original documents, which are said to be altered by the

⁴ LAWS(SC)-1963-11-25

2nd respondent, before the Labour Court. He would further contend that the Labour Court is justified in confining itself to the evidence before it and came to the conclusion that the charges are not proved against the 2nd respondent/workman, in particular, alteration of the bills, for which, the charge memo was issued. The learned counsel would further contend that the Enquiry Officer, merely basing on the oral evidence of the painter Ramesh, which was not supported by any documentary evidence or corroborative evidence, came to the conclusion that the charge is proved against the 2nd respondent. The learned counsel would further contend that the Labour Court has rightly disbelieved the oral evidence of the Painter Ramesh given before the Enquiry Officer and passed the impugned award, setting aside the removal order passed against the 2nd respondent and directed reinstatement of the 2nd respondent into service with full back wages, continuity of service and all attendant benefit, which does not call for any interference of this court.

In the facts and circumstances of the case, having considered the rival contentions of the learned counsel, and having carefully perused the award of the Labour Court and the evidence of the painter Ramesh before the Enquiry Officer, this court found that the removal of the 2nd respondent/workman from service, without considering the explanation of the 2nd respondent to the charge memo and the show cause notice, based on the Enquiry Officer's report, which is perverse, not supported by any legal evidence, is illegal. The Labour Court, having appreciated the evidence before it, held as under:

“The Enquiry Officer erred in accepting oral evidence of painter, Ramesh for the proof of grave charge against the 2nd respondent. Adverse interference is drawn against the petitioner/management for suppressing the original documents and enquiry report, which are absolutely

necessary, to enable the Tribunal to re-appreciate the evidence effectively. The Tribunal is left with only Xerox copies of depositions and Xerox copies of a portion of documents relating to domestic enquiry. Even from the available record placed before the Tribunal, there is absolutely no evidence to clinchingly establish that the 2nd respondent made alterations in the relevant bill and connected papers to gain wrongfully for himself. When the 2nd respondent categorically denied receiving of Rs.1760/- from painter Ramesh, the Management is bound to place acceptable documentary evidence in domestic enquiry to connect the 2nd respondent to the charge of falsification of accounts, tampering of documents and misappropriation of amount of Rs.1760/- The charge leveled against the 2nd respondent cannot be said as proved by drawing presumptions without sufficient evidence on record.”

The Labour Court having held, came to the conclusion that the charges are not proved against the 2nd respondent and removal of the 2nd respondent is illegal and accordingly, set aside the removal order passed by the Management against the 2nd respondent and directed reinstatement of the 2nd respondent into service with full back wages, continuity of service and all attendant benefits. This court found that the finding of the Labour Court did not suffer from any infirmity. Hence, there is no error of fact and error of law in the impugned award of the Tribunal, which calls for interference of this Court under Article 226 of the Constitution of India.

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

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.GANGA RAO,J

Date: 26.07.2018
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