
(1999) 11 AP CK 0054

In the Andhra Pradesh High Court

Case No : Writ Petition No 5114 of 1999

APSRTC, Mushirabad, Hyd. and another

APPELLANT

Vs

M. Ramulu and another

RESPONDENT

Date of Decision : 09-11-1999

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 2, 33

Citation : (2000) 1 ALD 138 : (1999) 6 ALT 578

Hon'ble Judges : Ghulam Mohammed, J

Bench : Single Bench

Advocate : Mr. K. Harinath SC for APSRTC, for the Appellant; Mr. V. Narasimha GoUd and Government Pleader for Labour, for the Respondent

Judgement

1. This writ petition is filed by the Andhra Pradesh State Road Transport Corporation, represented by it's Managing Director, Hyderabad, for a writ of certiorari to call for the records relating to the impugned order passed by the learned Presiding Officer, Labour Court-II, Hyderabad, in Miscellaneous Petition No.57 of 1997, dated 18-9-1998, wherein the Labour Court directed for the payment of wages of Rs. 19,123/-to the first respondent for the period from 23-2-1995 to 8-11-1995 when the first respondent was kept under put-off duty.

2. The facts leading to the filing of this writ petition can be briefly summarised as follows:

The first respondent herein who is the petitioner before the Labour Court II was a casual driver on daily wages from 9-3-1992. While driving the vehicle bearing Regd. No.AP9Z-7643 on 23-2-1995 he caused an accident while negotiating a curve shaped road collided with a scooter bearing No.AEY-8821 resulting the death of the scooterist and a pillion rider sustained injuries. The Police, Bhongir registered a case against the respondent No. 1 due to negligent driving of the said bus. Accordingly, the petitioner-Corporation passed an order on 14-3-1995 whereunder the first respondent was kept under put off duty pending disciplinary action against him. On the same day i.e., on 14-3-1995 a charge-sheet was

issued by the Depot Manager, Sangareddy, bearing No.P4/2(7)/95-DM:SRD, which reads as follows:

"It is alleged and reported by the TI-II, Sangareddy depot vide reference cited that vehicle No.AP9Z-7643 plying on route Sangareddy to Yadagirigutta and met with an accident at Kattamaisamma temple (4 Kms, away from Yadagirigutta) due to which a scooterist named Sri N. Rajendra Prasad aged 28 years succumbed to injuries on the spot and pillion rider Sri. N. Goverdhan Reddy aged 30 years was died in Hospital, Bhongir."

Based on the above the under mentioned charge is levelled against you:

Charge No.1: "For having driven the vehicle No.AP9Z-7643 on 23-2-1995, while operating from Sangareddy to Yadagirigutta in rash and negligent manner and with the lack of anticipation resulting which a scooterist was succumbed to injuries on the spot and pillion rider was also died in the Hospital, which constitutes serious misconduct as per APSRTC Employees (Conduct) Regulations 28(ix-b) 1963"

Please submit your explanation within seven days from the date of receipt of this charge-sheet as to why disciplinary action should not be taken against you, failing which, it will be assumed that the charge is admitted by you and further action will be initiated against you based on the evidences available on record.

Please acknowledge the receipt.

Sd/-Depot Manager,

Sangareddy Depot.

Thereafter a regular enquiry was conducted by the petitioner-corporation. On 10-10-1995 a show cause notice was issued to the first respondent herein proposing punishment of termination from service besides placing him under "Put-off duty" with effect from 14-3-1995. Consequently on 20-10-1995 the petitioner-Corporation terminated the services of the first respondent by passing an order of removal.

3. It is stated in the writ petition that the Labour Court has no jurisdiction to entertain the petition. u/s 33-C(2) of the Industrial Disputes Act, 1947 (for short "The Act") which suffers from various infirmities, namely, the claim u/s 33-C(2) is not maintainable but the claim has to be decided only u/s 10 of the Act.

4. The Labour Court failed to see that the services of the respondent were terminated on proved misconduct and the order of termination is the subject-matter of dispute in ID No.1 of 1996 which is still pending. The application filed before the Labour Court u/s 33-C(2) is not maintainable and the Labour Court ought not to have entertained the said application.

5. The Labour Court failed to appreciate that the daily wage worker is not an "employee" within the meaning of any of the regulation of the Corporation and is

not entitled to any benefit from the Corporation.

6. The order of the Labour Court is vitiated on the ground that the services of the daily wages worker comes to an end on the end of each day and he is not obliged to work on any day, and, therefore, he is not entitled to any wages on the analogy of "no work no pay."

7. The learned Standing Counsel for the petitioner-Corporation Mr. K. Harinath to substantiate these contentions he relied upon a decision of this Court in *M. Ganendra, In re* 1989 (2) ALT 559, and contended that even in the absence of any provision authorising the petitioner-corporation to keep the employee on "put-off duty" it is certainly open to the management to ask the respondent-workman not to attend the duty. It is one of the privileges of any master to require his servant not to attend duties pending enquiry. No specific order in that behalf is necessary. Secondly, he relied on a decision in *B. Varadha Rao v. State of Karnataka* and another 1988 (2) SLJ 107 SC, to the effect that though the Corporation is not bound to hold a regular enquiry by invoking the conduct rules. Nonetheless the principles of natural justice and fairness demands that the petitioner-corporation should take fair action. The petitioner-corporation has accordingly followed the procedure by appointing an Officer in issuing the charge-sheet and calling for his explanation and ultimately terminated the services. Even in respect of a daily wage employer he further contended that the daily wages employee have no right as daily wage-worker and his duty ends with the day ends and accordingly the contract of employment ceases. Finally in so far as the scope and ambit of the Labour Court u/s 33-C(2) the learned Counsel of the petitioner-Corporation contended that the proceedings contemplated u/s 33-C(2) is in the nature of execution proceedings and in the absence of any settlement/award when the right to the wages with regard to the said period is disputed the application u/s 33-C(2) is not maintainable and it is beyond the jurisdiction of the Labour Court. To substantiate this contention the learned Counsel also relied on a decision in *Union of India Vs. Gurbachan Singh and another*, , it was held that the Labour Court cannot adjudicate on fresh claims.

8. The learned Counsel for the respondent No.1 Mr. F. Narsimha Goud has relied upon a decision in *APSRTC v. Addl. Labour Court, Hyderabad and others* 1993-II LLN 272, wherein the claim that the respondent-workmen were contract conductors on daily wages and were not entitled to be treated as regular workmen is controverted by the assertions contained in the counter-affidavit which the petitioner had filed before the Labour Court as also by its conduct in initiating action against respondent-workmen under the very Conduct Regulations, clause 2(d) which excluded daily-rated workmen from the definition of employee. In the counter-affidavit before the Labour Court what was asserted was that the respondent-workmen were initially appointed as daily-rated workmen and that their services were subsequently regularised. It was also stated that they were appointed on a monthly scale of salary. These assertions contained in the pleadings before the Labour Court contained an undeniable

admission that the respondent workmen were employees who fell within the definition of workmen u/s 2(s) of the Industrial Disputes Act. The said decision was confirmed in WA Nos.1196 of 1994 and 1997 of 1994 holding that the daily wages employees stand excluded from the purview of the Conduct Regulations and Service Regulations. The fact that the disciplinary enquiry was held against them under the Regulations is a definite pointer that the Corporation is treated them as employees governed by the said regulations. If the respondent-workmen were not daily wage employees it cannot be disputed that they cannot be put-off from duty as and when the Corporation desired. They could only be suspended by means of a specific order passed by the competent authority under the provisions of APSRTC (CC & A) Regulations. Admittedly no such order of suspension was passed before stopping the workman from duty. Therefore, the Labour Court rightly awarded the wages for the period during which the workmen were kept out of job till the date of their termination. We find no substance in the contention that the Labour Court exceeded the jurisdiction vested in it u/s 33-C(2) of the Industrial Disputes Act. The learned single Judge has rightly upheld the order of the Labour Court.

9. The Counsel for the respondent further contended that neither the Conduct Regulations nor the Service Regulations provide for putting any employee "off-duty". That was neither a punishment nor an intermediate measure in aid of any punishment prescribed under the Service Regulations. The learned Counsel for the respondent further contended that the petitioner-Corporation had forcibly prevented the respondent from rendering services to the petitioner-Corporation during subsistence of employer-employee relationship. The principle of "no work no pay" is not attracted since the corporation has passed an order on 14-3-1995 factually preventing from his duty and on the same day charge-sheet was issued invoking the Employees (Conduct) Regulations 28 (ix-b) 1969 and asked him to submit his explanation. Thereafter, a regular enquiry was conducted and ultimately the services of the respondent No.1 was terminated by passing an order on 20-10-1995. It is necessary to extract Section 33-C(2) of the Industrial Disputes Act, 1947 which reads as follows:

"Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such labour Court as may be specified in this behalf by the appropriate Government "within a period not exceeding three months"."

10. A perusal of the said Section clearly discloses that the Labour Court acting u/s 33-C(2) is competent to entertain and make an award or Settlement under Chapter V-A of the Act. Section 33-C(2) takes within its purview cases of workmen who claim that the benefit to which they are entitled should be computed in terms of money even though the right to the benefit on which their

claim is based is disputed by their employers. It is open to the Labour Court to interpret the award or settlement on which the workmen's right rests.

11. In the instant case the respondent No.1 is not claiming over and above the amount but he claimed only Rs.87/- per day as he was entitled to receive since he was prevented from discharging his duty by the employer for the period from 23-2-1995 to 8-11-1995 by an order dated 14-3-1995 where under the petitioner (sic respondent) was kept on put-off duty. In a decision in Chief Superintendent, Government Livestock Farm Hissar v. Ramesh Kumar, (1997) 11 SCC 363 , the controversy pertains to a daily wage employee and the filing of application u/s 33-C(2) claiming pay and allowances equal to that of a regular employee. In that case the Supreme Court has held that the application u/s 33-C(2) is not maintainable. Here in the instant case the respondent No.1 is not claiming regular scale on par with regular employees, but he claimed only daily wages. However, the principle laid down in the said decision of the Apex Court is aptly applicable to the facts of this case. The relevant portion of the said judgment is extracted hereunder which reads as follows:

"The remedy of Section 33-C(2) of the Industrial Disputes Act is available only when there is no dispute about entitlement of the workman. That remedy cannot be invoked in a case where the entitlement is disputed. In the instant case, the entitlement of the respondent to regular scale was disputed by the appellant and, therefore, it was not a case in which the remedy of Section 33-C(2) could be invoked. The proper course for the respondent was to have his entitlement to regular-scale determined by a competent Court or Tribunal and in the event of non-payment of the amount payable to him as per his entitlement under such determination he could invoke the remedy u/s 33-C(2)."

12. On careful reading of this decision, I am of the considered view that the respondent No.1 is a daily wager and he is a workman within the definition of Section 2(s) of the Industrial Disputes Act and he is entitled to receive from the employer any money or any benefit which is applicable in terms of money and the application before the Labour Court u/s 33-C(2) is maintainable and the Labour Court has correctly allowed the claim for wages of the respondent No.1 workman for the put-off duty with effect from 23-2-1995 to 8-11-1995 and I see there is no illegality in the order passed by the Labour Court-II, Hyderabad. Accordingly, the writ petition is devoid of merits and the same is liable to be dismissed.

13. In the result, the writ petition is dismissed but in the circumstances without costs.