

(1994) 02 AP CK 0025

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 1305 of 1987

B. Narayana

APPELLANT

Vs

A.P.S.R.T.C., Karimnagar Depot and Another

RESPONDENT

Date of Decision : 10-02-1994

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A, 33, 33(1)

Citation : (1994) 2 ALT 297

Hon'ble Judges : Y. Bhaskar Rao, J;J. Eswara Prasad, J

Bench : Division Bench

Judgement

Y. Bhasker Rao. J.

1. This writ appeal is filed against the judgment of the learned Single Judge, holding that the charge that the appellant has committed dereliction of duty in not collecting fare from the passengers has been established and modifying the award of the Labour Court by directing reinstatement of appellant with continuity of service and with only 50% backwages.

2. The facts of the case are that the appellant-Collector was conducting the bus APZ 4253 on 28-8-1970 on the route "Karimnagar to Manthani" a check was conducted by M. W. 1 at stage No. 14 and it was found that three passengers were travelling in the bus without tickets. Thereupon charges were framed and enquiry was held. He was removed from service as the charges are held proved. The appellant then sought reference to the Labour Court and the Labour Court, on reference having considered the rival contentions and having perused the enquire material found that the domestic enquiry was not fair and proper and therefore permitted the Management to adduce evidence afresh. Accordingly the Management adduced evidence and the Labour Court, after considering the entire material evidence on record, held that the A. P. S. R. T. C. has not established the charges alleged against the appellant and accordingly passed an award setting aside the removal order and directed to reinstate the appellant with all consequential benefits and back wages Aggrieved by that order, the A. P.

S. R. T. C. filed a writ petition before the Court. A learned Single Judge of this Court, after hearing both the parties, held that the charge of misconduct is established. However, having regards to the nature of misconduct, the learned Judge while confirming the reinstatement with continuity of service, directed to pay 50% of back wages to the appellant. The learned Judge, however, opined that the denial of the remanding 50% of back wages would meet the ends of justice as punishment. Against that judgment, this present writ appeal is filed.

3. The learned Counsel for the appellant contended that the learned single Judge, ought not to have interfered while exercising jurisdiction under Article 226 of the Constitution of India with the well considered award passed by the Labour Court based on an appreciation of the evidence to the effect that the alleged misconduct against the appellant herein was not proved. On the other hand, the learned Counsel for the respondent-Corporation contended that the charge against the appellant is established, that the Labour Court erred in exoneration the appellant holding that the charge against the appellant is not established and that the learned Single Judge was correct in holding that the charge against the appellant that he had not issued tickets to three passengers while conducting bus on 20-8-1970 from Karimnagar to Manthani was established.

4. The management examined M. W. 1 and marked Exs. M-1 to M-11 whereas the workmen examined only M. W. 1 before the Labour Court.

5. The learned Single Judge after considering the material evidence on record came to the conclusion that the appellant committed misconduct. Under Regulation 28(vi) (a) of A. P. S. R. T. C. Employees (Conduct) Regulation, 1963, failure on the part of the conductor to issue any tickets to the passenger after recovery of fares is misconduct, unless he explains reasonable cause for not issuing ticket. The evidence of M. W. 1 coupled with Exs. M-2 and M-4 to M-6 clearly establish that the appellant has committed misconduct by not issuing ticket to three passengers. When the findings of the Labour Court is contrary to the material evidence on record or when conclusion reached by the Labour Court is not based on evidence on record it amounts to error apparent on the face of the record and the High Court while exercising powers u/s 226 of Constitution can interfere with the same. Therefore we are not able to accede to the contention of the learned Counsel for the appellant.

6. The learned Counsel for the appellant secondly contended that denial of 50% backwages to the appellant is not proper because the orders of the learned Single Judge comes into effect from the date of award of the Labour Court but not from the date of removal of appellant from service after domestic inquiry, when the Labour Court found that domestics enquiry against the appellant was defective and not fairly conducted and the management was permitted to adduce evidence afresh. He also contended that the order of the learned Single Judge will not take effect from that date of removal pursuant to the domestic enquiry as the doctrine of relation back theory will not apply.

7. The learned Counsel appearing for the Corporation Smt. A. Vijayanti, contended that where the Labour confirms the order of removal after considering further evidence adduced by the management before the Labour Court, the order relates back to the date of removal after domestic enquiry and therefore the order of the learned Single Judge not awarding 50% backwages as penalty relates back to the date of removal after domestic enquiry.

8. In view of the above stated contentions the important question that emerges for consideration in this appeal is :

Where the Labour Court holds that the domestic enquiry was not properly conducted and permits the management to adduce evidence on the basis of which the order of removal is confirmed, whether the order of removal dated back to the date of removal passed by the employer or to the date of order passed by the Labour Court and whether the doctrine of relation back theory applies.

9. Where a charge is levelled against an employee by the management, the management has to conduct domestic enquiry after giving fair opportunity to the employee. If any penalty is imposed, it is open to the employee to challenge the same before the Labour Court by seeking reference under the Industrial Dispute Act. In case, the Labour Court finds that the domestic enquiry is fair and proper, the Labour Court cannot interfere with the findings of the domestic enquiry, but Court can scrutinise whether the penalty imposed is proportionate to the guilt as per Section 11-A of Industrial Disputes Act. If the Labour Court comes to conclusion that the domestic enquiry was not properly conducted, then it is open to the management to adduce further evidence and the employee can adduce rebuttal evidence. The Labour Court after considering the above evidence had to pass an award. In case, the Labour Court holds the employee guilty and confirms the penalty to removal, the question will be whether that penalty imposed relates back to the date of order of removal passed by the employer or it comes into effect only from the date of award of the Labour Court.

10. There is no provision either in the Industrial Disputes Act or in any other Act as to the order of removal passed by the Labour Court on adducing further evidence by the management, relating back to the date of order of removal passed by the employer. Therefore, we have to decide this question by considering the precedents.

11. Therefore, it is relevant to refer to case law on the subject.

12. In *The Management of Ranipur Colliery Vs. Bhuban Singh and Others*, the question before Supreme Court was pending permission for dismissal of the employee by the management, when an employee is suspended whether the employee is entitled for wages from the date of the suspension till the date of dismissal after obtaining permission of the concerned authority. A Bench consisting of three Judges of the Supreme Court pointed out that but for the ban imposed by Section 33, the employer would have been entitled to dismiss the

employee immediately after completion of the enquiry on coming to the conclusion that the employee was guilty of misconduct. Their contract would have been brought to an end by immediate dismissal and all further wages would stop. Section 33, however, intervenes and stops the dismissal and further compels the employer for seeking permission of the Tribunal, it was, therefore, reasonable that the employer having done everything to bring the contract of service to an end, should not be expected to continue paying the employee thereafter. In such a contingency, the employer would be justified in suspending the employee without pay as the time consumed by the Tribunal was beyond the control of the employer, if ultimately, the Tribunal granted permission, the employee, would not get anything, whereas if the permission was refused he would get the wages for the period under suspension. While making these observations, the Supreme Court held that there was no question of the employee being paid during the period of suspension without pay, as the Industrial Tribunal has accorded permission to dismiss the employees which was upheld by the Appellate Tribunal.

13. In *Sasa Musa Sugar Works (P) Ltd. Vs. Shobrati Khan and Others*, when the workmen adopted to go-slow tactics pending conciliation proceedings and the management suspended workmen pending permission to dismiss them a Bench consisting of three Judges of the Supreme Court relying on the decision in *Management of Ranipur Colliery v. Bhuban Singh* (supra) held :

"As these forty-eight workmen were taking part in the go-slow and were thus guilty of serious misconduct, the management was entitled to get permission to dismiss them. But as the management held no enquiry after suspending the workmen and proceedings u/s 33 were practically converted into the enquiry which normally the management should have held before applying to the Industrial Tribunal, the management was bound to pay the wages of the workmen till a case for dismissal was made out in the proceedings u/s 33. The management will therefore have to pay the wages during the period of Suspension till the award of the Industrial Tribunal."

14. In the above case the Supreme Court observed that "where no enquiry is conducted and the workman is dismissed or removed after domestic enquiry which was conducted by the Labour Court then the employee is entitled for wages from the date of removal in the domestic enquiry till the date of order of Labour Court. This case is quite different from other cases as no enquiry was held in this case before passing the order of dismissal by the management.

15. In *P.H. Kalyani Vs. Air France Calcutta*, the appellant was dismissed from service on payment of one month's wages on receipt of report from the Station Manager after conducting enquiry and an application was moved before the Industrial Tribunal for approval of the action taken. The Labour Court after considering the case of the appellant and the respondent confirmed the dismissal of the appellant as the charges were found to be proved against the appellant. The said decision was challenged before the Supreme Court. It was urged on

behalf of the appellant that as the domestic enquiry was defective, there could be no approval of the action taken in consequence of such an inquiry and the Labour Court even if it held that the dismissal was justified should have ordered the dismissal from the date of the award of the Labour Court and reliance was placed on *Sasa Musa Sugar Works*" case (supra). Then, a Constitution Bench consisting of five Judges of the Supreme Court held that the observation made in the above said decision cannot be taken advantage of by the appellant as that was case where the application has been made u/s 33(1) of the Act for permission to dismiss the employees and such permission was asked for though no inquiry whatsoever had been held by the employer. It further held that as no inquiry was held by the employer in that case the order of dismissal comes into operation only from the date of order of the Labour Court. While referring to decision in *Management of Ranipur Colliery*"s case (supra), the Supreme Court held that if the Labour Court comes to the conclusion on appraisal of evidence adduced before it that the dismissal was justified its approval of the order of dismissal made by the employer in defective inquiry would relate back to the date of the order passed by the employer. After considering the above two decision, the Supreme Court held :

"In the present case an inquiry has been held which is said to be defective in one respect and dismissal has been ordered. The respondents has however to justify the order of dismissal before the Labour Court in view of the defect in the inquiry. It has succeeded in doing so and therefore the approval of the Labour Court will relate back on the date on which the respondents passed the order of dismissal. The contention of the appellant therefore that dismissal in this case should take effect from the date from which the Labour Court's award came into operation must fail."

16. In the above case, the Supreme Court clearly laid down the principle that once the Labour Court approves or confirms the dismissal order passed after domestic enquiry, considering the evidence produced before it by the management and the employee, the approval of the order of dismissal by the Labour Court relates back to the date of dismissal after domestic enquiry.

17. In *D. C. Roy v. Presiding Officer Labour Court* (AIR 1976 SC 1960) the Supreme Court held as follows.

"Where although the Labour Court found that the domestic inquiry was defective as it infringed the principles of natural justice, the employer led evidence before the Labour Court in support of the order of dismissal and on a fresh appraisal of dismissal and on afresh appraisal of that evidence, the Labour Court found that the order of dismissal was justified. The Award of the Labour Court must therefore relate back to the date when the order of dismissal was passed on the termination of the domestic enquiry.... The employee was not therefore entitled to back wages from the date of dismissal until the date on which the Labour Court delivered judgment."

18. In Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others, the Supreme Court observed :

"The discretion to deny reinstatement or pare down the quantum of back wages is absent save for exceptional reasons. However particular circumstances of each case may induce the Court to modify the direction in regard to the quantum of back wages payable. Though the normal rule, on reinstatement, is full back wages since the order of termination is non est, even so, the Industrial Court may well slice off a part if the workmen are not wholly blameless or the strike is illegal and unjustified. To what extent wages for the long interregnum should be paid is therefore, a variable dependent on complex on circumstances."

19. In Desh Raj Gupta Vs. Industrial Tribunal IV, U.P., Lucknow and another, the Supreme Court held that if the order of punishment passed by the management is declared illegal and after adducing further evidence before the Labour Court the punishment is upheld by the Labour Court, the date of dismissal cannot relate back to the date of the illegal order to the employer. Thus, the order of dismissal in pursuance of defective enquiry stands on a different footing than the illegal order of dismissal. Therefore, this judgment is not applicable to the facts of this case.

20. From the above cited decisions it is clear that the ratio as laid down in P. H. Kalyani's case (supra) on the point of "relation-back" doctrine is followed in the case of D. C. Roy's case (4 supra). The law enunciated in the case of D. C. Roy (supra) was accepted in the subsequent decision of the Supreme Court in Gujarat Steel Tubes Limited (supra). However, a contrary view taken by the Supreme Court in Deshraj Gupta case (supra) is in the circumstance of that case where enquiry found to be illegal. The Bombay High Court in Rambhau Vs. Maharashtra State Road Transport Corporation, elaborately dealt with the decisions of the Supreme Court and held that on misconduct being proved, the Labour Court has no jurisdiction to grant wages.

21. In view of the above laid down principle we hold that where the dismissal of the employee is confirmed by the Labour Court on fresh evidence produced where the domestic enquiry is found to be defective, the order of dismissal confirmed by the Labour Court dates back to the date of dismissal by the management after domestic enquiry and in such cases the employees are not entitled for back wages. Where a domestic enquiry is illegal or no domestic enquiry is conducted and an employee is dismissed and the matter is carried to the Labour Court which holds that there is no inquiry and gives an opportunity to the management to adduce evidence on the basis of which order of dismissal is passed, then the order of dismissal will not date back the date of dismissal passed after domestic enquiry, but come into force from the date of order of Labour Court. In the present case, enquiry was held to be defective and hence the appellant is not entitled for back wages. However, since the learned Single Judge directed payment of 50% backwages, we do not want to interfere with the same.

22. For the forgoing reasons, the appeal is dismissed. No costs.