

---

**(2002) 02 AP CK 0007**  
**In the Andhra Pradesh High Court**  
**Case No : Writ Appeal No. 234 of 2000**

Brahmandam Panduranga Rao

APPELLANT

Vs

GTC Industries Limited and Others

RESPONDENT

---

**Date of Decision :** 26-02-2002

**Acts Referred:**

**Citation :** (2002) 02 AP CK 0007

**Hon'ble Judges :** S.R.K. Prasad, J; S.R. Nayak, J

**Bench :** Division Bench

**Advocate :** C. Ramachandra Raju, for the Appellant; P. Nageshwar Sree, for the Respondent

**Final Decision :** Dismissed

---

## Judgement

1. This Writ Appeal filed by the 1st respondent employee is directed against the order of the learned Single Judge remanding the proceedings to the second appellate authority under the A.P. Shops and Establishments Act, 1988 (for short "the Act").

2. The appellant while serving as Supervisor in the establishment of the 1st respondent company, a departmental enquiry was initiated against him on certain alleged mis-conduct and after conducting the enquiry, he was dismissed from service by the Manager (Administration) of the 1st respondent company vide his proceedings dated 18.10.1982. The appellant-writ petitioner being aggrieved by the said order preferred an appeal to the Assistant Commissioner of Labour, the first appellate authority under the Act. The first appellate authority dismissed the appeal by his order dated 21.10.1988. That lead to the appellant preferring the Second appeal to the Deputy Commissioner of Labour who passed the order dated 13.2.1995 allowing the appeal and setting aside the disciplinary action taken by the Manager (Administration) of the 1st respondent company. The Management of the 1st respondent company being aggrieved by the said order of the second appellate authority preferred W.P. No. 26977 of 1995.

3. At this stage itself, a development that has taken place during the interregnum may be noticed. After the second appellate authority disposed of the appeal on 13.2.1995 in favour of the appellant-employee, the Management submitted an application before the second appellate authority seeking certain clarification. The relevant portion of the application is as follows :

"Without prejudice to the rights and contentions of the petitioner/Management, it is obliged to seek review and clarification.

- 1) For fixing the amount payable accepting the calculation of Memo appended;
- 2) Directing the petitioner to deposit before the Court the said amount within the time to be specified;
- 3) To pass such other just and proper order".

4. The second appellate authority in response to the above application made an order on 8.11.1995. It reads as follows :

"The Management/Respondent has filed a petition on 25.7.1995 stating that while passing the order dt. 13.2.1995, the Appellate Authority has modified the order issued by the lower authority and directed the management to pay the terminal benefits, but the amount to be paid has not specified. Therefore the respondent has clarification on the awarded amount by modifying the order of Lower Court.

In the order dt.13.2.1995, of this Court it is held that the charges levelled against the workman are not proved and the lower authority has erred and upheld the enquiry conducted by the respondent/management and modified the order of the lower court by awarding terminal benefits to the appellant/workman. Therefore, it is hereby clarified and as per above orders the terminal benefits means back wages from the date of dismissal to the date of superannuation (salary and leave salary) and service compensation upto superannuation. As per the material available in this Court, the awarded amounts are calculated as follows:

Therefore, the respondent/management is directed to deposit the amount of Rs.5,76,062/- by means of demand draft drawn in favour of Dy. Commissioner of Labour Guntur within 10 days from the date of receipt of this order".

4. In that view of the matter, in W.P. No. 26977 of 1995, the Management not only assailed the validity of the order of the second appellate authority dated 13.2.1995, but also the clarification issued by the second appellate authority dated 8.11.1995. As can be seen from the order under appeal, the learned Single Judge after perusing the order of the second appellate authority and opining that the 2nd appellate authority did not apply his mind to the contentious issues raised in the appeal, thought it fit to remand the proceedings to the second appellate authority for fresh disposal. The reasons assigned by the learned judge to remand the proceedings are the following:

"This order did not anywhere specifically say anything about granting of back wages nor, was any specific finding given about validity of enquiry. The petitioner-employer filed a petition seeking clarification/modification of the order dated 13.2.195. While deciding this application of clarification, the second appellate authority (Dy. Commissioner of Labour) made an observation that It was clarified that the employee jaws entitled to terminal benefits, inclusive of back wages from the date of dismissal to the date of superannuation.

Thus, this order was, in fact, totally new grounds and additional relief by way of clarification. In any event, in the original order, there was no reference anywhere about granting of back wages. The order passed in S.A. 3/93 was thus vague, without taking into consideration as to whether the employee was, in fact, entitled to back wages and, if so, for which period. Without that point being in issue, suddenly, by a mere clarification, the appellate authority should not have said that the employee was entitled for back wages from the date of dismissal to the date of superannuation. In the circumstances, the orders passed by the respondent No.1 on 13.2.1995 in S.A. 3/93, followed by order dated 8.11.195, in the same S.A. 3/93, are set aside. The matter is remanded to the respondent No.1 for passing a fresh speaking order, within three months from today, after hearing both sides."

5. At the threshold of the hearing of the Writ appeal, it is brought to our notice by Sri C. Ramachandra Raju, learned counsel for the petitioner that after the remand of the proceedings by the learned Single Judge, the second appellate authority again disposed of the appeal on merits by his order dated 12.4.2000. We asked the learned counsel for the appellant-petitioner as to whether that order has been assailed by the petitioner. The learned counsel would inform us that the said order is not yet challenged.

6. Sri C. Ramachandra Raju, with his usual vehemence and persuasiveness, would assail the validity of the order made by the Disciplinary Authority viz., the Manager (Administration). The grounds urged are that the (i) Manager (Administration) of the 1st respondent company has no jurisdiction to act as a disciplinary authority in the case of the petitioner and the competent Disciplinary authority is the General Manager of the 1st respondent company; (ii) the order of the Manager (Administration) is vitiated for non-application of mind because he did not appreciate the findings recorded in the enquiry report; (iii) the Disciplinary proceedings are also vitiated on account of non supply of enquiry report and also on account of breach of principles of natural justice inasmuch as the delinquent was not permitted to cross-examine the witnesses examined on behalf of the Management; (iv) the Management is estopped from filing W.P. No. 26977 of 1995 inasmuch as after the second appellate authority disposed of the appeal on 13.5.1995, it accepted that order and it wanted to implement that order and therefore, it sought clarification from the second appellate authority as to what would be its financial liability in implementing the order.

7. Assailing the validity of the order of the learned Single Judge, the learned

counsel would contend that although a specific contention was raised in the writ petition and was argued before the learned Single Judge that the Manager (Administration) of the 1st respondent company is not the competent authority to pass the impugned disciplinary order, the same was not considered. The learned counsel would also maintain that the view of the learned Single Judge that there is no proper application of mind on the part of the second appellate authority is not justified and the learned Single Judge ought not to have remanded the proceedings to the second appellate authority particularly in view of the finding recorded by the second appellate authority that there was breach of principles of natural justice in conducting the enquiry.

8. Although these are the contentions of the learned counsel for the appellant, consideration of these contentions which are directed against the order of the second appellate authority would arise only in the event of we finding that the learned Single Judge is not justified in remanding the proceedings to the second appellate authority for fresh disposal. Therefore, we proceed to consider the basic question whether the remand order passed by the learned Single Judge impugned in this Writ appeal warrants our interference.

9. In order to appreciate whether the order passed by the second appellate authority dated 13.2.1995 which is impugned in the writ petition suffers from the vice of non-application of mind, it is appropriate to extract the relevant consideration part of the order. It reads as follows:

"The point for consideration whether the appellant/workman was given reasonable opportunity in the enquiry conducted by the respondent/management and the punishment awarded to the appellant that the termination of the appellant/workman is in order. The principles of natural justice require that the appellant/workman would have been given reasonable opportunity before giving the punishment of termination by the respondent/management. The records show that charges were levelled against the appellant/workman by Factory Manager and respondent/management is one of the leading company and there is personnel department in their Company, why the personnel Department did not venture to take interest in the enquiry conducted by the respondent management. It was conducted by a Factory Manager, Subordinate to personnel Manager,. When there is a separate department of personnel department it would have been taken by them and as charges levelled against the appellant workman are not proved beyond doubt, and the lower authority has erred and upheld the enquiry conducted by the respondent/ management.

In view of the following the principles of natural justice it is necessary in conducting any enquiry, and it is therefore ordered and modified the order issued by Lower Authority i.e., the appellant/workman is entitled to the terminal benefits as per the provisions of the Act as the superannuation of the appellant/workmen is completed at this odd date."

10. The above paras in the order speak for themselves and reflect convincingly

the non-application of mind on the part of the 2nd appellate authority. Although the second appellate authority chose to record a finding that there is violation of principles of natural justice, nowhere the second appellate authority has pointed out how the principles of natural justice are breached in conducting the enquiry. Therefore, the finding recorded by the second appellate authority is based on 'no evidence' and if the finding recorded by a statutory authority is found to be on 'no evidence', 'no evidence' rule can be applied to nullify such finding. Furthermore, the 2nd appellate authority does not consider relevant facts in the decision-making. Added to this, even according to the learned counsel for the appellant, a specific contention was raised before the second appellate authority that the order passed by the Manager (Administration) of the 1st respondent company is one without authority of law for the General Manager of the Company is the competent disciplinary authority in the case of the petitioner and not the Manager (Administration). Even this contention is not dealt with by the second appellate authority. In that view of the matter, no exception can be taken to the order under appeal by which the order of the second appellate authority is set aside and the proceedings are remanded to the second appellate authority for fresh disposal in accordance with law. Above all, as a consequence of the remand order, the second appellate authority has already passed an order. If that order is invalid or illegal for any reason, the only course open to the aggrieved party is to assail the validity of the same in an independent legal action. Even according to the learned counsel for the appellant, that order of the second appellate authority dated 12.4.2001 remains unchallenged. For all these reasons, we do not find any substantive ground to interfere with the order of the learned Single Judge.

11. The Writ Appeal is, therefore, dismissed. However, we make it clear that the contention raised by the learned counsel for the appellant while assailing the order dated 13.2.1995 passed by the Deputy Commissioner of Labour relating to the authority of the Manager (Administration) is left open to be agitated at appropriate stage, if the appellant-petitioner chooses to assail the validity of the order made by the second appellate authority dated 12.4.2000 after the remand. No costs.