
(2006) 04 AP CK 0035
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 353 of 2006

B. Vidyasagar

APPELLANT

Vs

Depot Manager, APSRTC and Others

RESPONDENT

Date of Decision : 25-04-2006

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 10(1), 15, 17, 19

Citation : (2006) 4 ALD 507 : (2006) 4 ALT 280 : (2006) 110 FLR 938

Hon'ble Judges : D. Appa Rao, J;B. Prakash Rao, J

Bench : Division Bench

Advocate : P. Sridhar Rao, for the Appellant; P. Rajani Reddy, S.C. for Respondent Nos. 1 and 2 and G.P. for Labour, for the Respondent

Final Decision : Dismissed

Judgement

B. Prakash Rao, J.—Heard Sri P. Sridhar Rao, learned Counsel appearing on behalf of the appellant and Smt. P. Rajani Reddy, learned Government Pleader for APSRTC.

2. This appeal is at the instance of the unsuccessful 1st respondent-workman assailing the order dated 28-10-2005 in allowing the writ petition in W. P. No. 14079 of 2005 filed by the respondent-Corporation, seeking the correctness of the award passed in I.D. No. 149 of 2003, dated 11-11-2004.

3. A few facts which are necessary for disposal of this appeal are that the 1st respondent-workman, appellant herein, has been working as a Conductor with the respondents-Corporation. While so, on certain charges of having committed ticket irregularities, he faced the departmental enquiry and was removed from service and in appeal, the appellate authority, as per order dated 19-10-2002, though confirmed the finding of the primary authority in regard to the charges as framed, however, considering the past good record, took a lenient view and directed to reinstate the appellant into service. Thus, the punishment of removal from service has been modified into deferment of annual increment for a period

of two years with cumulative effect, treating the period of absence i.e., from the date of removal till reinstatement as "not on duty" and also further directed him to pay the Security Deposit afresh before joining his new post.

4. Challenging the said punishment, though a lesser one, imposed by the appellate authority, the appellant invoked the provisions of Section 2A(2) of the Industrial Disputes Act, 1947 ("Act" for short) before the Labour Court raising the dispute with regard to the correctness thereon. Ultimately, the Labour Court observed that the punishment given to the appellant is not justified and accordingly, set aside the order passed by the appellate authority, and restored the increments of the appellant and further directed to treat the period of absence as "on duty". Challenging the said award the respondents-Corporation filed the present writ petition.

5. The main contention that was urged before the learned single Judge was with regard to the very competence of the Labour Court to entertain the application u/s 2A(2) of the Act, against an order passed by the appellate authority since it could not fall within the purview of Section 2A(2) of the Act as contemplated therein and therefore, the Labour Court ought not have entertained the application. The learned single Judge, agreeing with the objection raised by the respondents-Corporation, held that having regard to the expression used in the said provision, the punishment as imposed against the appellant-workman would not be covered and thus no dispute arises nor can be raised at his instance. Hence, this appeal by the employee.

6. The learned Counsel for the appellant-workman, referring to the expressions used in the said provision u/s 2A(2) of the Act, strenuously contended that where an employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer on orders passed in appeal or otherwise, though modified, would be connected with, or arising out of such discharge, dismissal, retrenchment or termination and shall be deemed to be an industrial dispute notwithstanding other workman nor union of workmen is not a party to the dispute and therefore, the appellant is entitled to file an application directly before the Labour Court.

7. The learned Standing Counsel appearing for the respondents-Corporation sought to sustain the order of the learned single Judge contending that having regard to the nature of the ultimate punishment imposed by the appellate authority, the appellant is not entitled to file such an application before the Labour Court.

8. Having heard the learned Counsel appearing on either side and on perusal of the material available on record, the question that falls for consideration is as to whether in the facts and circumstances of the case the appellant is entitled to file an application before the Labour Court u/s 2A(2) of the Act, as against orders of lesser punishment of deferment of annual increment in appeal, arising out of

orders of punishment of removal of service by the competent disciplinary authority.

9. Before going into such questions, as stated above, there is no dispute in regard to the facts of the case i.e., after an enquiry held on charges against the appellant of committing ticket irregularities, he was removed from service and in appeal, the appellate authority modified the said punishment into that of deferment of increments by setting aside the orders of removal from service. Thereupon, the appellant directly invoked the provision u/s 2A(2) of the Act by filing an application.

10. For proper appreciation of the scope of the principles under the relevant provision, namely Section 2A(2) of the Act, the reference has to be made not only to the said provision, but also the other connected provisions. Section 2A(2) of the Industrial Disputes Act, as amended by the Central Act 35 of 1965 with effect from 1-12-1965, reads as follows:

2-A. Dismissal, etc., of an individual workman to be deemed to be an Industrial Dispute:- Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

Further, as per the A.P. Amending Act 32 of 1987, which came into force with effect from 27-7-1987, Sub-section (2) has been added thereto, which reads as follows:

(2) Notwithstanding anything in Section 10, any such workman as is specified in Sub-section (1) may, make an application in the prescribed manner direct to the Labour Court for adjudication of the dispute referred to therein; and on receipt of such application, the Labour Court shall have jurisdiction to adjudicate upon any matter in the dispute, as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act; and accordingly all the provisions of this Act, shall apply in relation to such dispute as they apply in relation to any other industrial dispute.

On the reading of either of the provisions as amended both by the Parliament and also the State Legislature, the object appears to be to enable an individual dispute to be raised by an employee even without the assistance of any other co-employee or through the union. This enabling provision to approach the authorities concerned in respect of disputes covered therein is in addition to the other procedure contemplated u/s 10 of the Act whereunder on the proper follow up, the power is conferred on the respective governments to make the reference of the disputes to the Tribunals concerned. For a look into such distinct procedure, as contemplated therein, the said provision u/s 10, reads as follows:

10. Reference of disputes to Boards, Courts or Tribunals:- (1) Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing-

- (a) refer the dispute to a Board for promoting a settlement thereof, or
- (b) refer any matter appearing to be connected with or relevant to the dispute to a Court for inquiry; or
- (c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the second schedule, to a Labour Court for adjudication; or
- (d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute whether it relates to any matter specified in the second schedule or the third schedule, to a Tribunal for adjudication;

Provided that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate government may, if it so thinks fit, make the reference to a Labour Court under Clause (c):

Provided further that where the dispute relates to a public utility service and a notice u/s 22 has been given, the appropriate Government shall, unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make a reference under this Sub-section notwithstanding that any other proceedings under the Act in respect of the dispute may have commenced:

Provided also that where the dispute in relation to which the Central Government is the appropriate Government, it shall be competent for that Government to refer the dispute to a Labour Court or an Industrial Tribunal, as the case may be, constituted by the State Government:

(1 -A) Where the Central Government is of opinion that any industrial dispute exists or is apprehended and the dispute involves any question of national importance or is of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, such dispute and that the dispute should be adjudicated by a National Tribunal, then, the Central Government may, whether or of it is the appropriate Government in relation to that dispute, at any time, by order in wiring, refer the dispute or any matter specified in the Second Schedule or the Third schedule, to a national Tribunal for adjudication.

(2) Where the parties to an industrial dispute apply in the prescribed manner, whether jointly or separately, for a reference of the dispute to a Board, Court, Labour Court, Tribunal or National Tribunal, the appropriate Government, if satisfied that the persons applying represent the majority of each party, shall make the reference accordingly.

(2-A) An order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this section shall specify the period within which such Labour Court, Tribunal or National Tribunal shall submit its award on such dispute to the appropriate Government:

Provided that where such industrial dispute is connected with an individual workman, no such period shall exceed three months.

Provided further that where the parties to an industrial dispute apply in the prescribed manner, whether jointly or separately to the Labour Court, Tribunal or National Tribunal for extension of such period or for any other reason, and the presiding officer to such Labour Court, Tribunal or National Tribunal considers it necessary or expedient to extend such period, he may for reasons to be recorded in writing, extend such period by such further period as he may think fit: Provided also that in computing any period specified in this sub-section, the period, if any, for which the proceedings before the Labour Court, Tribunal or National Tribunal had been stayed by any injunction or order of a Civil Court shall be excluded:

Provided also that no proceedings before a Labour Court, Tribunal or National Tribunal shall lapse merely on the ground that any period specified under this subsection had expired without such proceedings being completed.

(3) Where an industrial dispute has been referred to a Board, Labour Court, Tribunal or National Tribunal under this section, the appropriate Government may by order prohibit the continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of the reference.

(4) Where in an order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this section or in a subsequent order, the appropriate Government has specified the points of dispute for adjudication, the Labour Court or the Tribunal or the National Tribunal, as the case may be, shall confine its adjudication to those points and matters incidental thereto.

(5) Where a dispute concerning any establishment or establishments has been, or is to be referred to a Labour Court, Tribunal or national Tribunal under this section and the appropriate Government is of opinion, whether on an application made to it in this behalf or otherwise, that the dispute is of such a nature that any other establishment, group or class of establishments of a similar nature is likely to be interested in or affected by, such dispute, the appropriate Government may, at the time of making the reference or at any time thereafter but before the submission of the award, include in that reference such establishment, group or class of establishments, whether or at the time of such inclusion any dispute exists or is apprehended in that establishment, group or class of establishments.

(6) Where any reference has been made under Sub-section (1-A) to a national Tribunal, then notwithstanding anything contained in this Act, no Labour Court or

Tribunal shall have jurisdiction to adjudicate upon any matter which is under adjudication before the National Tribunal, and accordingly,-

(a) if the matter under adjudication before the National Tribunal is pending in a proceeding before a Labour Court or Tribunal, the proceeding before the Labour Court or the Tribunal, as the case may be, insofar as it relates to such matter, shall be deemed to have been quashed on such reference to the national Tribunal; and

(b) it shall not be lawful for the appropriate Government to refer the matter under adjudication before the National Tribunal to any Labour Court or Tribunal for adjudication during the pendency of the proceeding in relation to such matter before the National Tribunal.

(7) Where any industrial dispute, in relation to which the Central Government is not the appropriate Government, is referred to a National Tribunal, then notwithstanding anything contained in this Act, any reference in Section 15, Section 17, Section 19, Section 33A, Section 33-B and Section 36A to the appropriate Government in relation to such dispute shall be construed as a reference to the Central Government but, save as aforesaid and as otherwise expressly provided in this Act, any reference in any other provision of this Act to the appropriate Government in relation to that dispute shall mean a reference to the State Government.

(8) No proceeding pending before a Labour Court, Tribunal or National Tribunal in relation to an industrial dispute shall lapse merely by reason of the death of any of the parties to the dispute being a workman, and such Labour Court, Tribunal or National Tribunal shall complete such proceedings and submit its award to the appropriate Government.

Therefore, on a conjoint reading of Section 2A and 2A(2) vis-a-vis Section 10 of the Industrial Disputes Act, a distinction has been made in regard to the mode of approach and the procedure.

11. The main stressing argument, as sought to be impressed upon on behalf of the appellant herein, is to the effect that since the original authority has passed the orders of removal and it is only against such an order and in appeal, the punishment has been modified and therefore, in spite of such change in the quantum or nature of punishment, the latter order squarely falls out of or arises out of or connected with the discharge, dismissal, retrenchment or termination and therefore, the application as filed by the appellant u/s 2A(2), in aforesaid provision is perfectly maintainable.

12. We are not convinced to accept the said proposition since apparently any dismissal, retrenchment or any termination would be effected by the original authority and would stand modified and replaced by the lesser punishment of deferment of increments by the appellate authority. Therefore, it is only ultimate punishment imposed by the appellate authorities in the hierarchy as

contemplated in the regulation, which has to govern the situation. Therefore, it cannot be said that any subsequent modification would come within the purview of Section 2A(2) of the Act.

13. In view of the above provision, the learned Counsel for the appellant placed reliance on a judgment of Orissa High Court reported in Joseph Niranjana Kumar Pradhan v. The Presiding Officer, Industrial Tribunal, Orissa and Ors. 1976 Lab. I.C. 1396 and also on the judgments of this Court, reported in K. Karunakar Vs. APSRTC and Others, , P. Habeeb Saheb Vs. A.P. State Road Transport Corporation and Others, and also on the unreported judgments of this Court in WP. No. 22076 of 1996, dated 23-7-2002 and 21354 of 1999, dated 2-3-2005.

14. On a reading of all these decisions, it is seen that on facts, the original order of termination was not varied with and the employee/appellant is held to be entitled to seek remedy by filing an application u/s 2A(2) of the Act, whereas/ this case stands on a different footing, since original order of removal stood modified to lesser one.

15. However, coming to the facts of the present case is concerned, the original order of punishment no longer exists and it is only against the later orders in appeal, the application is being made. The appellant cannot be said to have any grievance against original orders of removal, since it is not subsisting or in force. Therefore, none of the above decisions would have any application to the facts of the case.

16. The stressing argument made on behalf of the appellant to show that since the latter order arises out of original order of removal and therefore, the aforesaid provision will have application to enable him to file the application. The expression "arising out of or connected with" in the said provision should necessarily have a correlation to the existing order, but not the one which has been varied with. It is only in case where the orders of discharge, dismissal, retrenchment or termination remains unaffected, then only the petitioner can invoke the said provision, but not otherwise. All these punishments, as mentioned to in the said provision are of quite serious in nature and certainly would not include any lesser impunity nor would it still continue to remain whether (sic. where) any such punishment is replaced by a lesser one like the one in the present case. The inclusion of only such punishment and exclusion of others, is sufficient indicative by the legislature to avoid the jurisdiction of the authorities constituted under the said Act to entertain any such disputes. Therefore, the lesser punishment which has been imposed by the appellate authority in the hierarchy, totally vanishes out the orders of discharge, dismissal, retrenchment or termination passed by the primary authority. Even on the principle of merger, the orders of termination passed in the present case would stand merged with that of the lesser punishment imposed by the appellate authority and therefore, the grievance made out of such lesser punishment imposed, cannot, in any way, be connected with or arising out of such punishment imposed by the primary authority.

17. Another attempt which has been made on behalf of the appellant is to the effect that the said plea of jurisdiction was not raised at any point of time earlier or initially except in the writ petition. The learned Counsel relies on National Buildings Construction Corporation Vs. S. Raghunathan and Others, :. No doubt, in the aforesaid decision, the Apex Court on considering the principle of legitimate expectation, and administrative law, held that the respondent not raising the said questions in the writ petition but agitated only during arguments, could not be a ground for allowing writ petitions.

18. Whereas, in the present case, the very reading of the provisions concerned and the telling facts affect the jurisdiction and the maintainability. The said plea has been made in the writ petition filed by the respondents-Corporation and even otherwise, since it goes to the very root of the case, no bar as such can be put against the respondents-Corporation. Hence, we do not accept such submission at this stage.

19. In view of the above reasons, the appellant-workman is not entitled to file an application before the Labour Court by invoking provisions u/s 2A(2) of the Act in regard of any punishment other than those as provided thereunder. We do not find any merits in the appeal.

20. Accordingly, the writ appeal is dismissed. No costs.