

(2014) 10 AP CK 0056
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 2432 of 2005

J.B. Satyanarayana

APPELLANT

Vs

The Chairman and Managing Director

RESPONDENT

Date of Decision : 10-10-2014

Acts Referred:

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

Citation : (2015) 4 ALD 305

Hon'ble Judges : L.N. Reddy, J;Challa Kodanda Ram, J

Bench : Division Bench

Advocate : A.K. Jayaprakash Rao, Advocate for the Appellant; D. Ravishankar Rao, Advocate for the Respondent

Judgement

L. Narasimha Reddy, J.—The appellant herein was employed as Operator Trainee on 17.10.1975 in the Lamps Division of HMT Limited, Hyderabad. Thereafter, he worked in the Tunston Wire Drawing (TWD) Section between 1976 and 1985. During that time, he is said to have developed kidney problem and made a request to transfer him to other sections. Acceding to the request, he was transferred to Mercury Vapour Lamp Division in the year 1985. The appellant states that though the company has acquired know-how to manufacture MVL 85 and SVL lamps, and the product has a good market, the company started supplying the manufactured products to other companies such as GEC, Philips, Mysore lamps and that himself and another senior employee were protesting against the same. Another allegation made by him was that the persons in management have committed theft of Cattode Pasts Monogram worth Rs. 10,00,000/- and sold them to competitors and in relation to that, he took steps to unearth the fraud.

2. The appellant was transferred to Glass Division in the year 1994. He alleged that the transfer was effected, in spite of his complaint that the Head of that division was harassing him and that it is an act of victimisation.

3. The 3rd respondent issued a charge sheet, dated 19.05.1994 alleging that the

appellant recorded his presence only by scratching the card in the electronic machine but did not report to duty to the Head of the Department. Another charge was that he forged the signature of his superior officer while submitting application for LTC. The appellant submitted his explanation on 27.05.1994. Not satisfied with that, a domestic enquiry was ordered. The enquiry officer submitted a report on 28.01.1995, holding that the first charge is proved and in the second charge, the allegation as to forgery is not proved.

4. The 3rd respondent passed an order, dated 09.06.1995 dismissing the appellant from service, after issuing a show cause notice. The appellant filed I.D. No. 1 of 2001 before the Industrial Tribunal-II, Hyderabad under Section 2A(2) of the Industrial Disputes Act, 1947 (for short "the Act") challenging the order of dismissal. The Labour Court passed Nil award on 07.09.2001. Thereupon, the appellant filed W.P. No. 3244 of 2005. The writ petition was dismissed through order, dated 23.02.2005. Hence, this writ appeal.

5. Sri A.K. Jaya Prakash Rao, learned counsel for the appellant submits that though the appellant reported to duty according to the prescribed procedure, the first charge was framed as though there is a serious violation. He contends that the very grievance of the appellant was that the Head of the Glass Division was harassing him and that though the Manager of the HRD Section promised him to shift to another division, that was not done. He further submits that the appellant was a kidney patient and for his medical bills and other related purposes, he had to move from one section to another and that was treated as an act of loitering. He further submits that though the enquiry officer held that the charge as to forgery is not proved, the 3rd respondent proceeded as though charge No. 2 is also proved. Learned counsel further submits that even if both the charges are taken as proved, the punishment of dismissal from service of an employee, who has put in 20 years of service, cannot be sustained or justified in law. He contends that the Labour Court has deviated from the prescribed norms and virtually adopted a more vindictive approach than the employer. It is urged that the view taken by the learned Single Judge that the failure of the appellant to examine witnesses before the Labour Court is fatal to proceedings; cannot be sustained in law.

6. Sri D. Ravi Shankar Rao, learned counsel for the respondents, on the other hand, submits that the charges framed against the appellant are serious in nature and since both the charges are held proved, the 3rd respondent was left with no alternative except to impose the punishment of dismissal. He contends that the Labour Court held that no defect has crept into the domestic enquiry and even on merits, the appellant was not able to demonstrate that the findings recorded by the enquiry officer are not correct. He placed reliance upon the judgment of this Court in General Manager Area-I, R.G. Division, Singareni Collieries Company Limited Vs. Presiding Officer, Industrial Tribunal-I and Another, . Learned counsel submits that if an employee who invokes the jurisdiction of Labour Court fails to adduce oral or documentary evidence, he

cannot get any relief whatever.

7. The charges framed against the appellant read as under:

1. It has been reported that you are not reporting to your assigned department i.e., Glass Plant, since 4.1.1994. On verification it is found that you are registering your Punches through "Keltron Punching system" and you are not reporting to your assigned department i.e., Glass Plant, in other Sections of the Unit during working hours and chit-chating with employees of the Sections, thereby creating indiscipline in the Sections.

You have also been advised orally and in writing to report to the assigned department i.e., Glass Plant, on several occasions. In spite of the above clear instructions, you have failed to report to your allotted department and thus you were not doing any work till late, and you continued to be loitering in different sections of the Unit without any reasons, thereby causing disturbances to the sectional employees.

2. It is noticed from your Leave Application that you have applied for 3 days leave (Earned leave) i.e., from 15.4.94 to 18.4.94 to proceed to Home Town, without obtaining the signatures of the Competent Officer i.e., neither from Glass Plant nor from MVL, instead, you have submitted your leave application form along with LTC Intimation letter dated 13.4.94 signed by an unknown person in the capacity of Sanctioning Authority, whose signature is not tallying with any of the Officer of Glass Plant/MVL Section."

Your above behavior amounts to an act of grave misconduct under Clause Nos. 19.101; 19.111 and 18.8. in respect of Charge No. 1 and Cl. Nos. 19.110; 19.124 and 19.109 in respect of Charge No. 2 of the Certified Standing Orders of the Company applicable to you.

8. The appellant submitted his explanation to the charge sheet. According to him, the Head of the Glass Plant was inimically disposed against him and despite his protest, he has been posted in that Section. He denied both the charges and furnished the particulars of his nature of working during that period. Not satisfied with the explanation, the 3rd respondent ordered departmental enquiry. Before the enquiry officer, the Management examined 4 witnesses and filed certain documents.

9. The allegation in charge No. 1 is that though the appellant was transferred to Glass Division, he did not attend to duties in that division and was spending his time in the MVL division, where he was working earlier. The enquiry officer summed up the cross-examination of M.W. 1, in this behalf, as under:

"During cross-examination by the defendant, M.W. 1 revealed that the charge-sheeted employee used to come and sit in the MVL section as and when he liked, not through-out the shift. Further, he stated that no leave application was brought to him except LTC intimation letter."

10. Regarding Charge No. 2, the following information was elicited from the same witness:

"Accordingly, M.W. 1 was once-again cross-examined by the Defendant. During cross-examination, M.W. 1 clarified that only LTG intimation letter was given to him by the defendant for his signature, and as per the procedure, normally, leave application for LTC will be permitted to submit even-after avilment of LTC. In this case, he felt that the defendant may be in a hurry to avail the LTC and may be planned to submit his leave application letter i.e., after avilment of LTC."

11. It is important to note that the enquiry officer himself observed on charge No. 2 as under:

"It is also not proved whether this signature is forged by Sri J.B. Satyanarayana."

12. Despite these observations and the material on record, the charges were held proved. A close perusal of the enquiry report of the enquiry officer would disclose that charge No. 2 cannot be said to have been proved at all, once he held that there is no proof that the appellant has forged the signature of any authority. What remains is charge No. 1. Even in that, the allegation is that the appellant used to loiter and spend his time elsewhere. That was also belied with the deposition of none other than M.W. 1. Assuming that charge No. 1 is proved, the punishment cannot be the one of dismissal of an employee, who has put in 20 years of service. The allegations made by the appellant as to selling away the properties of the company by the officials in the Management cannot be ignored.

13. The Parliament was conscious of the fact that in the departmental proceedings, it is quite possible that the charges against the employees are proved and at the same time, every charge cannot entail in the capital punishment of dismissal, particularly when the management has axe to grind against an employee. Obviously for this reason, Section 11-A was incorporated in the Act.

14. We are compelled to observe that in the instant case, the discussion of the Labour Court exhibited more harshness than the disciplinary authority. An order of dismissal, which would shock the conscious of even a common man, in the facts of this case, did not make any difference to the Labour Court and the I.D. was dismissed by undertaking totally irrelevant discussion.

15. In the writ petition, the only basis on which the learned Single Judge dismissed the same is reflected in paragraph 3 of the order and it reads:

"Neither any witness was examined nor any document was marked on behalf of the petitioner to prove that the enquiry conducted by the disciplinary authority was contrary to the rules. It is not the case of the petitioner that he was not afforded any opportunity nor respondent has violated the principles of natural justice. As the Tribunal gave a finding that the enquiry was conducted properly, it cannot be said that the enquiry conducted is perverse or contrary to law. Hence, there are no grounds to interfere with the impugned award passed by the

Tribunal."

16. Thus the only basis for the learned Single Judge to dismiss the writ petition was that no oral or documentary evidence was adduced before the Labour Court. In Singareni Collieries Company Ltd's, case (supra), a Division Bench of this Court held that it is for the concerned employee to disprove the charges, which he assails in an Industrial Dispute and that in turn would require oral and documentary evidence. Nowhere it was held that the failure to adduce evidence must entail in dismissal of the writ petition, wherein the award of the Labour Court is challenged.

17. If an employee is able to demonstrate that the evidence that formed part of the record before the enquiry officer is insufficient to prove the charges, he can certainly do so. This is a typical case, where such an exercise can be undertaken. We have already extracted the deposition of none other than the witness of the Management itself, in respect of both the charges. His deposition belies, or at least waters down both the charges. The Labour Courts are constituted with the specific purpose of undertaking such an exercise i.e., to analyze the evidence in the domestic enquiry. Further, even where the charges are taken as proved, Section 11-A of the is an important milestone, which the Labour Court has to cross. Any lapse in that behalf would be fatal to the entire proceedings and would constitute abdication of duty on the part of the Labour Court.

18. In the instant case, the Labour Court did not analyse the evidence on record. It did not bestow its attention to Section 11-A of the Act at all. An error apparent on the face of the record was glaring in the enquiry report itself. We have also demonstrated that though the enquiry officer himself observed that the allegation as to forgery is not proved, he held that charge No. 2 is proved. This only shows either his inexperience or his unbridled loyalty to the Management. Assuming that the charges can be taken as proved, we do not find that the imposition of punishment of dismissal on a senior employee like the appellant was justified. Section 11-A of the Act was introduced to meet the situation of this nature.

19. The mechanism provided for under the Act takes in its fold, not only a social security measure but also the one intended to protect the industrial activity in the Country. The discontinuance of an employee on trivial grounds would result not only in the deprivation of his employment but also denial of services of an experienced employee, to the industry. This is particularly so, when the establishment is a public sector undertaking.

20. We therefore allow the writ appeal and set aside the order passed by the learned Single Judge. Consequently, the writ petition is allowed and the award passed by the Labour Court is set aside. The order of dismissal passed against the appellant is also set aside. The respondents are directed to reinstate the appellant into service with backwages and attendant benefits.

21. It is brought to our notice that the whereabouts of the appellant are not

known for the past two years. Therefore, we direct that the respondents shall pay a sum of Rs. 3,00,000/- to the legal representatives of the appellant in lieu of the relief granted above, within two months from today.

22. The miscellaneous petition filed in this writ appeal shall also stand disposed of. There shall be no order as to costs.