
(2013) 08 AP CK 0007

In the Andhra Pradesh High Court

Case No : Writ Petition No. 15689 of 2013

S. Madhav Rao

APPELLANT

Vs

Hon'ble Industrial Tribunal-II and Another

RESPONDENT

Date of Decision : 13-08-2013

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(3)(b)

Citation : (2013) 6 ALD 544 : (2014) 1 ALT 311 : (2013) 4 LLJ 362

Hon'ble Judges : Noushad Ali, J

Bench : Single Bench

Advocate : Vasudha Nagaraj, for the Appellant; Vedula Srinivas for the Respondent No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Noushad Ali, J.—The petitioner is a workman, working as Electrician in the 2nd respondent-Jubilee Hills International Centre, Hyderabad. He was placed under suspension on certain allegations by an order dated 20-09-2009. It appears that similar action was taken against several other employees. The Employees Union raised an Industrial Dispute in I.D. No. 7 of 2010 against the orders suspending its members on the ground that the President of the Organization has no such power. In the meanwhile, enquiry was held after a charge-sheet dated 25-09-2009 was issued to the petitioner and he was found guilty. A show cause notice dated 14-11-2010 was thereupon issued to him seeking explanation as to why the punishment of dismissal from service should not be imposed. It appears that the petitioner submitted his explanation dated 20-11-2010. Since the dispute raised by the Employees Union was still pending, the 2nd respondent sought permission of the Industrial Tribunal to dismiss the petitioner from service as required u/s 33 (3)(b) of the Industrial Tribunal Act, 1947 by filing a petition M.P. No. 4 of 2011. The petition was resisted by the petitioner by contending that the disciplinary enquiry conducted against him was not legal and valid. According to him, he was denied the assistance of a co-employee and thus the enquiry

against him was in violation of Clause-38 of the Jubilee Hills International Centre Standing Orders and principles of natural justice. The said contention did not find favour with the Industrial Tribunal. The Tribunal upheld the enquiry as valid and held that the petitioner was given reasonable opportunity and there is no violation of principles of natural justice. It is against the said order, this writ petition is filed.

2. Smt. Vasudha Nagaraj, learned counsel appearing for the petitioner, would submit that the petitioner is entitled for assistance of a co-employee as a matter of right as per Clause-38 of the Standing Orders. The petitioner in exercise of his right sought the assistance of one Sri K.V.S. Ramachandra Rao. The 2nd Respondent-Management refused the permission to avail his assistance on the untenable ground that he himself was likely to face disciplinary action for absconding unauthorizedly from duties. The learned counsel, relying on Clause-38 of the Standing Orders, would submit that the petitioner was denied the opportunity of assistance and thus the enquiry conducted against the petitioner is vitiated.

3. Sri V. Srinivas, learned counsel appearing for the 2nd Respondent, would submit that though the assistance of a co-employee was not extended to the petitioner, since the named employee was not available as he was absconding from duty, an option was given to the petitioner to take the assistance of any other co-employee. The petitioner did not avail the opportunity.

Nonetheless, he participated in the enquiry and produced witnesses on his behalf, besides cross-examining the witnesses of the Management. Therefore, according to the learned counsel, the provisions of Clause-38 are not violated, nor the petitioner was denied the opportunity to avail the benefit conferred on him under the said clause. The counsel would further submit that the petitioner has not suffered prejudice on the ground that he was not given the assistance of the co-employee as he himself participated in the entire proceedings.

4. I have considered the aforesaid contentions and the material placed on record.

5. Clause-38 of the Standing Orders contemplates that a workman against whom an enquiry has to be held shall be given an opportunity to answer the charge and he shall be permitted to secure, during the enquiry, the assistance of a co-worker or office bearer of the recognized union. The said provision confers a right on the workman for assistance from a co-workman or Office Bearer at his choice. Therefore, it is for the workman to avail the said right and call upon the Management to provide assistance. In a given case, a workman may not be inclined to avail the assistance, as he might feel that he is capable of conducting his own case and refuse to avail the benefit available to him under Clause-38. Yet, in an another case, a workman may choose to have the assistance as an additional precaution even if he is capable of conducting his own case. Ultimately, it depends on the workman himself whether to avail the benefit or not. The obligation of the Management to provide assistance would arise only when the

workman seeks to avail it, but not otherwise.

6. In the instant case, no doubt, the petitioner wanted the assistance of one K.V.S. Ramachandra Rao, but it was not given by the 2nd respondent on the ground that he too was likely to face enquiry into the allegation of his being absconding from duties. In the ordinary course, the petitioner would have certainly been entitled to insist for the assistance of either K.V.S. Ramachandra Rao or at his choice, he could have asked for the assistance of any other employee. The petitioner did not avail either of the choices. On the other hand, he chose to proceed with the matter and participated in the enquiry fully. He examined as many as 10 witnesses on his behalf and also cross-examined the witnesses of the management. The enquiry was thereupon concluded.

7. Therefore, the question is, whether it can be said that the petitioner, who had chosen to proceed with the enquiry, can still insist upon exercising his right under Clause-38 of the Standing Orders. In the considered opinion of this Court, he is not entitled for the said right. He has waived his right by his own conduct.

8. In Union of India (UOI) and Others Vs. Alok Kumar, it was held that breach of principles of natural justice was in itself not sufficient and that in order to complain the violation of principles of natural justice, prejudice must be shown to have caused to the person concerned and it needs to be proved. The relevant portion of the judgment reads as under:

Earlier, in some of the cases, this Court had taken the view that breach of principles of natural justice was in itself a prejudice and no other "de facto" prejudice needs to be proved. In regard to statutory rules, the prominent view was that the violation of mandatory statutory rules would tantamount to prejudice but where the rule is merely directory the element of de facto prejudice needs to be pleaded and shown. With the development of law, rigidity in these rules is somewhat relaxed. The instance of de facto prejudice has been accepted as an essential feature where there is violation of the non-mandatory rules or violation of natural justice as it is understood in its common parlance. Taking an instance, in a departmental enquiry where the department relies upon a large number of documents majority of which are furnished and an opportunity is granted to the delinquent officer to defend himself except that some copies of formal documents had not been furnished to the delinquent. In that event the onus is upon the employee to show that non-furnishing of these formal documents have resulted in de facto prejudice and he has been put to a disadvantage as a result thereof.

The doctrine of de facto prejudice has been applied both in English as well as in Indian Law. To frustrate departmental enquiries on a hypertechnical approach has not found favour with the courts in the recent times. In S.L. Kapoor Vs. Jagmohan and Others, a three-Judge Bench of this Court while following the principle in Ridge v. Baldwin (1964 AC 40) stated that if upon admitted or indisputable facts only one conclusion was possible, then in such a case that

principle of natural justice was in itself prejudice would not apply. Thus, every case would have to be examined on its own merits and keeping in view the statutory rules applying to such departmental proceedings. The Court in *Juwarsingh and Others Vs. State of Madhya Pradesh*, held as under:

18. In *Ridge v. Baldwin* (1964 AC 40) one of the arguments was that even if the appellant had been heard by the watch committee nothing that he could have said could have made any difference. The House of Lords observed at (p.68):

It may be convenient at this point to deal with an argument that, even if as a general rule a watch committee must hear a constable in his own defence before dismissing him, this case was so clear that nothing that the appellant could have said could have made any difference. It is at least very doubtful whether that could be accepted as an excuse. But, even if it could, the watch committee would, in my view, fail on the facts. It may well be that no reasonable body of men could have reinstated the appellant. But as between the other two courses open to the watch committee the case is not so clear. Certainly on the facts, as we know them, the watch committee could reasonably have decided to forfeit the appellant's pension rights, but I could not hold that they would have acted wrongly or wholly unreasonably if they had in the exercise of their discretion decided to take a more lenient course.

9. Applying the said principle to the instant case, since the petitioner had fully participated in the enquiry, it cannot be said that he had suffered any prejudice on account of the fact that he was not given assistance of a co-employee in terms of Clause-38. This Court is, therefore, of the view that the Industrial Tribunal has considered the matter in proper perspective and the order dated 18-03-2013 passed by the 1st respondent in M.P. No. 4 of 2011 in I.D. No. 7 of 2010 does not warrant any interference.

10. The Writ Petition is accordingly dismissed. No costs. In view of the disposal of the Writ Petition, W.P.M.P. No. 19008 of 2013 and W.V.M.P. No. 2199 of 2013 stand closed.