

HIGH COURT FOR THE STATE OF TELANGANA

THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN

AND

THE HON'BLE SRI JUSTICE A.ABHISHEK REDDY

Writ Appeal No.818 of 2019

Date : 11.11.2019

Between:

Smt.A.Vijayakumari

..Appellant

And

The Chairman,
Industrial Tribunal-II,
Chandralok Complex,
Nampally, Hyderabad
And others

...Respondents

Counsel for the appellant : Mr. Sivaraj Srinivas Kumar

Counsel for the respondents : Mr. G.Vidya Sagar,
Senior Counsel

The Court made the following:

JUDGMENT: (Per the Hon'ble Sri Justice A.Abhishek Reddy)

Aggrieved by the dismissal of W.P.No.21637 of 2019, vide order, dated 30.09.2019, by the learned Single Judge, the present Writ Appeal is filed by the writ petitioner

2. The brief facts of the case are that on 01.07.1997 the appellant herein joined as a clerk in the respondent-Bank. In the year 2007, she was notionally promoted as Assistant Manager. While working as Assistant Manager at Ranigunj Branch, some misconduct was alleged against her. After conducting the domestic enquiry, she was reverted back from the post of Assistant Manager to the lower grade. Questioning the reversion, she filed an Industrial Dispute; the same was registered as I.D.No.7 of 2016. In the said I.D., a preliminary question as to the validity of the domestic enquiry was framed. By order, dated 14.06.2018, the Tribunal held that the domestic enquiry was invalid. Aggrieved by the finding of the Tribunal in I.D.No.7 of 2016, the Management-Bank filed a Writ Petition, being W.P.No.25490 of 2018. At the time of admission of the writ petition, this Court granted interim suspension of the orders of the Tribunal. Subsequently, basing on the consent of both the Counsels, the Writ Petition was allowed on 28.06.2019; the matter was remanded back to the Tribunal for deciding the I.D. based on the pleadings. After the remand, the appellant herein has again raised the preliminary objection regarding the validity of the domestic enquiry and the same was rejected by the Tribunal vide docket order, dated 19.08.2019; the appellant

herein has preferred writ petition No21637 of 2019. The learned Single Judge of this Court has dismissed the said writ petition holding that on the earlier round, the writ petition filed by the respondent-Bank was allowed with the consent of both the parties, and remanded the matter back to the Tribunal for adjudication of the dispute and there was nothing wrong with the order of the Tribunal.

3. The present Writ Appeal is filed mainly contending that the learned Single Judge has failed to appreciate that the domestic enquiry was not properly conducted. Even at the initial stage, the Tribunal had taken the same into consideration and held accordingly. But, subsequently, the employer had filed writ petition before this Court; this Court while setting aside the order of the Tribunal, dated 14.06.2018, has remanded the matter back to the Tribunal to decide the I.D. "on its own merits and pass appropriate orders". Hence, the writ petitioner/appellant had a right to raise a preliminary objection regarding the validity of the domestic enquiry. But the Tribunal rejected the same without properly appreciating the issue and in the writ petition, the learned Single Judge has upheld the decision of the Tribunal. While remanding the case, this Court did not preclude the Tribunal to decide the validity of the domestic enquiry as preliminary issue.

4. Heard Sri Sivaraj Srinivas, the learned Counsel appearing for the appellant, and Sri G.Vidya Sagar, the learned Senior

Counsel appearing on behalf of Ms.K.Udaya Sri, the learned Counsel for respondent No.3.

5. Mr. Sivaraj Srinivas has strenuously contended that the order of the learned Single Judge as well as the Tribunal rejecting the contention of the employee that after the remand, they were bound to decide the preliminary issue regarding the validity of the domestic enquiry, were not correct. Both the learned Single Judge and the Tribunal have failed to understand the purport of the earlier order whereby "the matter was remanded back to the Tribunal for deciding the matter afresh and pass appropriate orders". Hence, the case was not appreciated in proper perspective.

6. Having gone through the material on record, it is found that after remanding the matter by this Court, the parties have adduced their evidence. As on the date of passing of the order impugned in the writ petition, the appellant, instead of submitting herself for cross-examination, has again raised the objection regarding the validity of the domestic enquiry. The appellant wanted the Tribunal to decide the same as a preliminary issue. Said contention was rejected by the Tribunal and she approached this Court by filing W.P.No.21637 of 2016. Vide impugned order, dated 30.09.2019, the learned Single Judge has disposed of the writ petition, at the stage of admission, holding that the petitioner cannot raise the preliminary objection regarding the validity of the domestic enquiry having participated in the same.

7. We have given a patient-hearing to the learned Counsel appearing for the appellant as well as the learned Senior Counsel representing the employer/R.3. After giving a considerable thought, we are of the opinion that the writ appeal is devoid of merits for the following reasons:

a) When the order of the Tribunal, dated 14.06.2018 in I.D.No.7 of 2016 was assailed before this Court by the employer in W.P.No.25490 of 2018, this Court by order, dated 25.07.2018, had passed the following interim Order:

On a prima-facie reading of the order of the Industrial Tribunal-II, Hyderabad (for short 'the Tribunal') dated 14.06.2018, it appears that the Tribunal has exceeded its jurisdiction in holding the domestic enquiry as not validly held. The Tribunal mixed up two issues i.e., (i) with reference to conducting of enquiry in proper manner and (ii) with reference to imposing punishment under challenge by the appellate authority depriving the right of appeal.

Prima-facie, these two issues are independent. It appears from a reading of the order of the Tribunal that the respondent herein accepted the charge levelled against her. That being so, there is no need to conduct a detailed enquiry and the Tribunal could not have held that the enquiry was not validly conducted. Balance of convenience is in favour of the petitioner. Hence, interim suspension as prayed for, operative for a period of six (6) weeks. It is also made clear that the Tribunal may proceed with the I.D.No.7 of 2016 without reference to the order impugned.

As the proceedings before the Tribunal were not stayed and the evidence of the parties was adduced, and when the writ petition

came up for hearing, on 28.06.2019, this Court disposed of the said Writ Petition by passing the following Order:

When the matter is taken up for hearing learned Counsel on either side, in principle, agreed that the Award passed by the Tribunal in I.D.No.7 of 2016, dated 14.06.2018, can be set aside by directing the Tribunal to adjudicate the said ID based on its own merits and pass appropriate orders.

In view of the same, the writ petition is allowed and the matter is remanded to the Tribunal. The Tribunal shall adjudicate the dispute based on the pleadings of the respective parties and dispose of the same within a period of six months from the date of receipt of a copy of this order. No costs.

By virtue of the above order, this Court has allowed the writ petition and set aside the earlier order of the Tribunal whereby the Tribunal had upheld the preliminary objection regarding the validity of the domestic enquiry. When the earlier writ petition filed by the employer is allowed and the matter was remanded back to the Tribunal for deciding the matter based on its own merits, it is trite to submit that the party can again re-agitate the very same preliminary objection regarding the validity of the domestic enquiry, more particularly when the evidence has been led by both the parties and the matter is at the stage of final adjudication.

b) Under Section 11A of the Industrial Disputes Act, 1947, when 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, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman

on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in *lieu* of discharge or dismissal, as the circumstances of the case may require.

c) In view of the above provision of law, the preliminary objection raised by the appellant before the Tribunal regarding the validity of the domestic enquiry cannot be sustained. However, in case the Tribunal has already framed an issue as to *whether the domestic enquiry is valid or not*, the said issue can be decided at the time of final hearing and not as a preliminary one.

8. With the above observations, and for the reasons stated above, the Writ Appeal is dismissed.

The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

RAGHVENDRA SINGH CHAUHAN, HCJ

A.ABHISHEK REDDY, J

11th November, 2019
smr