

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.16064 of 2001

ORDER:

The Employer-Senior Superintendent, RMS, RMS 'Y' Division, Vijayawada and another filed this writ petition being aggrieved by the Award passed in I.D.No.23/1999, dated 31.10.2000, by the Industrial Tribunal-I, Hyderabad, whereby the 1st respondent-workman was ordered to be reinstated into service with continuity of service, but without service benefits and back wages, and seek to issue a writ of mandamus, declaring the award of the Tribunal as illegal, arbitrary and set aside the same.

Brief facts of the case are that the 1st respondent-workman was appointed as Extra Departmental Agent, and his service conditions are governed by the P & T ED Agents Conduct and Service Rules, 1964 (for short "the Rules"). He worked for about 26 years. While working as such, the 1st respondent fell sick on 02.04.1997, he informed the same to the employer by sending leave letters, dated 02.04.1997, 01.07.1997 and 30.07.1997, and the same were rejected by the employer. On account of sickness, the 1st respondent could not attend the duty from 02.04.1997 and he reported to duty on 01.11.1997 with medical certificate of fitness, but he was not allowed to join duty. Enquiry was initiated against the 1st respondent for his absence from duty for the period from 01.11.1997 to 31.12.1997. He was issued a charge sheet on 26.12.1997, calling for his explanation and he submitted his explanation, denying the charges. However, the 1st respondent was kept on put off duty with effect from 01.01.1998. Based on the departmental enquiry, the 1st respondent was terminated from service on 21.04.1998, by following the procedure under

P&T EDAs Conduct & Service Rules, 1964. Instead of filing appeal and review provided under the Rules, the 1st respondent raised conciliation proceedings before the Conciliation authorities. On failure of conciliation proceedings, the competent Central Government referred the dispute to the Industrial Tribunal-I, Hyderabad under Section 10(1)(d) and sub-section (2A) of the Industrial Disputes Act, 1947, vide Order No.L-41012/163/98-IR(B-I), dated 15.02.1999 for adjudication of the issue as to “whether the action of the Management of Railway Mail Service in inflicting the punishment of dismissal from service on the 1st respondent is justified. If not, to what relief the workman is entitled to?”. The 1st respondent filed claim petition before the Industrial Tribunal. The petitioner filed counter before the Industrial Tribunal, having taken a specific plea that the services of the 1st respondent is an employee, appointed as Extra Departmental Agent and his service conditions are governed by Extra Departmental Service Rules. When the service of the 1st respondent is governed by special Rules, formulated by the employer, exercising the power under Article 309 of the Constitution of India and such an employee is excluded from the provisions of the Industrial Disputes Act. The Hon’ble Supreme Court, in Civil Appeal No.3385-86 of 1996, while dealing with the same Extra Departmental staff in Postal Department and appointment of Extra Departmental Sub-Postmasters and Extra Departmental Branch Postmasters etc., clearly held that these employees are civil servants regulated by Conduct Rules and they do not come under the category of workman within the provisions of the Industrial Disputes Act.

The Assistant Solicitor General, appearing for the petitioner, relying on the judgment of the Apex court in Civil Appeal No.3385-86 of 1996,

would contend that the Industrial Tribunal has no jurisdiction to entertain the dispute, as the service conditions of the 1st respondent/employee are governed by the P & T ED Agents Conduct and Service Rules, 1964 and he was removed from service by following the said rules, and the 1st respondent is not left with any remedy for redressal of his grievance, he can go before the Central Administrative Tribunal.

Per contra, Sri William Burra, learned counsel, appearing for the 1st respondent, would contend that after receiving termination order, the 1st respondent/workman had approached the Conciliation Officer, the Conciliation Officer submitted a failure report to the Government and the Central Government referred the matter to the Industrial Tribunal-I, Hyderabad under Section 10(1)(d) and sub-section-2A of the Industrial Disputes Act and hence the Industrial Tribunal has entertained the petition. The learned counsel has further contended that the Industrial Tribunal passed the award while rejecting the objection raised by the petitioner/employer, directing reinstatement of the 1st respondent with continuity of service, but without back wages and attendant benefits. There is no illegality in the award passed by the Industrial Tribunal. At this length of time, on mere technicalities, the award of the Tribunal could not be set aside and relegate the 1st respondent/workman to the Central Administrative Tribunal. He would further contend that the award of the Tribunal has not suffered from any irregularity or perversity in finding of facts and the same was passed by exercising the power under Section 11-A of the Industrial Disputes Act, which does not warrant any interference.

In the facts and circumstances of the case and in considered view of this court, the 1st respondent/workman was appointed as Extra

Departmental Agent and his service conditions are governed by P&T EDAs Conduct & Service Rules, 1964, there is no procedural irregularity in terminating the services of the 1st respondent. The Hon'ble Supreme Court in Civil Appeal No.3385-86 of 1996, vide order, dated 02.02.1996, held that when the workman/employee's services are governed by Special Rules, such employee is entitled to seek redressal of his grievance under the P&T EDAs Conduct & Service Rules, 1964 framed by exercising power under Article 309 of the Constitution of India and not under the provisions of the Industrial Disputes Act.

In view of the above, the writ petition is allowed. The impugned award of the Tribunal, dated 31.10.2000 in I.D.No.23 of 1999, is set aside. However, the 1st respondent/workman is given liberty to approach the appropriate Forum for redressal of his grievance. On such approach, the appropriate Forum shall deal with the grievance of the 1st respondent/workman and pass appropriate orders thereon, in accordance with law, without being influenced by any of the observations of this court made in this order. No order as to costs.

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

M.GANGA RAO,J

Date: 17.07.2018
Dsr