
(2022) 03 TEL CK 0016
In the Telangana High Court
Case No : Writ Petition No. 27211 Of 2003

Depot Manager

APPELLANT

Vs

Morla Maheswar

RESPONDENT

Date of Decision : 08-03-2022

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 10A, 11A

Citation : (2022) 03 TEL CK 0016

Hon'ble Judges : P. Madhavi Devi, J

Bench : Single Bench

Advocate : A Ravi Babu

Final Decision : Dismissed

Judgement

1. This Writ Petition was filed by the petitioners challenging the award in I.D.No.93 of 2002 dt.24.03.2003 on the file of the Labour Court, Godavarikhani and to quash the same as arbitrary and illegal by way of issue of a Writ of Certiorari.

2. Brief facts leading to filing of this Writ Petition are that the 1st respondent was appointed as daily wage Conductor with effect from 05.03.1991 in APSRTC and while working so, on 04.05.2000 the 1st respondent was conducting the Bus bearing No.4295 on the route from Nagapoor to Mancherial and a check was conducted at Stage No.13/12 in which certain cash and ticket irregularities were detected. Thereupon, the following charges were framed:

- (1) For having failed to observe the rule "Issue and Start".
- (2) For having collected Rs.8/- from two individual passengers (Each Rs.4/- total Rs.8/- at boarding point itself) found travelling without ticket, who boarded the bus at Nagapoor, stage No.14 and bound for Asnad II Stage No.13/12.
- (3) For having closed the tray nos. of all denominations upto stage no.13, without completing the above ticket issues.

3. The 1st respondent therefore was subjected to departmental enquiry and thereafter was dismissed from service. On appeal, the 1st respondent was reinstated into service, but punishment was modified by reducing his pay by two increments for a period of two years with cumulative effect. Against the same, the 1st respondent filed a Review Petition and the same was also dismissed, against which the 1st respondent approached the Labour Court. The Labour Court modified the punishment to stoppage of increments for a period of two years without cumulative effect and against such relief granted by the Labour Court, the Corporation has filed this Writ Petition.

4. Learned counsel for the petitioners, Sri A.Ravi Babu, submitted that the Labour Court erred in entertaining the dispute itself as the reference was not against any dismissal or discharge from service but it was against the punishment of stoppage of increments with cumulative effect. He submitted that Section 11A of the Industrial Disputes Act, 1947 refers to appropriate relief in case of only discharge or dismissal and not in relation to any other punishment. He relied upon a decision of the Hon'ble Supreme Court of India in the case of South Indian Cashew Factories Workers' Union Vs. Kerala State Cashew Development Corpn. Ltd. and others (2006) 5 SCC 201, for the proposition that the powers of Labour Court were restricted only to interfere when there were allegations of unfair labour practice, victimisation, etc., and it cannot interfere with the punishment imposed by the management. He therefore submitted that the award of Labour Court is liable to be set aside on this ground alone.

5. The learned counsel for the 1st respondent, Sri V. Narasimha Goud, on the other hand submitted that Section 11-A of the Industrial Disputes Act deals with not only dismissal and discharge of employees but also deals with any proceeding relating to such dismissal or discharge. He submitted that the 1st respondent was initially dismissed from service and it is only in the appeal that he has been reinstated and the punishment of stoppage of increments is in modification of the order of dismissal or discharge from service. He further submitted that the Tribunal has the power to reappraise the evidence and also to examine the correctness of the findings and not only to interfere with the punishment, but also to alter the same. In support of these arguments, he placed reliance upon the decision of the Hon'ble Supreme Court of India in the case of The Workmen of M/s. Firestone Tyre and Rubber Co. of India P. Ltd. Vs. The Management and others AIR 1973 SC 1227. He also placed reliance on the decisions of this Court in Divisional Manager, APSRTC and another Vs. E. Raja Reddy and another 1999 (5) ALD 735 and Depot Manager, APSRTC, Guntur District and another Vs. Ch. Suresh Babu and another 2019 (2) ALD 264 (DB).

6. Having regard to the rival contentions and the material on record, this Court finds that the learned counsel for the petitioners has relied upon the judgment of Hon'ble Supreme Court in the case of South Indian Cashew Factories Workers' Union Vs. Kerala State Cashew Development Corpn. Ltd. and others (1supra), wherein bias against the enquiry officer was raised for the first time before the

Hon'ble Supreme Court and it was in these circumstances that the Hon'ble Supreme Court held that the mere fact that the enquiry was conducted by an officer of the management and that he had made some observations in the enquiry report which were not warranted, was not vitiation of the enquiry itself. The Supreme Court further held that where there was a punishment order than dismissal or discharge after a properly conducted enquiry in which there was no violation of principles of natural justice and the findings were not perverse, the Labour Court could not reappraise the evidence to examine the propriety of the quantum of punishment and thereafter it was held that Section 11A was applicable only in case of dismissal or discharge of a workman. This observation of the Court is only on the basis of the recitals in the heading of the Section.

7. Learned counsel for the petitioners, on the other hand, relied upon a judgment of the Hon'ble Supreme Court in the case of *The Workmen of M/s. Firestone Tyre and Rubber Co. of India P. Ltd. Vs. The Management and others* (2 supra), wherein at para 32 the Hon'ble Supreme Court has held as under:

"We will first consider cases where an employer has held a proper and valid domestic enquiry before passing the order of punishment. Previously the Tribunal had no power to interfere with its finding of misconduct recorded in the domestic enquiry unless one or other infirmities pointed out by this Court in *Indian Iron and Steel Co. Ltd.* 1958 SCR 667 = AIR 1958 SC 130 existed. The conduct of disciplinary proceeding and the punishment to be imposed were all considered to be a managerial function with which the Tribunal had no power to interfere unless the finding was perverse or the punishment was so harsh as to lead to an inference of victimisation or unfair labour practice. This position, in our view, has now been changed by Section 11A. The words "in the course of the adjudication proceeding, the Tribunal is satisfied that the order of discharge or dismissal was not justified" clearly indicate that the Tribunal is now clothed with the power to reappraise the evidence in the domestic enquiry and satisfy itself whether the said evidence relied on by an employer established the misconduct alleged against a workman. What was originally a plausible conclusion that could be drawn by an employer from the evidence, has now given place to a satisfaction being arrived at by the Tribunal that the finding of misconduct is correct. The limitations imposed on the powers of the Tribunal by the decision in *Indian Iron and Steel Co. Ltd.* 1958 SCR 667 = AIR 1958 SC 130, case can no longer be invoked by an employer. The Tribunal is now at liberty to consider not only whether the finding of misconduct recorded by an employer is correct; but also to differ from the said finding if a proper case is made out. What was once largely in the realm of the satisfaction of the employer, has ceased to be so; and now it is the satisfaction of the Tribunal that finally decides the matter."

8. This decision has been followed by Division Benches of this Court in the cases of *Divisional Manager, APSRTC and another Vs. E. Raja Reddy and another* (3 supra) and *Depot Manager, APSRTC, Guntur District and another Vs. Ch. Suresh Babu and another* (4 supra).

9. Section 10 of the Industrial Disputes Act, 1947 is applicable to reference of disputes to Boards, Courts or Tribunals and Section 10A thereof is applicable to voluntary reference of disputes to arbitration. Section 11 refers to procedure and power of conciliation officers, Boards, Courts and Tribunals, while Section 11A refers to powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal from service. From these provisions of the Industrial Tribunal Act, it is clear that where an employer or employee refers any dispute to the Labour Court, on such reference the Labour Court has the power and duty to adjudicate the dispute. If the intention of the Legislature was only to refer the disputes relating to dismissal or discharge from service to the Tribunal, the provisions of Sections 10 to 11 would not be in existence in the Statute Book and therefore the judgment of the Hon'ble Supreme Court in The Workmen of M/s. Firestone Tyre and Rubber Co. of India P. Ltd. Vs. The Management and others (2 supra) is clearly applicable to this case and the Tribunal has power to interfere with the punishment awarded or modified by the Appellate Authority.

10. In view of the same, the Writ Petition filed by the organisation is liable to be dismissed and it is accordingly dismissed. No order as to costs.

11. Pending miscellaneous petitions, if any, in this Writ Petition shall also stand dismissed.