

(1999) 09 AP CK 0095

In the Andhra Pradesh High Court

Case No : Writ Petition No. 12748 of 1991

M.A. Abood

APPELLANT

Vs

Presiding Officer, Labour Court, Warangal, and another

RESPONDENT

Date of Decision : 28-09-1999

Acts Referred:

Andhra Pradesh State Road Transport Corporation Employees (Conduct) Regulations, 1963 — Regulation 218, 28
Industrial Disputes Act, 1947 — Section 11

Citation : (1999) 6 ALD 11 : (1999) 5 ALT 604

Hon'ble Judges : B. Sudershan Reddy, J

Bench : Single Bench

Advocate : Mr. Karra Prabhakar Rao, for the Appellant; Government Pleader for Labour and Ms. G. Jyothi Kiran, SC, for the Respondent

Judgement

1. The Award passed by the Labour Court, Warangal in ID No.173 of 1987, dated 22-4-1988 refusing to grant any relief to the petitioner herein is challenged in this writ petition on various grounds.

2. The petitioner while working as a Driver in the second respondent-Corporation was served with a charge-sheet containing the following charges:

1. For having caused the dislocation of punctual operation of service i.e., 8.00 hours Hyderabad on 25-11-1982 for no written reasons and demanding change of vehicle No.AAZ 3003 booked for the said service causing inconvenience to the travelling public due to your gross negligence. This constitutes your misconduct under Regulation 28(ix)(a) of APSRTC Employees (Conduct) Regulations, 1963.

2. For your insubordination, misbehavior with AMF while on duty on 25-11-1982 in the Depot premises for no written reasons when you have been booked to work as driver for 8.00 hours Hyderabad service with vehicle No.AAE-3003. This constitutes misconduct 28(viii) of APSRTC Employees (Conduct) Rules, 1963.

3. For having entered the depot premises on 27-11-1982 at about 12.00 hours

after knowing the fact of suspension order issued to you by the undersigned and making attempt to assault the AMF in the garage while he was on duty. This constitutes your misconduct under (Conduct) Regulations, 1963.

4. For having collecting with your co-workers to get back your bicycle unauthorisedly and against the rules driven into the maintenance garage by you on 27-11-1982, and after making attempt to assault the AMF with a view to wipe out the practical evidence. This constitutes your misconduct under Regulation 28(XXX) of APSRTC Employees (Conduct) Regulations.

5. For your riotous and disorderly behavior shown in the STI's room where AMF, STI and another conductor was sitting and making attempt on the life of AMF, taking into the circumstances of your suspension. This was happened on 28-11-1982 at about 14.00 hours. This constitutes misconduct under Regulation 218 (xviii) of APSRTC Employees (Conduct) Regulations, 1963.

3. An enquiry was held into the matter in which the petitioner was found guilty of all the charges. The disciplinary authority by order dated 30-7-1983 accordingly removed the petitioner from service. The petitioner raised an industrial dispute and the same has been referred by the Government through its order dated 4-3-1986 for adjudication of the following question :

"1. Whether the Depot Manager, APSRTC, Asifabad Depot, is justified in removing Sri Mohd. Abood, Ex-Driver, E-97368, Asifabad Depot, from service by his order dated 30-7-1983.

2. If not, to what relief, the workman is entitled to."

4. The Labour Court confirmed the order of removal and refused to grant any relief whatsoever to the petitioner. Hence the present writ petition.

5. The petitioner contested the findings of the disciplinary authority as defective and perverse. The Labour Court has not recorded any finding whatsoever about the validity of domestic inquiry. But, however, permitted the respondent-management to adduce evidence to justify its order of removal. The Management accordingly examined MWs. 1 and 2 and got marked Exs. M1 to M4. The petitioner has examined, himself, as WW1 and marked Ex. W1. Upon appreciation of the evidence and the material evidence available on record the Labour Court upheld the order of removal passed against the petitioner.

6. In this writ petition Sri Karra Prabhakar Rao, learned Counsel for the petitioner, submits that the whole procedure adopted by the Labour Court in adjudicating the dispute is vitiated. It is urged that the Labour Court could not have permitted the Management to adduce evidence in the absence of any finding about the validity of domestic inquiry. It is the submission of the learned Counsel for the petitioner that the Labour Court may provide an opportunity to the management to adduce evidence to justify its action only when there no domestic inquiry held against the petitioner or where the domestic enquiry was found to be defective by the Labour Court itself.

7. It is further urged that the Labour Court having found that charge No. 1 is not proved against the petitioner, ought to have granted some relief to the petitioner in exercise of its jurisdiction u/s 11-A of the Industrial Disputes Act, 1947 (for short "the Act").

8. The question that arises for consideration is - whether the Labour Court has committed any illegality in permitting the respondent-management to lead evidence in support of its order of removal passed against the petitioner from its service without recording any finding whatsoever about the validity of the domestic enquiry.

9. The award passed by the Labour Court would show that the petitioner filed claim statement to which the respondent-management did not file any counter. The respondent-management has not relied upon the domestic enquiry report in support of its order of removal of the petitioner from service. The record would further disclose that the respondent No.2 was permitted to adduce evidence to justify its order of removal and accordingly the management examined two witnesses on its behalf and marked four exhibits. The petitioner was also given an opportunity and accordingly he examined, himself, as WW1 and marked Ex.W1.

10. It is not clear from the record as to whether the petitioner raised any dispute as to the validity of the domestic enquiry. It is also not clear from the record as to whether the respondent-management made any request seeking permission to adduce evidence to justify the order of removal. But, the fact remains that the Labour Court granted permission to both the respondent-management, as well as the petitioner to lead evidence in support of their respective claims. The record would disclose that the statements given by MW1 and MW2 before the enquiry officer were marked as Exs.M1 and M2 in the Labour Court. Like wise, the statement of the petitioner herein, before the enquiry officer is marked as Ex.W1. The Labour Court in arriving at its conclusions with regard to each of the charges levelled against the petitioner relied upon both oral and documentary evidence adduced before it, which includes the statements made by the witnesses examined on behalf of the respondent-management, as well as the workman during the domestic enquiry. Therefore, the questions that would for consideration are :

(1) Whether the Labour Court has committed any illegality in permitting the management to lead evidence in support of the order of removal of the petitioner from the service without deciding the validity of the domestic enquiry ?

(2) Whether the Award suffers from any error apparent on the face of the record?

11. In *State Bank of India Vs. R.K. Jain and Others*, , the Supreme Court observed that:

"It is always open to the management to rely upon the domestic inquiry

conducted by it and satisfy the Tribunal that there is no infirmity attached to the order of discharge or dismissal. The management has also got a right to justify on facts as well that its order of discharge was proper."

It is further held that:

"if the management defends its action solely on the basis that the domestic inquiry held by it is proper and valid and if the Tribunal holds against the management on that point, the management will fail. On the other hand if the management relies not only on the validity of the domestic inquiry, but also adduced evidence before the Tribunal justifying its action, it is open to the Tribunal to accept the evidence adduced by the management and hold in its favour even its finding is against the management regarding the validity of the domestic inquiry. It is essentially a matter for the management to decide about the stand that it proposes to take before the Tribunal. It is the right of the management to sustain its order by adducing also independent evidence before the Tribunal. It is a right given to the management and it is for the management to avail itself of the said opportunity.

12. The very same question up came for consideration before the Apex Court in *Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh*, , The Supreme Court after elaborate consideration of the matter deduced the following principles by referring to the authoritative pronouncements of the Court on the subjects:

1. If no domestic enquiry had been held by the management, or if the management makes it clear that it does not rely upon any domestic enquiry that may have been held by it. It is entitled to straightway adduce evidence before the Tribunal justifying its action. The Tribunal is bound to consider that evidence so adduced before it, on merits, and give a decision thereon. In such a case, it is not necessary for the Tribunal to consider the validity of the domestic enquiry as the employer himself does not rely on it.

2. If a domestic enquiry had been held, it is open to the management to rely upon the domestic enquiry held by it, in the first instance, and alternatively and without prejudice to its plea that the enquiry is proper and binding, simultaneously adduce additional evidence before the Tribunal justifying its action. In such a case no inference can be drawn without anything more, that the management has given up the enquiry conducted by it.

3. When the management relies on the enquiry conducted by it, and also simultaneously adduces evidence before the Tribunal, without prejudice to its plea that the enquiry proceedings are proper, it is the duty of the Tribunal, in the first instance, to consider whether the enquiry proceedings conducted by the management, are valid and proper. If the Tribunal is satisfied that the enquiry proceedings have been held properly and are valid, the question of considering the evidence adduced before it on merits, no longer survives. It is only when the Tribunal holds that the enquiry proceedings have not been properly held, that it derives jurisdiction to deal with the merits of the dispute and in such a case it

has to consider the evidence and decide the matter on the basis of such evidence.

4. When a domestic enquiry has been held by the management and the management relies on the same, it is open to the latter to request the Tribunal to try the validity, of the domestic enquiry as a preliminary issue and also ask for an opportunity to adduce evidence before the Tribunal, if the finding on the preliminary issue is against the management. However, elaborate and cumbersome the procedure may be, under such circumstances, it is open to the Tribunal to deal, in the first instance, as a preliminary issue the validity of the domestic enquiry. If its finding on the preliminary issue is in favour of the management, then no additional evidence need be cited by the management. But if the finding on the preliminary issue is against the management, the Tribunal will have to give the employer an opportunity to cite additional evidence and also give a similar opportunity to the employee to lead evidence contra, as the request to adduce evidence had been made by the management to the Tribunal during the course of the proceedings and before the trial has come to an end. When the preliminary issue is decided against the management and the latter leads evidence, before the Tribunal, the position, under such circumstances, will be, that the management is deprived of the benefit of having the finding of the domestic Tribunal being accepted as prima facie proof of the alleged misconduct. On the other hand, the management will have to prove, by adducing proper evidence, that the workman is guilty of misconduct and that the action taken by it is proper. It will not be just and fair either to the management or to the workman that the Tribunal should refuse to take evidence and thereby ask the management to make a further application, after holding a proper enquiry, and deprive the workman of the benefit of the Tribunal itself being satisfied, on evidence adduced before it, that he was or was not guilty of the alleged misconduct.

5. The management has got a right to attempt to sustain its order by adducing independent evidence before the Tribunal. But the management should avail itself of the said opportunity by making a suitable request to the Tribunal before the proceedings are closed. If no such opportunity has been availed of, or asked for by the management, before the proceedings are closed, the employer can make no grievance that the Tribunal did not provide such an opportunity. The Tribunal will have before it only the enquiry proceedings and it has also to decide whether the proceedings have been held properly and the findings recorded therein are also proper.

6. If the employer relies only on the domestic enquiry and does not simultaneously lead additional evidence or ask for an opportunity during the pendency of the proceedings to adduce such evidence, the duty of the Tribunal is only to consider the validity of the domestic enquiry as well as the finding recorded therein and decide the matter. If the Tribunal decides that the domestic enquiry has not been held properly it is not its function to invite suo motu the employer to adduce evidence before it to justify the action taken by it.

13. In the *The Cooper Engineering Limited Vs. Shri P.P. Mundhe*, , the Supreme Court observed that:

"When a case of dismissal or discharge of an employee is referred for industrial adjudication the Labour Court should first decide as a preliminary issue whether the domestic enquiry has violated the principle of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer, there will be no difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary issue. On that decision being pronounced it will be for the management to decide whether it will adduce any evidence before the Labour Court. If it chooses not to adduce any evidence, "it will not be thereafter permissible in any proceeding to raise the issue."

14. In the *Depot Manager, APSRTC, Charmmar Depot v. K. Jelman Reddy*, 1990 (1) An WR 754, a Division Bench of this Court held that:

"If the Labour Court holds u/s 11-A that the domestic enquiry is vitiated, in that case, it would be open to the management to place before the Labour Court even material relating to past conduct of the workman. But, where the domestic enquiry is not held vitiated, it would not be open for the management to place material relating to past conduct of the workman on record for the first time before the Labour Court unless of course the question of past conduct was an integral part of the charge and the workman had an opportunity to meet it in the domestic enquiry or unless the Standing Regulations or any special statute permitted the past conduct to be taken into account by the management at the time of awarding punishment, even though the same was not part of the charge."

15. In *Pandu A.N. Vs. Management of Bharat Heavy Electricals Ltd. and Others*, , another Division Bench of this Court appears to have taken a view that the Labour Court cannot permit the management to lead evidence in the enquiry before it without holding the domestic inquiry was vitiated by reason of its being perverse or that there was no evidence to support its finding of guilty.

16. In *Bio-chemical and Synthetic Products Ltd. Vs. Somiah and Another*, , another Division Bench of this Court (in which I am a member) observed that:

"There is no stage determined for an employer to come forward and ask for leading evidence before the Court or Tribunal in support its action. It is the duty of the Court to see that such an opportunity is allowed to the employer and unless the employer consciously waives the right to lead fresh or further evidence in the course of enquiry, the employer can be permitted to lead evidence even in the absence of a finding that the domestic enquiry is invalid."

17. In *Neeta Kaplish Vs. Presiding Officer, Labour Court and Another*, , the management even after providing an opportunity to lead evidence on merits failed to do so. Such an opportunity was given to the management to lead evidence, in support of its order, after the Labour Court found that the domestic enquiry was not fairly and properly held. But the management wanted to rely

upon the domestic enquiry proceedings already held by the enquiry officer, including the evidence recorded by him, by contending that it is entitled to rely upon the material on record. The Supreme Court after referring to the earlier judgments observed:

"In view of the above, the legal position as emerges out is that in all cases where enquiry has not been held or the enquiry has been found to be defective, the Tribunal can call upon the Management of the employer to justify the action taken against the workman and to show by fresh evidence, that the termination or dismissal order was proper. If the Management does not lead any evidence by availing of this opportunity, it cannot raise any grouse at any subsequent stage that it should have been given that opportunity, as the Tribunal, in those circumstances, would be justified in passing an award in favour of the workman. If, however the opportunity is availed of and the evidence is adduced by the Management, the validity of the action, taken by it has to be scrutinised and adjudicated upon the basis of such fresh evidence.

In the instant case, the appellant had questioned the domestic enquiry on a number of grounds including that her own answers, in reply to the questions of the Presiding Officer, were not correctly and completely recorded and that the Enquiry Officer was not impartial and was biased in favour of the respondent.

It was further contended that her own witnesses were not called and she was not given the opportunity to lead evidence. The Labour Court has discussed a few of these grounds but has not given any finding on the bias of Enquiry Officer or the ground relating to" incorrectly recording the statement of the appellant. The Labour Court, however, found that the enquiry was not fairly and properly held. It was after recording this finding that the Labour Court called upon the Management to lead evidence on merits which it did not do.

Learned Counsel for the appellant contended that inspite of the direction by the Labour Court to the respondent-management to lead evidence, it was open to the management to rely upon the domestic enquiry proceedings already held by the Enquiry Officer, including the evidence recorded by him, and it was under no obligation to lead further evidence, particularly as the Management was of the view that the charges, on the basis of the evidence already led before the Enquiry Officer, stood proved, it was also contended that u/s 11-A, the Labour Court had to rely on the "material on record" and since the inquiry proceedings constituted "material on record", the same could not be ignored. The argument is fallacious.

The record pertaining to the domestic enquiry would not constitute "fresh evidence" as those proceedings have already been found by the Labour Court to be defective. Such record would also not constitute "material on record", as contended by the Counsel for the respondent, within the meaning of Section 11-A at the inquiry proceedings, on being found to be bad, have to be ignored altogether. The proceedings of the domestic enquiry could be, and, were, in fact,

relied upon the management for the limited purpose of showing at the preliminary stage that the action taken against the appellant was just and proper and that full opportunity of hearing was given to her in consonance with the principles of natural justice. This contention has not been accepted by the Labour Court and the enquiry has been held to be bad. In view of the nature of objections raised by the appellant, the record of enquiry held by the Management ceased to be "material on record" within the meaning of Section 11-A of the Act and the only course open to the Management was to justify its action by leading fresh evidence as required by the Labour Court. If such evidence has not been led, the Management has to suffer the consequences."

18. In the instant case, the record would not show as to whether the petitioner herein raised any dispute with regard to the validity of the domestic inquiry. At any rate, the management itself has not placed any reliance upon the domestic inquiry. The findings recorded by the enquiry officer were not at all relied upon by the management. All the findings recorded by the enquiry officer, as well as the disciplinary authority are admittedly against the petitioner. All the charges framed against the petitioner are also held to have been proved. The management without placing any reliance upon the proceedings in the domestic enquiry straight away led evidence, both oral and documentary, in support of the removal order passed against the petitioner. It is also not clear as to whether the Tribunal suo motu accorded permission to the management to lead evidence in support of its order of removal or such a permission was granted on the request of the management. But the fact remains that the management was permitted to lead evidence and the petitioner was permitted to lead rebuttal evidence.

19. In my considered opinion, the procedure adopted by the Labour Court does not suffer from any incurable legal infirmities. It is apparent from the record that neither the management nor the petitioner herein have placed any reliance whatsoever upon the enquiry report. The Labour Court arrived at its own conclusions based on the evidence that was let in by the management during the course of inquiry before it. In such a situation, the only possible conclusion is that the management itself has proceeded as though domestic inquiry was not held and accordingly led evidence in support of its order of removal passed against the petitioner. In such a situation the procedure adopted by the Labour Court cannot be said to be vitiated.

20. The Supreme Court in *Delhi Cloth and General Mills*, case (supra) in categorical terms held that:

"it is open to the management to rely upon the domestic inquiry held by it in the first instance and alternatively and without prejudice to its plea that the inquiry is proper and binding, simultaneously adduce additional evidence before the Tribunal justifying its action. In such a case, no inference can be drawn, as if the management has given up the enquiry conducted by it."

It is further observed by the Supreme Court that:

"the management has got a right to attempt to sustain its order by adducing independent evidence before the Tribunal. But the management should avail itself of the said opportunity by making a suitable request to the Tribunal before the proceedings are closed. It is not the function of the Tribunal to invite suo motu the employer to adduce evidence before it to justify the action taken by it."

21. In the instant case, it appears that the parties to the proceedings have proceeded as if there was no domestic enquiry in the matter. Neither of the parties placed any reliance upon the same. The domestic inquiry report and the proceedings are not in favour of the petitioner and it is not as if the petitioner wanted to place any reliance upon the domestic inquiry report. Even in the absence of any findings as to the validity of the domestic enquiry, the Tribunal could have always permitted the management to lead evidence in support of its order of discharge or dismissal without prejudice to the plea that the enquiry proceedings are proper and in such a case the Tribunal in the first instance to consider whether the enquiry proceedings conducted by the management are valid and proper. On being satisfied that the inquiry proceedings have been held properly and are valid, the question of considering the evidence adduced before it on merits, does not arise. The Tribunal is entitled to go into the evidence adduced before it on coming to the conclusion that the proceedings have not been properly held.

22. In the instant case, the Tribunal has not placed any reliance whatsoever upon the domestic enquiry; but, relied upon the evidence adduced before it by both the parties. The Tribunal may not be duty bound to suo motu direct the parties to lead evidence and if the Tribunal fails to provide such an opportunity suo motu, the same may not suffer from any infirmity in law. But if the Tribunal suo motu provides such an opportunity, the same cannot be held to be illegal. After all the requirement in law is that no workman shall be punished without proper and adequate enquiry in accordance with the principles of natural justice. Reasonable opportunity may have to be provided to the workman before awarding any punishment. Such an enquiry is required to be fair and free from any bias. The said requirement is met in the instant case, as the Tribunal itself has recorded the evidence, relied upon only on such evidence totally ignoring the material upon which the inquiry officer relied upon, in coming to the conclusion that the charges levelled against the petitioner were held proved. The procedure does not suffer from any legal infirmity. The procedure adopted by the Labour Court is neither against the principles of natural justice nor contrary to the provisions in Section 11-A of the Act.

23. The charges levelled against the petitioner are very serious in nature. The Tribunal rightly observed that the petitioner attempted to assault an officer of the Corporation on the ground that he was placed under suspension from service on untenable grounds. The Labour Court held that the petitioner tried to assault the officer concerned on three occasions, as he was placed under suspension by the

said officer. The Labour Court is right in observing that even if the order of suspension was totally wrong, the petitioner cannot be allowed to take the law into his own hands and attempt to assault the officer concerned. This one finding is enough to support the order of removal passed against the petitioner. The findings and the conclusions reached by the Labour Court do not suffer from any infirmity whatsoever. This Court in exercise of its jurisdiction under Article 226 of the Constitution of India cannot reappraise the evidence and material on record and substitute its own findings for that of the Labour Court/Tribunal. The Labour Court itself had adverted to the question as to what would be the appropriate punishment in the facts and circumstances of the case and accordingly upheld the order of removal. The Labour Court exercised its jurisdiction conferred upon it by Section 11-A of the Act. The Labour Court had not committed any error whatsoever in exercising its discretion in the matter.

24, For all the aforesaid reasons, I do not find any merit in this writ petition and the same shall accordingly stand dismissed. There shall be no order as to costs.