
(2008) 08 AP CK 0047

In the Andhra Pradesh High Court

Case No : Writ Petition No. 12426 of 2007

G.P. Babu

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 26-08-2008

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A, 2A(2)

Citation : (2008) 6 ALD 147 : (2009) 1 ALT 130 : (2008) 119 FLR 575 : (2009) 1 LLJ 501

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : T. Lakshmi Narayana, for the Appellant; Government Pleader for Respondent No. 1 and C. Prakash Reddy, SC for APSRTC, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—The petitioner was employed as a Conductor in Bapatla Depot of APSRTC. He was removed from service by the Depot Manager, Bapatla, 2nd respondent herein (for short "the respondent"), on disciplinary grounds. Aggrieved thereby, the petitioner approached the Labour Court, Guntur, by filing I.D. No. 276 of 2006 u/s 2-A(2) of the Industrial Disputes Act, 1947 (for short "the Act"). At his instance, the Labour Court has taken up the question of validity of the domestic enquiry, as preliminary issue. The petitioner pleaded that the domestic enquiry was conducted in a defective manner and in violation of the principles of natural justice. The respondent contested the matter. Through its order, dated 1.3.2007, the Labour Court answered the said issue in affirmative and held that the domestic enquiry is valid and binding on both the parties. The said order is challenged in this writ petition.

2. Heard the learned Counsel for the petitioner and the learned Standing Counsel for the respondent.

3. The petitioner approached the Labour Court u/s 33-C(2) of the Act, aggrieved

by the order passed by the respondent, removing him from service. It is quite strange that the petitioner, who invoked the jurisdiction of the Labour Court, had insisted that the question, as to the legality and validity of the domestic enquiry, be decided. Normally, it is the contesting respondents in the proceedings before a Court or Forum, that would raise several issues opposing the claim of the persons, who instituted the proceedings. Preliminary issue is the one; the answer to which in a particular form, would terminate the proceedings, without the necessity to deal with the other aspects of the matter. Invariably, such issues are raised by the defending parties. It is uncommon that a party, who invokes the jurisdiction of a Forum or Court, would insist on the answer to a preliminary issue. Therefore, it was impermissible for the petitioner, to insist on the adjudication of a preliminary issue.

4. Be that as it may, let it be examined as to whether the issue sought for adjudication is preliminary in nature. In the course of adjudicating the matter before it, u/s 33-C(2) of the Act, the Labour Court would not only examine the validity of the domestic enquiry, but also the merits of the matter. Even where, the domestic enquiry is found to be valid, the proceedings do not get terminated. The Labour Court has to examine the matter on merits. Further, Section 11-A of the Act confers powers on the Labour Court to grant relief not only in cases, where the domestic enquiry is held to be defective, or where the charges are held not proved on merits, but also in cases, where a finding is recorded on merits to the effect that the charges are proved.

5. The issue as to whether the validity of the domestic enquiry could not have been treated as preliminary. The reason is that, the necessity to adjudicate the matter on merits, or other aspects, would have remained, irrespective of the manner in which, the said issue was answered. Had the domestic enquiry been held not valid, it would have been for the Labour Court, to examine the matter, with reference to the material, that formed part of the record of the enquiry officer, or to set aside the order of dismissal, duly indicating the nature of steps to be taken, such as the manner in which the employee be treated, when the matter is remanded for fresh consideration and disposal.

6. Assuming that the domestic enquiry is held valid, the Labour Court would still be under an obligation, to satisfy itself as to the correctness of findings. Pronouncement upon the validity of the domestic enquiry is mostly guided by the compliance, or otherwise with the procedural requirements. The mere fact that a domestic enquiry was held to be procedurally correct, does not obviate the necessity to examine the correctness of the findings. Even an extreme situation, where no other view, than the one, expressed in the domestic enquiry is possible, the jurisdiction of the Labour Court, u/s 11-A of the Act, would have remained intact. Viewed from any angle, the proceedings before the Labour Court cannot be terminated by answering the question, as to the validity of the domestic enquiry, one way or the other.

7. The Labour Court committed error, both (a) in permitting the petitioner to

raise a preliminary issue, and (b) by treating the validity of the domestic enquiry as a preliminary issue.

8. The writ petition is accordingly dismissed.

9. The Labour Court, however, is directed to examine the matter on merits, uninfluenced by any of its observations in the impugned order. There shall be no order as to costs.