

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.17581 OF 2001

ORDER:

Petitioner, who worked as a clerk in the second respondent Company, filed this Writ Petition being aggrieved by the Award passed in I.D.No.144/1999 dated 13.07.2000 by the Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad, whereby his claim petition for reinstatement with continuity of service and other attendant benefits under Section 2-A (2) of the Industrial Disputes Act, 1947 (for short 'I.D.Act') was dismissed.

Brief facts of the case are that the petitioner was appointed as a clerk in the year 1986 in the Second respondent Company. While so, when the petitioner was working in Stores Department, a charge sheet dated 05.10.1998 was issued alleging that he had committed theft in the Factory and he was issued with a charge memo invoking clauses 23 (b)(9), 23 (b)(12) and 23 (b)(19) of the Standing Orders. Thereafter, having not satisfied with the explanation submitted by the petitioner, a departmental enquiry was conducted. The Enquiry Officer submitted Enquiry Report holding that the charges are proved. Based on the Enquiry Officer's Report, a show cause notice of removal was issued on 18.12.1998. After considering the explanation of the petitioner submitted on 27.12.1998, the petitioner was dismissed from service vide dismissal order dated 04.01.1999. Being aggrieved by the same, petitioner raised an Industrial Dispute in I.D.No.144/1999 before the Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad, under Section 2-A (2) of the I.D.Act, claiming reinstatement with continuity of service and

attendant benefits. The Labour Court having considered the documentary evidence before it in Exs.M.1 to M.7 came to the conclusion that the enquiry was validly conducted, during enquiry MWs 1 to 3 have categorically stated about the weighment made by the petitioner in the first instance and another weighment made at the instructions of MW.2 and also about the weighment made at the private kantas and held that misconduct on the part of the workman was proved and thereby dismissed the claim. 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 was appointed as a clerk in the year 1986 in the second respondent Company. Thereafter, based on his performance, he was promoted as an Assistant Manager in the purchase department. He has put unblemished service. A charge sheet dated 05.10.1998 was issued alleging that the petitioner has committed theft in the Company and thereby violated the Standing Orders of the Company. A farce of departmental enquiry was conducted wherein a retired Judicial Officer was appointed as an Enquiry Officer and a Prosecuting Officer representing the employer was appointed. The petitioner was not allowed to be represented by Advocate and none of the employees have come forward to defend the petitioner in the enquiry, due to fear of the Management. Before the Enquiry Officer, MWs 1 to 4 were examined, but none of the witnesses spoke about the mischief committed by the petitioner. MW1-Kribakaran, Manager (Production) stated that on 28.09.1998, a lorry of M/s.Shruthi Enterprises came with scrap material, he checked the lorry. Meanwhile, MW.2 Swaminathan, Manager

(Commercial) of the Company, came and asked him to verify the weight once again. As such, lorry was taken back to the weigh-bridge after weighing. After a while, Swaminathan returned and informed that there was a shortage of 2 tons. Then, MW.1 verified the weighing machine and found it was showing '0' when there was no weight on it. Then, he again got the lorry weighed and found difference of 2 tons in the first weighment and second weighment. Hence, he refused to accept the material. According to MW.2-Swaminathan, himself, Charged Officer and the Assistant Security Officer Hussain, all three went out and got the lorry re-weighed at two outside kantas at the instructions of V.M.Chary, Senior Manager (Personnel), but in the evidence nowhere it is stated as to how the shortage of 2 tons came and under what circumstances. Merely based on the deposition of MW.4, without any legal evidence in support of the charge, the Enquiry Officer submitted Enquiry Report holding that the charge is proved and the petitioner was dismissed from service without considering his explanation to the show cause notice.

He would further contend that when the lorry carrying the M.S.Scrap belonging to M/s.Sruti Enterprises entered the premises of the Company for weighment, the Charged Officer weighed the scarp in the presence of security guard, lorry driver and also in the presence of Sri Mahesh, partner of M/s.Sruti Enterprises. After weighment, the vehicle was sent to Production Manager i.e. Sri Krupakaran for inspection. On his instructions, the lorry was taken to Pit No.7 for unloading. In the meantime, Swaminathan has brought the vehicle for weighment for the second time. In the second weighment, a difference of 2 tons was found with that of

first weightment. Learned counsel would further contend that said Swaminathan was trying to implicate the Charged Officer falsely for extraneous reasons to get him dismissed from service and send him out of the Company on false allegations and thereby the Second respondent Company succeeded in dismissing the petitioner by conducting departmental enquiry. The Labour Court grossly erred in believing the Enquiry Officer's report submitted without any legal evidence. The Labour Court on erroneous appreciation of the evidence before the Enquiry Officer came to the conclusion that the charge is proved and thereby dismissed the claim. The Enquiry Officer and the Labour Court committed grave error of law and error of fact in coming to the conclusion that the charges were proved against the petitioner on appreciation of the evidence of MWs 1 to 4. The finding of the Labour Court that the charge was proved in the domestic enquiry, based on the evidence of MWs 1 to 4, is perverse. The Labour Court committed error in accepting the evidence before the Enquiry Officer, which is not legally admissible evidence, and evidence of the petitioner was not taken into consideration while submitting the Enquiry Officer's report and coming to the conclusion that the charges are proved. Based on perverse findings, the Labour Court dismissed the petitioner's claim application. The Labour Court has not addressed itself to the validity of the domestic enquiry *in spite* of being challenged. The Labour Court also not addressed itself to the proportionality and thereby the Labour Court committed error of law and thereby rendered perverse finding. Hence, the award as well as the dismissal order are liable to be set aside.

Per contra, Sri V.Hari Haran, learned counsel for the second respondent, would contend that the petitioner, while working as a Senior Executive Assistant in Stores Department, involved in serious acts of misconduct and the petitioner was issued with a charge sheet on 05.10.1998. Being not satisfied with his explanation, a domestic enquiry was conducted wherein the petitioner was given full opportunity to defend his case. The petitioner is not entitled to be represented by the Advocate in the domestic enquiry and he was asked to engage co-workman to defend his case. However, he has not engaged any co-employee. Petitioner's version that no co-employee has come forward to defend his case on being afraid that they will be removed from service, merit no consideration. As per the evidence of MWs 1 to 4 before the Enquiry Officer, the charges are proved and a show cause notice dated 18.12.1998 was issued to the petitioner. After considering his explanation dated 27.12.1998, he was dismissed from service w.e.f.04.01.1999. There is no illegality or irregularity in dismissing the petitioner. The Labour Court having considered the documents in Exs.M.1 to M.7 and taking into consideration the evidence before it, concluded that the petitioner has committed serious misconduct, dismissed the I.D. The Labour Court has not committed any error of fact and error of law, which warrants interference of this Court under Article 226 of the Constitution of India and hence the writ petition is liable to be dismissed.

In the facts and circumstances of the case, having considered the rival contentions of the counsel and perused the record, it is found that the petitioner was appointed as a clerk in the year 1986 in the second respondent Company, later based on

his performance, he was promoted as a Senior Executive Assistant in Stores department and he worked with unblemished service record. While so, he was issued with a charge sheet on 05.10.1998 alleging that he was involved in serious acts of misconduct, framing the following charges:

- “1) Theft within the factory or fraud or dishonesty in connection with company’s business or another employee’s property within the Company.
- 2) Demanding or offering or accepting bribes or any illegal gratification.
- 3) Commission of any act subversive of discipline.”

A domestic enquiry was conducted wherein MWs 1 to 4 were examined on behalf of the Management. Petitioner was not given proper opportunity to defend his case before the Enquiry Officer. The Enquiry Officer, on mere surmises and conjectures, without properly considering the evidence before him, submitted Enquiry Report holding that the charges are proved. The petitioner was dismissed from service on 04.01.1999 without properly considering his explanation submitted on 27.12.1998 to the show cause notice dated 18.12.1998. Petitioner raised I.D.No.144/1999 before the Labour Court. The Labour Court without properly considering the evidence before it i.e. Exs.M.1 to M.7 came to the conclusion that the charges are proved in the domestic enquiry and dismissed the I.D. The Labour Court grossly erred in holding that the charges are proved in the domestic enquiry without there being any legal evidence. The variations in the weighment were not properly considered to come to the conclusion that scrap of 2 tons less was shown in first weighment. In the circumstances, it can be

concluded that the entire material was not properly weighed in the second weighment. It appears that the unloaded material at pit No.7 was not taken into account during second weighment. Though there is a conclusion that two tons less weight was found in the second weighment, for which there is an understanding between the scrap supplier MW4 and the petitioner that for each load, the petitioner will be given a bribe of Rs.5000/- but the MW.4-supplier has not specifically stated the same in his deposition before the Enquiry Officer. He simply stated before the Enquiry Officer that there was an understanding between himself and the petitioner. But the nature of such understanding was not specifically deposed by the witness before the Enquiry Officer. In such a situation, the Enquiry Officer ought not have taken into consideration the mere statement of M.W.4 without any details. Hence, the finding of the Enquiry Officer that the charges are proved is not based on any legal evidence and the same is found to be perverse. The Labour Court committed error of fact in accepting the finding of the Enquiry Officer, which is not based on any legal evidence. The finding of the Labour Court that the charges are proved in the domestic enquiry is perverse. Based on the perverse findings, the claim of the petitioner for reinstatement was dismissed.

For the reasons stated above, the impugned award passed by the Labour Court in I.D.No.144/1999 dated 13.07.2000 as published on 30.12.2000 and dismissal order dated 04.01.1999 passed by the 2nd respondent are liable to be set aside and are accordingly set aside.

Accordingly, the Writ Petition is allowed directing the second respondent-Company to pay a *lump sum* amount equivalent to 50% of the back wages to the petitioner, *in lieu* of his reinstatement into service with continuity of service and all other attendant benefits. The respondents are further directed to complete the said exercise within a period of eight weeks from the date of receipt of a copy of this order.

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

7th September, 2018
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(M.GANGA RAO, J)