
(2000) 07 AP CK 0003

In the Andhra Pradesh High Court

Case No : Writ Petition No. 14548 of 1995

Depot Manager, APSRTC, Sangareddy

APPELLANT

Vs

Presiding Officer, Industrial Tribunal-II, Hyd. and another

RESPONDENT

Date of Decision : 19-07-2000

Acts Referred:

Industrial Disputes Act, 1947 — Section 11

Citation : (2000) 5 ALD 669 : (2000) 5 ALT 708

Hon'ble Judges : B.S.A. Swamy, J

Bench : Single Bench

Advocate : Mr. K. Harinath, SC for APSRTC, for the Appellant; Government Pleader for Labour and Mr. A.K. Jayaprakash Rao, for the Respondent

Judgement

1. Aggrieved by the award of the Industrial Tribunal II, Hyderabad in ID No.197/94, dated 12-8-1994, reinstating the respondent No.2 to duty without back wages with continuity of service, the APSRTC filed this writ petition.

2. I have gone through the award of the Tribunal. The petitioner Corporation framed the following charges against the respondent No.2 :

"(1) For having misbehaved with the Leading Hand Sri Ghousuddin, E.21018, LH on 7-4-1984 while you were on duty from 9.00 hours to 17.00 hours.

(2) For having relaxed in the Tyres Section at 15.30 hours on 7-4-1984 while you were on duty from 9.00 to 17.00 hours.

(3) For having entering the AMF/STI's room at 17.00 hrs, and caught hold of LH's Shirt Collar and assaulted him and spoke "E Department Na Sulli Cheethunda."

3. Pursuant to the domestic enquiry held, the petitioner Corporation removed him from service by its order dated 3-8-1984. Questioning the order of removal the respondent No.2 moved the Industrial Tribunal for reinstatement with back wages and other attended benefits. The Tribunal having held that the domestic

enquiry conducted by the petitioner Corporation is not in accordance with law, by order dated 4-8-1988 gave an opportunity to the petitioner Corporation to adduce evidence to prove the misconduct alleged against the respondent. While the respondent did not chose to adduce any evidence in support of the relief sought for by him, on behalf of the management, Mohd. Gaisuddin, the leading hand, under whom the respondent was working and who was assaulted by the respondent on the fateful day and Y. Pullaiah, Assistant Mechanical Foreman, in whose presence the respondent assaulted MW1 were examined as MW1 and MW2 and M1 to M3 were marked as exhibits. On the basis of the evidence adduced by the petitioner Corporation, the Tribunal framed the following points for consideration:

1. Whether the alleged misconduct against. Muneer Khan, the petitioner by the respondent Depot Manager, APSRTC, Sangareddy is established.

2. If so, whether the punishment for removal from service-inflicted upon the said Muneer Khan is commensurate with the misconduct proved against him.

3. To what relief is the petitioner entitled to in this reference?

4. The Tribunal Having believed the witnesses examined on behalf of the Corporation categorically observed that the respondent did not chose to come to the witness box to contradict the version deposed by the witnesses and the documents marked therein in corroboration with the oral testimony of the witnesses, recorded the following finding :

"Thus the respondent established beyond doubt the misconduct alleged against the petitioner. Thus the point is decided against the petitioner and in favour of the respondent"

5. Coming to the second issue, it is not in dispute that the respondent scolded the MW1 and also abused the department by saying "Eli Department naku Sulli Chestunda". The Tribunal giving credence to the statement made by the Counsel for the respondent that the word "Sulli" is a Urdu word and it means handing and it is not a foul language observed "considering the circumstances under which the petitioner is said to have uttered these words it is highly probably that the petitioner might have meant that the department might have not hang him for he was found relaxing for some time in the Tyre Section after taking lunch".

6. As far as manhandling of MW1 by catching hold of his shirt, the Tribunal recorded that it is a serious misconduct and the punishment of removal from service is not commensurate with the misconduct proved against him.

7. Coming to the third point, the Tribunal felt that the interests of justice would be met if the petitioner is punished by imposing the punishment of stoppage of two annual increments with cumulative effect and ordering reinstatement of the petitioner without any back wages.

8. Questioning the said award, the petitioner Corporation filed this writ petition.

Mr. K. Harnath, Counsel appearing for the petitioner Corporation submits that the second respondent came to the adverse notice of the Corporation twice and suffered punishments. Though this fact was brought to the notice of the Tribunal, the Tribunal passed the award without reference to the past conduct and the misconduct levelled against the second respondent being a serious one and was proved beyond doubt, the Tribunal went wrong in ordering reinstatement without back wages. If the workmen of this temperament are reinstated to duty, the very congenial atmosphere expected to be maintained between the superiors and the subordinates, will be effected adversely. The Counsel for the respondent tried to defend the award by relying on a judgment of the Supreme Court and a judgment of a Division Bench of this Court. In Ramakanth Misra v. State of U.P. and others 1982 LLJ 472. First of all it should be kept in mind that this judgment was rendered at a time when the Industrial Law was developing and taking its roots in this country and those were the days where Courts were interpreting the provisions in favour of the workmen the Industrial Disputes Act, being a welfare Legislation intended to protect the workmen from the high-handed and arbitrary action of the employers. Much water has flown from that date and the Courts cannot forget the fact that almost all the public sector undertakings are under closure or privatisation because of the huge losses incurred by the organisation started with taxpayer's money and the role played by the trade union in this disaster cannot be underestimated. In this country people know to assert their rights but not their duties to the nation. With the result, the poor man's money collected through his nose in the shape of taxes is being completely drained beyond anybody's comprehension. Now, we are at a time when all these units are being closed or being privatised, I feel that any ratio decidendi that is being laid by the Courts should reflect the contemporaneous/ Circumstances under which they were asked to adjudicate the lis and the paramount consideration of the Court would be the orderly progress of the society in the forward direction, but not in the inverse direction. In that point of view, I am of the opinion that since the date of the judgment of the Supreme Court much water has flown and the misconduct on the part of the workmen is on the increase and they are ransacking the congenial atmosphere, expected to be maintained in the workplace. Everywhere muscle men are dictating terms to the management and were creating severe unrest, resulting in loss of production, deterioration of the services that are expected to be rendered by these public sector undertakings. If the country has to progress in achieving the long cherished goal of the founding fathers of the Constitution for establishment of an egalitarian society, the Courts have to interpret the laws in such a manner that any sort of misbehavior or misconduct on the part of the workmen has to be dealt with severely by imposing a deterrent punishment. In fact, I am fortified in my view by a judgment of the Supreme Court in Mahindra Nissan Allwyns Ltd v. M.P. Siddappa 2000(1) LLJ 168, in which it was held that the High Court went wrong in interfering with the award of the Labour Court, having held that the workmen abused the Dy.G.M. and Manager (Personnel) in filthy language and threatening them by observing that the charges levelled

against the workmen were not serious in nature and modified the order of the Labour Court to that of reinstatement without continuity of service and without back wages (appointment afresh) by holding that the punishment imposed was disproportionate to the charges proved against the workmen in the following words:

4. We do not agree with the High Court. The charges are of a serious nature. The first respondent was found to have led out workmen from the factor premises regardless of the challenge by the Security Guard. Along with these workmen the first respondent entered the administrative building of the appellant and the room of the Deputy General Manager. The Deputy General Manager and Manager (Personnel) were abused in filthy language and threatened, examples of which have been given. Misbehavior was also proved against the first respondent in his conduct with five executives of the appellants. If these are not serious charges against a workman worthy of his dismissal from service, we do not know what can be. The High Court was quite wrong in the conclusion that it reached and in the order that it passed. The punishment imposed against the respondent must remain unaltered.

9. Before dealing with the two judgments cited by the Counsel for the respondent, he tried to cite a number of decisions in support of his contention that the Industrial Tribunal is well within its competence in exercising the discretion vested in it u/s 11(a) of the ID Act in interfering with the punishments imposed by the management in the industrial dispute. He has also cited a decision that the power u/s 11(a) of the Act can even be exercised by the High Court while exercising writ jurisdiction. As I am in full agreement with the contentions raised by the Counsel, I am not referring them in this judgment.

10. Coming to the two judgments cited by the Counsel for the respondent while in Ramakanth Misra's case their Lordships were dealing with the case of a workman who used threatening language against his superiors. In that case, it is true that their Lordships observed that even if the misconduct is proved and a penalty has to be imposed; the extreme penalty of dismissal or discharge was not justified in the facts and circumstances of the case, meaning thereby that the punishment was either disproportionately heavy or excessive. As stated earlier, it is a well-established principle of jurisprudence that the penalty to be imposed for misconduct has to be commensurate with the gravity of the offence charged. Admittedly, in that case, though the workmen used the threatening language, it cannot be said that the workmen used foul language and the workman has not gone to the extent of catching hold of the collar of the superior officer and beating him apart from not coming to the adverse notice either prior or after the incident.

11. In the instant case the learned Judge interpreted the word "Sulli" and observed that the petitioner might have meant that the department is not going to hand him for his relaxation for some time in the tyre section after taking lunch, on the basis of the submission made by the Counsel for the workman that the word "Sulli" is a Urdu word. But, the learned Judge did not specify the

meaning of the word in Urdu language. Though the workman happened to be a Muslim it is highly difficult to record a finding that he does not know the meaning of the word he used. If the workmen who utters such foul language is allowed to continue in service as observed earlier, the very industrial peace is at peril and thereby creates turmoil in the work place. That apart, the Tribunal categorically recorded a finding that the action of the respondent is a serious misconduct. It is not in dispute that the workman in the instant case came to the adverse notice of the Corporation on two occasions earlier and suffered punishments. This fact itself proves that the workman is in the habit of using intemperate language against the superiors and was trying to threaten the superior officers in the work place. In the circumstances of the case I am of the opinion that the Tribunal is not justified in modifying the order of removal to that of reinstatement with continuity of service and without back wages on the misplaced sympathies on the workmen, which do not warrant in the circumstances of the case. Very often I come across the awards passed by the Tribunals of this country on misplaced sympathies, as if the Tribunals are created only to favour the workmen and condone even serious lapses on their part. The Tribunals shall not forget that they are discharging the judicial functions and it is their duty not to protect the workmen, but also to see that the majesty of law is upheld.

12. Coming to the second case relied by the Counsel for the respondents in B. Balaraj Vs. The Management of Federal Sports and Others, the workman was found guilty of a charge for assaulting his co-workman for not contributing some amount to the union of which he was the Secretary and punishment of dismissal was imposed. The Labour Court having held that the enquiry was conducted properly held that the punishment of dismissal to be grossly disproportionate and directed reinstatement of the workman with 50% back wages. Their Lordships of this Court having held that the charge levelled against the workman was proved beyond doubt both in using abusing language and beating his co-workman, dismissed the appeal filed by the Corporation by observing that the discretion exercised by the Tribunal is not to be likely interfered with unless it is shown that the Tribunal has perverted itself in projecting the problem and considering the relevant circumstances, while observing that the High Court, while silting in the certiorari over the award of the Industrial Tribunal, is having power u/s 11(a) of the Act to interfere with the discretion of the Tribunal.

13. Firstly, in this case, the abusive language used by the workman was not extracted. Further the man whom the workman assaulted is his co-workman and the dispute is with regard to the contribution to the Union for conducting the union activities. But, in the instant case, I have already held that the language used by the workman is a foul language not an intemperate language, more so, uttered against his superiors (leading hand) in the presence of their next superior (Asst. Mechanical Foreman). In other words, he used the foul language against MW1 and bet him in the presence of MW2 who is superior to the respondent as well as to MW2 and it reflects the respect he had to his superiors. Further it is interesting to note that MW1 reported about his taking rest in the

tyre room to MW2 at 2:30 p.m. and at 5:00 p.m., he enters the room of MW2 and caught hold of the collar of MW1 who was sitting there and started assaulting him using foul language. Hence, it cannot be even presumed that the reaction of the workman is an instantaneous one. He purposefully came to MW2 room with a definite intention to assault the leading hand as he has given a compliant against him to MW2 and it is a premeditated attack on MW1. If such type of conduct on the part of workman is exonerated the very industrial peace will be disturbed and chaos will prevail.

14. Even assuming that the Counsel is right in relying on these two judgments in support of his contention, in the light of the latest decision of the Supreme Court stated supra (Mahindra Nissan Allwyns case), I hold that the view taken by the Division Bench of this Court is no longer good law after that judgment.

15. Lastly, the Counsel for the 2nd respondent contended that this Court while admitting the writ petition directed interim stay of all proceedings except reinstatement and pursuant to the said orders he was reinstated to duty and in the last four years the workman has not come to the adverse notice of the Corporation.

16. I am inclined to give much weight-age to this fact for the simple reason that the workmen might be behaving properly because of the pendency of the writ petition by way of Damocles sword and he knows pretty well that if he misbehaves during the pendency of the writ petition it will cost his job, keeping his past conduct also prior to this incident.

17. For the foregoing reasons the writ petition is allowed and the award passed by the Industrial Tribunal II, Hyderabad in ID No.197/94 dated 12-8-1994 is quashed and consequently the punishment given by the Corporation pursuant to the domestic enquiry held, stands good. But, in the circumstances there will be no order as to costs.