
(2001) 11 AP CK 0057
In the Andhra Pradesh High Court
Case No : Writ Petition No. 17361 of 1994

P. Rajanna

APPELLANT

Vs

Labour Court, Godavarikhani and Another

RESPONDENT

Date of Decision : 15-11-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 11

Citation : (2002) 1 ALD 64 : (2002) 1 ALT 213

Hon'ble Judges : S.R. Nayak, J; L. Narasimha Reddy, J

Bench : Division Bench

Advocate : Sadu Rajeswar Reddy, for the Appellant; C.V. Ramulu, SC for APSRTC, for the Respondent

Final Decision : Partly Allowed

Judgement

S.R. Nayak, J.—This writ petition is directed against the award dated 9.11.1992 passed in I.D. No. 309 of 1990 on the file of the Industrial Tribunal Cum Labour Court, Godavarikhani (for short the "Labour Court) declining to grant any relief to the petitioner-delinquent.

2. When the petitioner was serving as Driver in the establishment of the APSRTC, he was issued a Charge Memo. The charge reads as under:

"For having found on the Driver's Rest Seat of Guntur service which came to Depot on 17.11.1988, in fully drunken and unconscious condition while on duty which constitutes serious mis-conduct in terms of Reg.28 (XXXi) of APSRTC Employees" (Conduct) Reg. 1963 read with item (ix) under Note (2) of Regulations of APSRTC Employees" (CC&A) Regulations, 1987.

3. The petitioner did not submit any reply to the charge and in that context a Departmental Enquiry was held against the petitioner in terms of APSRTC. CC & A Regulations. The Enquiry Officer found the petitioner guilty of the charge. On the basis of the finding recorded by the Enquiry Officer, the Depot Manager,

APSRTC, Adilabad Depot who is the Disciplinary Authority under the Regulations passed the proceedings No. OI/214(2)/88-ADB dated 29.8.1989 removing the petitioner from service as a disciplinary measure. The petitioner being aggrieved by the disciplinary action imposed on him by the respondent preferred an appeal and revision within the administration of APSRTC, but without any success. That led to the petitioner instituting I.D No.309 of 1990 assailing the validity of the disciplinary action.

4. The learned Presiding Officer of the Labour Court upon re-appraisal of the evidence on record found the petitioner guilty of the mis-conduct alleged against him. Thereafter, the learned Presiding Officer of the Labour Court proceeded to examine whether the quantum of punishment imposed on the petitioner is proportionate or disproportionate in exercise of the discretion vested in him u/s 11A of the Industrial Act, 1947 (for short "the Act") and found that there were no mitigating circumstances to reduce the penalty imposed on the petitioner-delinquent. Accordingly he dismissed the !.D. without granting any relief to the petitioner. Hence this writ petition under Article 226 of the Constitution assailing the validity of the award.

5. Sri Sadu Rajeshwara Reddy, learned counsel appearing for the petitioner-delinquent would firstly contend that in recording the finding on the charge, both the Enquiry Officer as well as the Labour Court have lost sight of the fact that the charge is not satisfactorily proved by the mode known to law. Elaborating the contention, the learned counsel would maintain that non-production of the medical certificate and non-examination of the Doctor in the Departmental Enquiry is fatal to the enquiry. Alternatively, the learned counsel would maintain that even assuming that the petitioner is guilty of the mis-conduct alleged against him even then the quantum of punishment imposed on him is totally disproportionate to the gravity of mis-conduct committed by him.

6. On the other hand, the learned Standing Counsel for the APSRTC would maintain that the learned Presiding Officer of the Labour Court after re-appraisal of the entire evidence on record and after due application of his mind and in exercise of his discretionary power u/s 11A of the Act thought it fit not to grant any relief to the petitioner and there is absolutely no case made out for interference with the discretionary order made by the Labour Court. The learned Standing Counsel would also maintain that simply because the Doctor was not examined and the Medical Certificate is not produced, that would not vitiate the finding, because the finding is supported by the oral evidence of three witnesses examined in the case.

7. In the light of the rival contentions of the parties, two questions arise for our decision. They are :

(1) Whether the finding of mis-conduct recorded by the Enquiry Officer and accepted by the Disciplinary Authority is vitiated on account of want of substantive material evidence?

(2) Whether the penalty of removal from service in the facts and circumstances of the case is disproportionate to the gravity or mis-conduct committed by the petitioner?

8. As regards the first point, suffice it to say that in the first place the petitioner-delinquent for the reasons best known to him did not deny even the allegations when he was served with a Charge Memo. As if that is not enough, even after the conclusion of enquiry and when an adverse finding was recorded by the Enquiry Officer, and when the second show cause notice was served, he did not even file the reply to the second show cause notice also.

9. In the absence of any plea from the petitioner and having regard to the evidence of three witnesses against whom, the petitioner did not attribute any mala fides, there is no reason for us to discredit the finding recorded by the Enquiry Officer and accepted by the Disciplinary Authority as well as the Labour Court. As held and reiterated, this Court while reviewing the industrial awards cannot go in to the question of sufficiency or adequacy of the evidence, on the basis of which the findings are recorded. The only thing to be seen is whether there is some legal evidence to support the finding. In this case, it cannot be said that the finding of mis-conduct recorded against the petitioner-delinquent is not supported by any legal evidence. The findings do not suffer from the vice of perversity.

10. This takes us to the second contention of the learned counsel for the petitioner. Undoubtedly, the Labour Court has the discretionary power u/s 11A of the Act to alter or modify the penalty imposed by the Disciplinary Authority, if it is of the opinion that the penalty imposed by the Disciplinary Authority, in the facts and circumstances of the case, is disproportionate to the gravity of the mis-conduct. It is also a well-settled position that this Court also while reviewing the Industrial Award under Article 226 of the Constitution in appropriate cases can exercise the same power, which is available to the Labour Court u/s 11A of the Act.

11. After our anxious concern and thought, we are of the considered opinion that the extreme penalty of removal from service, in the facts and circumstances of the case, was not warranted. It is true that even when the petitioner-delinquent was taking rest, he was in the course of his duty. It is pointed out that initially in the trip he drove the vehicle and after completing his turn another co-driver by name Ibrahim was driving the vehicle. It was not that the petitioner had to drive the vehicle further in the course of the journey. The fact of the petitioner consuming the Alcohol was detected only when the Bus after completing the journey was brought to the Depot, that is to say, after completion of the journey. It is not the case of the Disciplinary Authority that the petitioner had consumed liquor before or in the course of his turn of driving the vehicle or that he caused nuisance or accident in the course of his driving. Further, it is pertinent to notice that though the charge was that the petitioner consumed Alcohol and was found in a drunken condition and admittedly he was taken to the Doctor for

examination, quite curiously, neither the Doctor was examined in the course of the departmental enquiry nor the certificate issued by him was produced by the Disciplinary Authority in the course of enquiry. In the absence of such relevant evidence, which should have been produced by the Disciplinary Authority without any difficulty, it cannot be said that the proof placed by the Disciplinary Authority in the regular departmental enquiry is quite satisfactory. Therefore, in the totality of the circumstances and keeping the perception of justice in our mind, we think that the ends of justice would be met by directing the re-instatement of the petitioner-delinquent with continuity of service denying him the back wages,

12. In the result and for the foregoing reasons, we allow this writ petition in part and set-aside the award passed by the Labour Court and in its place, we direct reinstatement of the petitioner into service as Driver with continuity of service, but without any back wages. We make it very clear that the continuity of service awarded by us would count only for computation of pension and pensionary fringe benefits and for no other purpose.