
(1984) 07 AP CK 0015
In the Andhra Pradesh High Court
Case No : W.A. No. 477 of 1983

Management, Royal Laboratories, Hyderabad

APPELLANT

Vs

Labour Court and Another

RESPONDENT

Date of Decision : 05-07-1984

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1984) 2 ALT 207 : (1985) 1 LLJ 201

Hon'ble Judges : P.A. Chowdhary, J;A. Lakshmana Rao, J

Bench : Division Bench

Judgement

P.A. Choudary, J.—This is an appeal filed by the writ petitioner against a judgment of our learned brother Jeevan Reddy, J. The writ petition is filed by the Management, Royal Laboratories, against an award of the Labour Court, Hyderabad, made in I.D. No. 3 of 1974.

2. The Royal Laboratories is a pharmaceutical firm manufacturing drugs. One Srihari Sahay, the contesting respondent to the above writ petition, was one of its employees. The said Sahay was engaged by the said Royal Laboratories to work as Optical Testor and Supervisor. On the basis of certain allegations of misconduct of violence and disorderly behaviour, viz., habitual neglect of work and wiful damage to the property of the management, charges were laid against the said Sahay by the Management on 7th August, 1972. On the denial of those charges by the employee, the Management conducted a domestic inquiry in which it was found that the charges were proved against the employee. On that basis, the service of the employee were terminated by an order of discharge simpliciter on 25th September, 1972. Challenging that order of termination of his services, the employee raised an industrial dispute in I.D. No. 3 of 1974 before the Labour Court, Hyderabad. The Labour Court, by its award, dated 29th November, 1977 found that the charge were not proved against the employee and that the termination of his services was therefore improper. On the basis of that finding, the Labour Court ordered the employee's reinstatement with

backwages. In doing so, the Labour Court rejected the alternative plea of the Management based upon an allegation that it had lost confidence in the employee and that, therefore, in no event an order should be made for the reinstatement of the employee. Against that award of the Labour Court, the Management had preferred W.P. No. 1540 of 1978 which was dismissed by our learned brother Jeevan Reddy, J., on 23rd March, 1983. Against that order of the learned Judge, present Writ Appeal is preferred.

3. It is not now seriously argued that, the judgment of the learned Judge to the extent that it holds that order of termination dated 25th September, 1972 passed by the Management to be illegal, is bad. In fact, no serious argument is advanced against that part of the judgment of the learned judge. We may also mention that. In a writ appeal against a Judgment of a learned single Judge, it is not open to the appellate court to overrule the order of the learned single Judge made under Art. 226 of the Constitution mainly on the ground that the appellate court does not agree with that view. So long as the view of the learned single Judge is one of the two plausible views to be taken and is not otherwise vitiated, a review of the matter is not open. We are on this point one with the view of the Judgment of the Kerala High Court reported in *Neelakanta Kartha v. Registrar* [1978 II L.L.J. 435]. We cannot find fault with the judgment under appeal on the ground that an alternative view which might commend itself to us is not accepted by him. At least, such review is not open to an appellate Court hearing appeals against orders made under Art. 226 of the Constitution which is a discretionary remedy. We can only interfere on an error of principle, but not on reevaluation of evidence; nor on the basis of preferential choice of the alternatives. What is now seriously contended is that, assuming that the order of termination passed by the Management cannot be sustained, the learned Judge ought not to have upheld the order of the Labour Court directing the reinstatement of the employee. It is argued by Sri L. Panduranga Rao, learned counsel for the appellant, that the employee is working in the Laboratory manufacturing vital drugs and his conduct in the past would justify the loss of confidence in him by the Management. But we find that the management laid no factual foundations for its plea of loss of confidence.

4. In the counter-affidavit filed by the Management before the Labour Court, it was boldly stated :

"The petitioner admittedly in his claims made unequivocal and categorically statements, expressing lack of confidence in the managements, and also questioned the bona fides and the fair play of the Management. Under the circumstances, the Management is left with no option except reciprocating the feelings and sentiments expressed by the petitioner. Under given circumstances, it is highly improper, unjust and also equally illegal on the part of the petitioner to claim reinstatement in the Laboratory, when medicines are being prepared and sent to different parts of the country to be used by the ailing and the needy. The management has got genuine bona fide apprehensions about the motives of the

petitioner in seeking reinstatement in the Laboratories."

One of the partners of the Laboratories, in his evidence for the Management before the Labour Court, stated thus,

"We lost confidence in him because of his activities and misbehaviour which prompted us to terminate his services.

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Even while he was in our service the petitioner was sending petitions against us to various authorities. That is one of the grounds on which we lost confidence in the petitioner. Even now we apprehend that the petitioner will certainly work against our interest if we take him back into service, having regard to his conduct and our past experience with him."

5. The question now is whether the Management can be said, on the above material, to have made out a case of loss of confidence in the employee. An analysis of the allegation made and the evidence given in support of those allegation would show that the employee was guilty of no more than making claims against the Management regarding his service conditions. The statement in the evidence to the effect that the employee was sending petitions was admitted by the Management to be based on mere suspicion. It is admitted by the Management in the cross-examination that, "such allegation was no doubt made against us in various petitions sent which we suspect must have been sent by the petitioner". Then what remains to be taken to have been proved is the charge of the Management that the petitioner had made allegations in his claim application for betterment of service conditions. The question is whether the Management can lose legally confidence in one of its employees merely on the basis of the claims openly made by the employee for the betterment of his service conditions before the legally constituted authority. Loss of confidence cannot be merely subjective, based upon the state of mind of the Management. Objective facts, which would induce a reasonable apprehension in the mind of the Management regarding the trustworthiness of the employee must be alleged and proved. Otherwise, the right of reinstatement to which an employee is ordinarily entitled to on a finding that he is not guilty of any misconduct will be irretrievably lost to the employee. In this case, there is neither sufficient allegation made by the Management or sufficient reasonable proof offered by the Management in its evidence to justify their assertion that they have reasonably lost confidence in the employee. Ventilating of grievance by making legal claims regarding betterment of service conditions before lawfully constituted authorities is a normal trade union right. The exercise of such a right is guaranteed to a workman and he need not lose his job. Nor can the Management be heard to say that it has reasonably lost confidence in the employee merely because the employee exercised his lawful right.

6. In *Attorney General v. Butterworth* 1963(1) Q.B. 696, the Court of Appeal held that any disciplinary action taken by the Management against its employee on

the basis of evidence given by that employee before a judicial tribunal would amount to contempt of Court. The Judgment is based upon the premise that such a disciplinary action would interfere with proper administration of justice as a continuing process and deters potential witnesses from giving evidence in future cases. That case was first noticed in Sayeeduddin v. Anantaraman (I.L.R. 1964 A.P. 811), by a Division Bench of this Court consisting of Chandra Reddy, C.J. and Gopalakrishna Nair, J., and was later followed by Gopala Rao Ekbote, J., in Gafoor v. State of A.P. (I.L.R. 1975 A.P. 168), Gopala Rao Ekbote, J., as he then was, held that the Government is not competent to take disciplinary action against its employee merely on the ground that the employee gave evidence detrimental to the interests of the Government in a Civil Court. These cases are authorities for the proposition that for the lawful exercise of one's lawful rights before judicial or quasi-judicial tribunals, no one should be called to pay any penalty. If the workmen were to be deterred by the threat of termination of services - no doubt compensated by damages - only for the reason that they claimed improvement in service conditions before the lawfully constituted authority, the whole system of the rights of the labour to agitate for their rights built by blood, tears and sorrow and now recognised by judge-made law would collapse. We cannot, therefore, uphold the contention of Sri Panduranga Rao that a reasonable case of loss of confidence has been made out in this case. Nor can we agree that such a thing is possible merely on the basis of employee's lawful claims lawfully made. If we exclude the claim of the employee from our consideration, we find no other evidence that would sustain the management's claim of loss of confidence. We accordingly reject this contention of the learned counsel.

7. We may also refer to the judgment of the Supreme Court in Orissa Cement Ltd. v. Habibullah, [1960 I L.L.J. 522] where the Supreme Court held that a workman cannot be held to be guilty of misconduct merely on the basis of his disbelieved evidence given in an industrial adjudication.

8. Jeevan Reddy, J., in this case held that the post which the employee is holding is not a sensitive post. He was merely testing the vials for their cleanliness. We hold additionally that the question of loss of confidence cannot arise in relation to the duties of such an employee in this organisation. There does not seem to be anything in the activities of the employee of which the management can be legitimately afraid so long as the Management acts lawfully.

9. We may notice here that on an examination of the evidence, the Labour Court found that no case of loss of confidence has been made out by the Management. With that finding, the learned single Judge has concurred. We cannot say that there is any error of law warranting interference of an appellate Court. We accordingly dismiss this writ appeal with costs. Advocate's fee Rs. 250/-.