

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.24496 OF 2001

ORDER:

The Singareni Collieries Company Ltd., Godavarikhani (for short the 'Company'), filed this Writ Petition being aggrieved by the award dated 12.09.2000 passed in I.D.No.107 of 1998 by the Industrial Tribunal-cum-Labour Court, Godavarikhani, whereby the workman-2nd respondent was directed to be reinstated into service without back wages but with continuity of service.

Brief facts of the case are that while the workman was working as General Mazdoor in the Exploration Division of the petitioner Company, a charge sheet dated 07.07.1997 was issued to him alleging unauthorized absence from duty from 03.06.1997 to 07.07.1997 amounting to misconduct under Company Standing Order No.25 (31) for over stayal of actual leave granted on 02.06.1997. A domestic enquiry was conducted. The Enquiry Officer submitted his report on 17.06.1998 holding that the charge is proved. A notice dated 27.07.1998 was served on the workman along with Enquiry Officer's report asking to submit his explanation/representation. Pursuant to the same, the workman has submitted his representation. However, he was dismissed from service vide proceedings dated 28.08.1998. Being aggrieved by the same, the workman raised an Industrial Dispute in I.D.No.107 of 1998 before the Labour Court under Section 2-A (2) of the Industrial Disputes Act, 1947 as amended by Andhra Pradesh Amended Act, 1987. The Labour Court having considered the evidence before it held that the punishment of dismissal from service is disproportionate to the proved misconduct of unauthorized absence from duty from 03.06.1997 to 07.07.1997

and thereby passed the impugned award setting aside the dismissal order and directed reinstatement of the workman into service without back wages but with continuity of service. Challenging the same, the present Writ Petition came to be filed by the petitioner Company.

While admitting the Writ Petition on 28.11.2001, this Court granted interim stay of the impugned award in W.P.M.P.No.30943 of 2001. Subsequently, interim stay is modified subject to complying of Section 17-B of I.D.Act in W.V.M.P.No.2018/2002 in W.P.M.P.No.30943 of 2001 dated 22.08.2002. Thereafter, during the pendency of the writ petition the workman died on 29.12.2012. Hence, the wife of the deceased was brought on record being the legal representative of the deceased workman.

Sri J.Srinivasa Rao, learned counsel for the petitioner Company, would contend that the respondent-Workman while working as General Mazdoor in the petitioner Company availed one day casual leave on 02.06.1997. Thereafter, for his unauthorized absence from duty from 03.06.1997 to 07.07.1997, a charge sheet dated 07.07.1997 was issued to him. A domestic enquiry was conducted wherein the workman was given ample opportunity in the enquiry and the Enquiry Officer held that the workman was absented from duty from 03.06.1997 to 07.07.1997 without permission. Based on the Enquiry Officer's report, the workman was dismissed from service on 28.08.1998, after considering his representation to the notice dated 27.07.1998. Aggrieved by the same, the workman raised I.D.No.107 of 1998. The Labour Court grossly erred in entertaining the dispute raised by the workman under Section 2-A (2) of the I.D.Act. The workman is working in

petitioner Company, which is owned by the Central Government. Hence, the Central Government alone is competent to refer the dispute to the Industrial Tribunal (Central) Hyderabad, under Section 10 of the I.D. Act, on submitting the failure report by the Labour authorities. The workman cannot directly approach the Industrial Tribunal by invoking Section 2-A (2) of the I.D. Act. The Labour Court failed to give any reasons for coming to the conclusion that the dismissal of the workman from service for his unauthorized absence without any reason from 03.06.1997 to 07.07.1997 is disproportionate to the proved misconduct. By passing a cryptic order the Labour Court partly allowed the dispute by setting aside the dismissal order and ordered reinstatement of the workman into service without back wages but with continuity of service. He would further contend that the workman is a habitual absentee. Due to his frequent authorized absence from duty, the production of the Company would be stalled and the Company cannot reach its targets. The action is taken against the workman to prevent the other employees to take recourse to unauthorized absence. Hence, the award of the Labour Court suffered from error of law and fact and liable to be set aside.

Sri K.Vasudeva Reddy, learned counsel for the workman, would contend that while working as a General Mazdoor in the petitioner Company, the workman availed casual leave on 02.06.1997 and went to his native village. There, he was attacked with epilepsy resulting in injuries to his head, due to which, he could not attend duty from 03.06.1997 to 07.07.1997 for which a charge sheet dated 07.07.1997 was issued to the workman alleging that his unauthorized absence amounts to misconduct under

Company Standing Order No.25 (31). A farce of domestic enquiry was conducted wherein the out station medical certificate produced by the workman was not considered. The enquiry report was submitted holding that the charge is proved and the workman was removed without considering his representation submitted in pursuance of the notice dated 27.07.1998. The workman raised I.D.No.109/1998 before the Labour Court by invoking provision under Section 2-A (2) of the I.D.Act as amended by A.P.Amendment Act, 1987. The Labour Court accepting the version of the workman and considering the evidence before it, rightly came to the conclusion that the dismissal from service is disproportionate to the proved misconduct of unauthorized absence from 03.06.1997 to 07.07.1997. The Labour Court having exercised its power under Section 11-A of the I.D.Act rightly passed the impugned award ordering reinstatement of the workman without back wages and with continuity of service and the same could not be found fault with. Petition submitted by the workman before the Labour Court is maintainable as per the judgment of this Court in ***U.Chinnappa vs. Cotton Corporation of India***¹ wherein it is held that even the employees of the Central Government Undertaking can also approach the Labour Court under Section 2-A (2) of the I.D.Act without recourse to the process of reference and there is no illegality or irregularity in the impugned award warranting interference of this Court.

In the facts and circumstances of the case and having perused the record, in considered view of this Court, the second respondent-workman worked as General Mazdoor in the

¹ 1998 (5) ALD 16 (DB)

Exploration Department of the petitioner Company. It appears that he had fairly put in considerable length of service in the petitioner Company. The writ affidavit discloses that the workman is a habitual absentee and he was unauthorizedly absent from duty for 66 days in the year 1993, 33 days in 1994, 98 days in 1995, 269 days in 1996 and 207 days in 1997. However, past conduct of the workman is not a charge in the charge sheet issued to the petitioner on 07.07.1997 and no opportunity was given to the workman in that regard. The Enquiry Officer submitted an enquiry report filling the printed proforma of the enquiry report. As such, no good and sufficient reasons were given by the Enquiry Officer to come to the conclusion that the charge is proved. Company Standing Order No.25 (31) denotes "*absence from duty without sanctioned leave or sufficient cause or over staying of sanctioned leave by workman amounts to misconduct*". The workman availed casual leave on 02.06.1997 and went to his native village and there he was attacked with epilepsy and received injury on his head. As such, he could not attend duty from 03.06.1997 to 07.07.1997. He was allowed to duty on production of out-station medical certificate and then he was issued with charge sheet dated 07.07.1997. When this Court finds that when good and sufficient reasons were shown by the workman for his unauthorized absence from 03.06.1997 to 07.07.1997, his removal from service is illegal and without properly considering his representation submitted to the notice dated 27.07.1998. The Labour Court exercising power under Section 11-A of the I.D.Act has rightly held that the punishment of dismissal from service is disproportionate to the proved misconduct of unauthorized absence. The Labour Court rightly entertained the application of

the workman under Section 2-A (2) of the I.D. Act as amended by A.P. Amendment Act, 1987 in view of the decision of this Court in ***U.Chinnappa case (1 supra)*** as contended by the learned counsel for the workman. Merely for the reason that the petitioner Company is owned by the Central Government, the workman cannot be prevented from approaching the Labour Court directly without reference under Section 2-A (2) of the I.D. Act. In view of the decision rendered by the Division Bench in ***U.Chinnappa case (1 supra)*** wherein it is held that the provision of Section 2-A (2) introduced by A.P. Industrial Disputes (Amended) Act 32 of 1987 could not be said to be applicable only to workman employed in industrial undertakings of State Government, but it would also govern all workmen irrespective of whether he is a workman engaged in an industry run by or under the authority of the Central Government, a State Government or an industry located in the State, the contra contentions advanced by the learned counsel for the petitioner Company merit no consideration.

For the reasons stated above, this Court finds that there is no error of law or error of fact in the impugned award warranting interference of this Court under Article 226 of the Constitution of India.

Accordingly, 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)

12, October, 2018
sur