

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.25928 OF 2002

ORDER:

The petitioner, conductor in the second respondent-Corporation, filed this Writ Petition being aggrieved by the award dated 22.10.2001 passed in I.D.No.306/1999 by the Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad-I, got published through G.O.Rt.No.283 dated 06.02.2002 whereby the claim of the petitioner for reinstatement as Conductor with continuity of service and back wages was dismissed, as being illegal and arbitrary.

Brief facts of the case are that the petitioner joined in the respondent-Corporation in the month of March, 1985. Due to back pain, he took treatment in the year 1994. Due to his unauthorized absence from duty from 18.09.1994 without prior sanction of leave and as he was not available for duty for 165 days, a charge sheet was issued to the petitioner framing the following charge:

“For having absented from 18.09.1994 to till date for duties unauthorizedly, which constitutes misconduct under Reg.28 (xxvii) of APSRTC Employees’ Conduct Reg.1963”.

Charge sheet was sent to the petitioner’s address given in his leave letter, but the same was returned un-served. Having displayed the same in the notice board, when no response was received to the said notice, an *ex parte* enquiry was conducted into the charge framed against the petitioner. The Disciplinary Authority based on the Enquiry Officer’s Report and the evidence available on record, issued a show cause notice of removal to the

petitioner on 23.02.1995. Having not satisfied with the explanation of the petitioner to the said show cause notice, he was removed from service vide proceedings dated 25.04.1995 issued by the second respondent. On appeal, the Deputy Chief Traffic Manager, Mahabubnagar, the third respondent herein, ordered for reinstatement of the petitioner into service afresh with minor punishment. Being aggrieved by the same, petitioner filed claim petition under Section 2-A (2) of the I.D.Act before the first respondent-Labour Court. The Labour Court having considered the same, dismissed the claim of the petitioner, accepting the contentions of the Law Officer appeared for the Corporation that the claim of the petitioner under Section 2-A (2) of the I.D.Act is not maintainable as the workman was already reinstated into service and no removal order was in existence and no lenient view can be taken under Section 11-A of the I.D.Act. Before the Labour Court, the Law Officer appeared for the Corporation placed reliance on 1987 (1) ALT 33, 2001 (1) LLN 66 SC and 1992 II LLJ page 93 wherein it is held that the dispute under Section 2-A (2) of the I.D.Act is maintainable only in case of discharge/dismissal/retrenchment/termination of the employee or any dispute relating thereto, but not otherwise. Having accepted the contention of the Law Officer, the Labour Court dismissed the I.D. holding that on appeal, the petitioner was reinstated into service as a fresh conductor and the same could not be treated as a retrenchment or termination to entertain the application under Section 2-A (2) of the I.D.Act. Being aggrieved by the same, the present Writ Petition came to be filed.

Sri A.K.Jaya Prakash Rao, learned counsel appearing for the petitioner, would contend that the petitioner filed a claim petition under Section 2-A (2) of the I.D.Act challenging his fresh appointment and imposing the condition by the appellate authority and seeking reinstatement with continuity of service and back wages. As the petitioner was taken into service afresh and not with continuity of service, the petition before the Labour Court is maintainable. Petitioner was terminated from service based on the *ex parte* enquiry, which is wholly contrary to the Regulations of the Corporation and the punishment of termination imposed on the petitioner for over stayal of the leave on medical grounds is disproportionate to the proved misconduct and the Labour Court on erroneous appreciation of evidence before it having carried-away by the contentions of the Law Officer that the claim petition is not maintainable as there is no retrenchment/termination as the petitioner was reinstated as a fresh conductor by the appellate authority, rejected the claim, whereas, in fact, the petitioner was not reinstated into service but he was only directed to be appointed afresh. The Labour Court had committed error of law by dismissing the claim petition on the ground that the claim is not maintainable under Section 2-A (2) of the I.D.Act as the petitioner was not retrenched/dismissed from service. Hence, he seeks reinstatement of the petitioner as Conductor with continuity of service and back wages by setting aside the award of the Labour Court.

Sri B.Mayur Reddy, learned Standing Counsel for the Corporation, would contend that the petitioner was removed from service for the proved misconduct of unauthorized absence by

conducting departmental enquiry. There is no illegality or irregularity in terminating the services of the petitioner. However, on appeal, the petitioner was reinstated as a fresh Conductor by taking a lenient view by the appellate authority *in spite* of the fact that the petitioner's past conduct was not good since earlier he was imposed several punishments for cash and ticket irregularities, he was once suspended, thrice censured, ultimately he was removed from service and the labour Court rightly dismissed the claim of the petitioner as not maintainable under Section 2-A (2) of the I.D. Act as the petitioner was not retrenched/terminated from service. Hence, there is no illegality or irregularity in the award passed by the Labour Court and there are no grounds for interference of this Court under Article 226 of the Constitution of India in the award of the Labour Court.

Having considered the rival contentions of the learned counsel, it is found that the petitioner was removed from service after conducting departmental enquiry for the proved misconduct. However, the enquiry was conducted *ex parte*. But, on appeal, the appellate authority reinstated the petitioner as a fresh Conductor by taking lenient view *in spite* of his past service conduct being bad. This Court finds that the claim petition under Section 2-A (2) of the I.D. Act is not maintainable against the order of reinstatement of the petitioner afresh passed by the appellate authority as there is no termination or retrenchment of the petitioner from service. In the absence of termination/retrenchment/dismissal, there could not be any industrial dispute to be adjudicated under Section 2-A (2) of the I.D. Act as contended by the learned counsel for the respondent-Corporation and as

rightly held by the Labour Court. Hence, this Court finds no error of fact or error of law in the impugned award passed by the Labour Court, which warrants interference of this Court under Article 226 of the Constitution of India.

Therefore, the Writ Petition is dismissed.

Miscellaneous petitions pending in this petition, if any, shall stand closed. There shall be no order as to costs.

(M.GANGA RAO, J)

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