
(2014) 07 AP CK 0134

In the Andhra Pradesh High Court

Case No : Writ Appeal Nos. 405 and 409 of 2013

M.V. Seshachary

APPELLANT

Vs

The Chairman

RESPONDENT

Date of Decision : 04-07-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 11-A, 2-A(2)
Penal Code, 1860 (IPC) — Section 420

Citation : (2015) 5 ALD 280 : (2014) 143 FLR 218 : (2014) 3 LLJ 446 : (2015) 1 LLN 440

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

Bench : Division Bench

Advocate : S. Satyam Reddy, Senior Counsel, Advocate for the Appellant; Pratap Narayan Sanghi, Standing Counsel, Advocate for the Respondent

Judgement

L. Narasimha Reddy, J.—Both these writ appeals are filed by the same appellant being aggrieved by the common order dated 29-01-2013, passed by the learned single Judge in Writ Petition Nos.14936 of 2006 and 17819 of 2007.

2. The appellant joined the service of M/s Madras Fertilizers Limited, the 1st respondent herein, as Assistant on 22-01-1990. He was promoted as Senior Assistant on 01-10-1995. The appointing authority placed the appellant under suspension through order dated 18-02-2004. This was followed by a charge-sheet dated 09-03-2004, wherein seven charges were levelled against the appellant. He was required to submit explanation within two days. Aggrieved by that, he filed Writ Petition No. 4966 of 2004. The writ petition was disposed of at the admission stage granting a weeks time to submit the explanation.

3. Explanation was submitted by the appellant and not satisfied with the same, the disciplinary authority ordered departmental enquiry. The Enquiry Officer submitted his report dated 10-08-2004, holding that all the charges framed against the appellant are proved. A show cause notice dated 12-08-2004 was

issued requiring the appellant to explain as to why the punishment indicated therein, be not imposed. The appellant submitted a detailed explanation on 18-08-2004. Obviously, not satisfied with the explanation submitted by the appellant, the disciplinary authority passed an order dated 26-08-2004, dismissing the appellant from service.

4. The appellant approached the Labour Court-cum- Industrial Tribunal, Hyderabad u/s 2-A(2) of the Industrial Disputes Act, 1947 (for short the Act) by filing LCID No. 215 of 2004, assailing the order of dismissal. After contest by the parties, the Labour Court passed Award dated 16-01-2006, substituting the punishment of reduction of pay scale by two stages. While the respondents filed Writ Petition No. 14936 of 2006 challenging the Award insofar as it has set aside the order of dismissal, the appellant filed Writ Petition No. 17819 of 2007, feeling aggrieved by the modified punishment imposed by the Labour Court. Through the order under appeals, the learned single Judge allowed Writ Petition No. 14936 of 2006 and dismissed Writ Petition No. 17819 of 2007. Hence, these two writ appeals.

5. Sri S. Satyam Reddy, learned Senior Counsel for the appellant submits that the charges framed by the respondents against the appellant are so frivolous, that the management itself represented before the learned single Judge that there is no strength in as many as four charges. He contends that the Labour Court has undertaken extensive discussion and recorded a finding to the effect that the conclusions arrived at by the Enquiry Officer are not well founded. He submits that the power conferred upon the Labour Court, u/s 11-A of the Act is wide enough, and even if the Labour Court agrees with the findings as to misconduct in a domestic enquiry, a punishment of lesser degree can be imposed by it. He further submits that the very approach of the learned single Judge, to the scope of Section 11-A of the Act, does not accord with the settled principles of law and that the discretion of the Labour Court was almost reduced to the level of non-existence.

6. Learned Senior Counsel submits that even on merits, the only misconduct alleged against the appellant was that he participated in the business of his family members, such as, by attesting certain forms or offering himself as surety, and if one takes it as true also, it does not amount to misconduct, much less does it constitute dereliction of duties on the part of the appellant. It is also pleaded that imposition of punishment of dismissal from service on such trivial charges is contrary to law, and cannot be sustained.

7. Sri Pratap Narayan Sanghi, learned counsel for the respondents, on the other hand, submits that the charges framed against the appellant are grave in nature and amounted to acts of serious misconduct, as defined in the Standing Orders framed by the respondents. He contends that once the departmental enquiry is found to be not tainted with any defect, it is not open to the Labour Court to reverse the findings therein, unless it was based on no evidence. He placed reliance upon certain precedents, handed out by the Supreme Court. Learned

counsel submits that even where two views are possible on the same set of facts and the Enquiry Officer has taken one such, it is not open to the Labour Court to take the other view. He submits that adequate opportunity was given to the appellant at every stage and no defects were noticed in the domestic enquiry.

8. Learned counsel further submits that the discretion of the Labour Court u/s 11-A of the Act can be exercised only when the findings in the domestic enquiry are found to be perverse, or based on no evidence; and in the instant case, the Labour Court exceeded the scope of its powers. He contends that it functioned as an appellate authority and substituted not only the findings but also the punishment. He submits that the order passed by the learned single Judge does not warrant any interference.

9. As many as seven charges were framed against the appellant through the charge-sheet dated 09-03-2004. The learned single Judge extracted all the seven charges in the order and though reproduction thereof would be a repetition, it is felt necessary to extract them, to appreciate the matter from the proper perspective. The charges read:

1) It is alleged that you, along with M/s C Ashok Vishnu, N Surya Kumar, M V N Acharya, Sivaramakrishna and M Vijayalakshmi, borrowed funds from M/s Andhra Pradesh Industrial Development Corporation Limited (APIDC) to set up facilities for a Software Development for GIS application and solutions, etc. You have thereby indulged in a business activity without the approval of the Competent Authority.

2) It is alleged that you, along with M/s C Ashok Vishnu, N Surya Kumar, M V N Acharya, Sivaramakrishna and M Vijayalakshmi, raised funds from the general public for the Software Company styled as M/s Visie Cyber Tech Ltd. You have engaged in the activity of raising funds for the Company without the approval of the Competent Authority.

3) It is alleged that you sold 5000 shares of the Company, M/s Emvee Securities Limited, which is jointly owned by your household members, to Mr B Yadachary, E.No. 864, Asst Manager, MFL (retired). You have engaged in a business activity without the approval of the Competent Authority.

4) It is alleged that the Central Crime Police Station, Hyderabad, have registered a Case against you u/s 420 of IPC in FIR No.535/2003 dated November 5, 2003. The case relates to misappropriation and cheating of the public in the matter of raising funds for the Software Company styled as Visie Cyber Tech. Ltd., Hyderabad.

5) It is alleged that you were detained in Policy Custody and that you were arrested by the Central Crime Police Station in connection with a Criminal Case No.535/03 at 1200 hrs on 16.2.2004.

6) You were issued with an identification badge by the Company. You failed to report about the loss of the identification badge to your Superior.

7) You were unauthorizedly absent from 2.2.2004 to 16.2.2004.

10. The seven charges can be classified into three categories: The first category comprises of charges 1, 2 and 3, which are in relation to the alleged business activities of the appellant and his family members. The second category comprises of charges 4, 5 and 6, which are about the alleged arrest of the appellant and registration of a case against him. The third is referable to charge No.7, wherein unauthorised absence of 14 days is alleged.

11. The appellant submitted a detailed explanation denying the allegations against him, in all respects. The Enquiry Officer submitted a report dated 10-08-2004, holding that all the charges are proved. The appellant moved the Labour Court u/s 2-A(2) of the Act. In its Award dated 16-01-2006, the Labour Court took the view that no procedural defect has crept into the domestic enquiry. No evidence, whatsoever, was adduced by the parties before the Labour Court. After discussing the matter before it, which is mostly in the form of record in the domestic enquiry, the Labour Court held that charges 1 and 2 are not proved. The relevant finding reads:

The evidence collected by the Enquiry Officer does not prove that the petitioner has indulged in the business activities of the M/s. Visie Cybertech Limited. Further there is no record to show that the petitioner is directly or indirectly participate the business of the M/s. Visie Cybertech Limited. The documents relied by the Enquiry Officer cannot be interfered that the petitioner indulged in the business activities of the dame company. Therefore, I differ with the finding of the Enquiry Officer in respect of the charges 1 and 2.

12. On the third charge, it was held that there is no evidence to infer that the appellant has indulged in business activity without the approval of the management.

13. The Labour Court held that charges 4, 5 and 6 are not held proved. It is important to note that the learned counsel for the respondents conceded before the learned single Judge that there is no substance in charges 4, 5 and 6. On charge No.7, the Labour Court held that absence of the appellant from 02-02-2004 and 16-02-2004 was not authorised. It is in this context, that the punishment of dismissal was set aside and the one of withholding of stoppage of two increments with cumulative effect was imposed.

14. In this background, it needs to be seen as to whether the adjudication undertaken by the Labour Court is contrary to the relevant provisions of law or the binding precedents.

15. Two aspects need to be taken note of: The first is where the Labour Court disagrees with the findings arrived at in the domestic enquiry and either sets aside the order of punishment in its entirety, or substitutes with the one of a lesser punishment, depending on the facts. The second is where the Labour Court agrees with the findings recorded by the Enquiry Officer, but takes a view

that the punishment is excessive or disproportionate, to the acts of misconduct alleged and proved. It is only in the second category of cases that the Labour Court has to fall back upon the powers conferred upon it u/s 11-A of the Act. In other words, if the Labour Court differs with the findings of the Enquiry Officer, it is always competent to it, to set aside the order of punishment as well as to impose a lesser punishment. But, if the findings of the Enquiry Officer are found to be correct, hardly there exists any scope for the Labour Court to substitute the punishment of its own choice, albeit guided by the principles of proportionality. It is to supply power to the Tribunal in such cases, and to bring the matter relating to disciplinary proceedings from the juggernaut of managerial functions, to the field of adjudication; that the Parliament inserted Section 11-A. The scope thereof has been explained, in detail, in *Workmen vs. Firestone Tyre and Rubber Co. of India (P) Ltd.*.

16. The learned single Judge did take note of this and other judgments, which explained the scope of Section 11-A of the Act. However, a restricted approach was sought to be adopted towards Section 11-A. As has been already pointed out, once the Labour Court has disagreed with the findings on the three important charges, it did not have the necessity to fall back on Section 11-A, at all. If the finding on all the charges was found to be correct, the occasion would have arisen to take recourse to Section 11-A of the Act. This needs to be borne in mind before further discussion is undertaken.

17. Learned counsel for the respondents relied upon the judgment of the Supreme Court in *Usha Breco Mazdoor Sangh vs. Management of Usha Breco Limited* and some other judgments.

18. A note needs to be added here. In almost all the cases covered by the said precedents, the Labour Court had to invoke its jurisdiction u/s 11-A.

19. Nowhere in the judgments relied upon by the learned counsel for the respondents, the Hon'ble Supreme Court held that the Labour Courts cannot reappreciate the evidence that found part of the record of the Enquiry Officer. The effort in all the precedents was to correct the deviation on the part of the Labour Courts, ignoring the material available on record. For example, in *Usha Breco Mazdoor Sanghs case (2 supra)*, the Supreme Court held as under:

29. Indisputably, in the event, fresh evidence is adduced before the Labour Court by the management, the Labour Court will have the jurisdiction to appreciate the evidence. But, in a case where the materials brought on record by the enquiry officer fall for reappreciation by the Labour Court, it should be slow to interfere therewith. It must come to a conclusion that the case was a proper one therefor. The Labour Court shall not interfere with the findings of the enquiry officer only because it is lawful to do so. It would not take recourse thereto only because another view is possible. Even assuming that, for all intent and purport, the Labour Court acts as an appellate authority over the judgment of the enquiry officer, it would exercise appropriate restraint. It must bear in mind that the

enquiry officer also acts as a quasi-judicial body. Before it, parties are not only entitled to examine their respective witnesses, they can cross-examine the witnesses examined on behalf of the other side. They are free to adduce documentary evidence. The parties as also the enquiry officer can also summon witnesses to determine the truth. The enquiry officer can call for even other records. It must indisputably comply with the basic principles of natural justice.

20. Similarly, the subject matter of the judgment in Chairman & Managing Director, United Commercial Bank vs. P.C. Kakkar was not the purport of Section 11-A of the Act. It was in relation to disciplinary proceedings initiated by a Nationalised Bank against as Assistant Manager. The discussion was mostly on the principles of administrative law.

21. In Mahindra and Mahindra Ltd., vs. N.B. Narawade, the following passage from the judgment of UPSRTC vs. Subhash Chandra Sharma was extracted:

6. Whether it is open to the Industrial Tribunal or the Labour Court or the High Court to interfere with the quantum of punishment is, no longer, *res integra*, as the question has been answered by this Court several times in its various decisions. In B.C. Chaturvedi Vs. Union of India and others, a three-Judge Bench of this Court has held that Section 11-A of the Industrial Disputes Act, 1947 confers power on the Industrial Tribunal/Labour Court to apply its mind on the question of proportion of punishment or penalty. that this power is also available to the High Court under Article 226 of the Constitution, though it was qualified with a limitation that while seized with this question as a writ court, interference is permissible only when the punishment/penalty is shockingly disproportionate.

(emphasis supplied)

22. Nowhere it was mentioned that it is not competent for the Labour Court to disagree with the findings recorded in a domestic enquiry. If that were to be the law, the very purpose underlying the Act and the creation of Labour Courts stands defeated. Much would depend upon the facts of each case in the context of reappreciating the material on the record, in the enquiry. If the findings arrived at by the Enquiry Officer are well founded, they cannot be disturbed by the Labour Court, out of sympathy for the workmen. Just as the rights of a workman need to be protected from the oppression of the management, the discipline in the work place also must be ensured and guarded, at any cost.

23. Reverting to the facts of the case, the learned single Judge disagreed with the findings of the Labour Court, treating the acts and omissions on the part of the appellant as constituting misconduct. Even if one goes by the reasoning adopted by the learned single Judge, the only act attributed to the appellant is that he helped his wife and family members to undertake their own business. No provision of law is cited, that prohibits an employee from helping his family members. Prohibition, if at all is against the employee himself undertaking such activities.

24. We are also clear in our view that the findings recorded by the Labour Court on charges 1, 2 and 3 are based on thorough discussion and supported by valid reasons. The contention of the learned counsel for the respondents is that once the findings are recorded in the enquiry, they cannot be interfered with, unless they are perverse or found to be based on no evidence.

25. In the mechanism provided for under the Act, the Labour Court happens to be the final Court on facts. Before the proceedings land in the Labour Court, there does not exist any occasion for examination of the matter by an adjudicator. Howsoever impartial, an Enquiry Officer in a domestic enquiry, may be, the enquiry undertaken by him cannot be equated to the adjudication undertaken by a Labour Court constituted under the Act. Therefore, it is impermissible to treat an Enquiry Officer as the final authority on facts. On the other hand, the Labour Court answers that description.

26. Learned counsel for the respondents is not able to point out that the conclusions arrived at by the Labour Court on charges 1, 2 and 3 are either perverse or bereft of reasons.

27. The hollowness of the disciplinary proceedings is also demonstrated from the fact that the Enquiry Officer has blindly held that charges 4, 5 and 6 have been proved, though in all fairness, the learned counsel for the respondents stated before the learned single Judge that there is no substance in those charges.

28. What now remains is only charge No.7, which is about unauthorised absence. The objectivity on the part of the Labour Court is evident from the fact that though the period of unauthorised absence is not enormous, it treated the same as an act of misconduct. The punishment of withholding of two increments, that too with cumulative effect was imposed for the unauthorised absence of 12 days. In a way, the punishment can be said to be excessive. All the same, since the respondent happens to be a private company, it needs a disciplined work force and such punishment was treated appropriate.

29. We, therefore, find that the judgment under appeal insofar as it has set aside the award of the Labour Court cannot be sustained in law. We agree with the findings of the Labour Court on charge No.7 as well as the punishment imposed therefor.

30. Hence, Writ Appeal No. 405 of 2013 filed against the common judgment insofar as it relates to Writ Petition No. 14936 of 2006 is allowed. As a result, Writ Petition No. 14936 of 2006 is dismissed, upholding the Award of the Labour Court. Writ Appeal No. 409 of 2013 is dismissed, upholding the dismissal of Writ Petition No. 17819 of 2007.

31. The miscellaneous petitions pending in these appeals shall also stand disposed of.

32. There shall be no order as to costs.