
(1997) 09 AP CK 0031

In the Andhra Pradesh High Court

Case No : Writ Petition No. 15356 of 1993

S. Pratap Reddy

APPELLANT

Vs

Bharat Heavy Electricals Ltd., Hyderabad and Another

RESPONDENT

Date of Decision : 24-09-1997

Acts Referred:

Constitution of India, 1950 — Article 226, 235

Citation : (1998) 1 ALD 620

Hon'ble Judges : C.V.N. Sastri, J

Bench : Single Bench

Advocate : Mr. M. Panduranga Rao, for the Appellant; Government Pleader for S.W. and Mr. S. Ravindranath, for the Respondent

Judgement

1. In this writ petition the petitioner challenges the award of the Labour Court which upheld the order of dismissal from service passed against him by the management. While the petitioner was serving as Assistant Grade-I in the first respondent company, a charge-sheet was issued to him on 17-12-1983 to the effect that he failed to check and scrutinise the L.T.C. claims properly and passed claims of some employees knowing them to be fraudulent which resulted in payments to employees for which they are not entitled and thereby caused pecuniary loss to the company. It was further alleged that he had received Rs.1836/- from one Satyanarayana as illegal gratification for having got his L.T.C. bill passed by his colleague Chalapathi JKao for Rs,3036/-knowing fully well that Sri Satyanarayana had already availed L.T.C. for 1982-83. An Enquiry Officer was appointed to hold enquiry into the said charges. After conducting enquiry the Enquiry Officer submitted a report holding the charges to be proved. After considering the report of the Enquiry Officer and the explanation of the petitioner, he was dismissed from service on 18-5-1985. Questioning the said order, the petitioner raised an industrial dispute before the Labour Court. The Labour Court found that the domestic enquiry was vitiated as no committee of enquiry was appointed as per the Standing Orders. The Labour Court, therefore, permitted the management to lead evidence to justify the action taken against

the petitioner. On a consideration of the evidence adduced, the Labour Court upheld the action of the management in dismissing the petitioner.

2. Sri M.V. Rama Rao, the learned Counsel appearing for the petitioner, sought to assail the award of the Labour Court by contending that the charge-sheet was issued by the Manager (Finance) who was not competent to issue the charge-sheet. According to Standing Order 23(a), the Head of the Department concerned is the competent authority to issue the chargesheet and to appoint the Enquiry Officer. The Deputy General Manager (Finance), who is the Head of the Finance Department alone is competent to Issue the chargesheet and appoint the Enquiry officer. As the charge-sheet was issued by the Finance Manager, who is not the Head of the Department, the charge-sheet is illegal and void and all the consequent proceedings are also null and void. * He further contended that as per Standing Order 23(e) the dismissal order can be passed only by the Head of the Department but in the instant case the same was passed by the Manager (Personnel) who is not competent to pass the order. As such the order of dismissal is illegal and void. He finally submitted that, in any case, the extreme punishment of dismissal from service is shockingly disproportionate to the gravity of the charges. He also submitted that several other employees, who were similarly charged, have been let off with comparatively minor punishments and the petitioner has been singled out for the extreme punishment of dismissal which amounts to hostile discrimination.

3. On the other hand, Sri Ravindranath, the learned counsel appearing for the first respondent sought to justify the order of dismissal and also the award of the Labour Court. He contended that as per the Standing Orders, even a Manager is competent to issue the charge-sheet and appoint the Enquiry Officer. Even otherwise, since the Labour court gave opportunity to the parties to lead evidence and on a consideration of the evidence adduced, the Labour Court came to the conclusion that the charges have been established and that the punishment of dismissal also is proper, there are no valid grounds to interfere with the award of the Labour Court.

4. As regards the contention that the dismissal order was issued by an, incompetent authority, the learned Counsel for the respondent submitted that the dismissal order was actually passed by the competent authority i.e., the Deputy General Manager (Finance) who is the Head of the Department, but the same was merely communicated by the Manager (Personnel) and as such there is no illegality in the order. The learned Counsel has produced the order of dismissal dated 5-5-1985 passed by the Deputy General Manager (Finance). I am, therefore, satisfied that the order of dismissal was actually passed by the competent authority. As such the second contention raised by the learned Counsel for the petitioner has no substance.

5. So far as the first contention is concerned, Standing Order 23(a) clearly provides that it is the Head of the Department who shall issue the charge-sheet to the employee. Standing Order 23(c) further provides that where the employee

submits an explanation controverting the charges levelled against him and the Head of the Department/ Manager is satisfied on examining the explanation offered by the employee that he deserves dismissal or more stringent punishment than fine or censure, he shall issue a notice to the employee in the prescribed form requiring him to appear before an enquiry committee consisting of Head of the Department/Manager as the Chairman, any other officer or officers whose presence the Chairman deems necessary and the Labour Officer/ Labour Welfare Officer. In view of the fact that Standing Order 23(c) mentions "Head of the Department/Manager" as the competent authority to appoint the enquiry committee, the Labour Court came to the conclusion that the Manager (Finance) also is competent to issue the charge-sheet and appoint the Enquiry Officer. But the Labour Court failed to notice that "Manager" has been defined in Standing Order 2(g) as follows:

" "Manager" means the Incharge of Factory as registered under Factories Act or such other person or persons as may be authorised by the Project authorities to exercise all powers of a Manager under these orders but not below the rank of Assistant Engineer/Foreman;"

So the "Manager" referred to in Standing Order 23 (c) means the Manager as defined in Standing Order 2(g) but not any other Manager. I am, therefore, satisfied that the Labour Court committed an error in thinking that the Manager (Finance) was competent to issue the charge-sheet and appoint the Enquiry Officer. That apart, admittedly in the instant case, no committee of enquiry was appointed as contemplated in Standing Order 23(c) but only an individual Enquiry Officer was appointed. It follows from this that the enquiry held by the Enquiry Officer in this case was not valid. The Labour Court, therefore, rightly held that the domestic enquiry was not valid and it was vitiated. This does not, however, conclude the matter as the Labour Court gave an opportunity to the parties to lead evidence before it and accordingly the management adduced evidence before the Labour Court to justify the action taken against the petitioner. The Labour Court, on a consideration of the evidence so adduced, came to the conclusion that the misconduct alleged against the petitioner has been established and that the punishment of dismissal from service is also fully justified having regard to the nature and gravity of misconduct. The learned Counsel for the petitioner, however, contends that this cannot cure the basic illegality of the charge-sheet and all the consequent proceedings which are null and void. In support of this contention, the learned Counsel for the petitioner tried to place reliance on the following decisions in *Hindustan Brown Boveri v. Their Workmen* 1968 (1) LLJ 571, *Marathwada University v. Sesharao Babvam Rao Chavan* SCSLJ (13) 251 and *G.S.Nagmoti v. State of Mysore* SCSLJ (3) 575. None of these judgments is, however, directly in point. In *Hindustan Brown Boveri v. Their Workmen* (supra) the Supreme Court on consideration of Standing Order 27 of the *Hindustan Brown Boveri Limited* held that the disciplinary power to direct dismissal or demotion was reserved to the Company and that the works Manager has no power to order dismissal. In *Marathwada University v. Sesharao*

Bahvant Rao Chavan (supra) the Supreme Court while considering the provisions of the Marathwada University Act, 1974 observed that when the Act prescribes a particular body to exercise a power, it must be exercised only by that body. Without delegation of power, no other authority has a right to exercise such powers. In that case the power to take disciplinary action was delegated to the Vice Chancellor by the Executive Council. The Vice Chancellor appointed an Enquiry Officer and based on the Enquiry Officer's report issued orders terminating the services of the respondent. The Supreme Court after considering all the relevant provisions of the Statute held that the delegation by the Executive Counsel to the Vice Chancellor was in contravention of Statutory rules and as such the action of the Vice Chancellor was void ab initio and the subsequent ratification of the same by the Executive Council cannot cure the defect. In *G.S. Nagmoli v. State of Mysore* (supra) the question that fell for consideration was whether the disciplinary proceedings initiated by the Governor against a Subordinate Judge on the request of the High Court and the consequent punishment imposed on him were liable to be struck down as being in violation of Article 235 of the Constitution which vested such power in the High Court only. It was contended before the Supreme Court that as the High Court itself requested the Government to hold an enquiry into the conduct of the Subordinate Judge concerned the provisions of Article 235 of the Constitution have been substantially complied with. The Supreme Court, however, held that it was not possible for it to examine the validity of the said argument, because the writ petition was dismissed in limine by the High Court and the copy of the alleged letter of the High Court was also not enclosed to the affidavit. The Supreme Court, therefore, remitted the matter back to the High Court for being disposed of according to law. Thus none of the judgments cited by the learned Counsel for the petitioner throws any light on the question which arises for consideration in the instant case.

6. Sri S. Ravindranath, learned Counsel for the respondents, has cited a judgment of the Kerala High Court in *Managing Partner, Subaida Cloth Stores Vs. Labour Court and Others*, . In that case a domestic enquiry was held by the Management against an employee without issuing any charge-sheet and the employee was dismissed from service. On the matter being referred to Labour Court, the Labour Court tried the validity of the disciplinary enquiry as a preliminary issue. It held that the domestic enquiry conducted by the Management was defective as no proper charge has been framed by the Management against the workman before the dismissal and the charge framed was very vague. Though the Enquiry Officer framed charges and examined witnesses to prove charges, the Labour Court held that the Enquiry Officer is incompetent to frame charges and hence, evidence cannot be relied upon. The Labour Court, therefore, set aside the dismissal order and directed reinstatement of the workman. The Kerala High Court, however, set aside the award of the Labour Court and remitted the matter back to the Labour Court for fresh disposal according to law observing that the absence of a specific charge-sheet issued by

the management itself before domestic enquiry commenced is immaterial, as the entire matter is before the Labour Court and the Labour Court has to examine the same on the basis of the pleadings and issues raised and the evidence adduced before it. This Judgment, to my mind supports the contention of the learned Counsel for the respondents that even though the domestic enquiry was vitiated by reason of the fact that the charge-sheet was not issued by the competent authority and no committee of enquiry was appointed it is of no consequence since the Labour Court has practically conducted a de novo trial and came to the conclusion on the basis of evidence ted before it, that the misconduct alleged against the petitioner has been established. Learned Counsel for the respondents has also cited a Judgment of the Supreme Court in Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others, for the proposition that the certified Standing Orders, though they are binding on both the employer and the employee and constitute conditions of service of employees have no, statutory force. There can be no dispute about this proposition. Even though the Standing Orders have no statutory force they are still binding on the management as well as the workman and the management is bound to hold the disciplinary enquiry in accordance with the Standing Orders and if there is any violation of the same, the enquiry will be vitiated. This, however, does not any importance in the instant case, since the Labour Court has conducted a de novo trial giving opportunity to both parties to lead evidence. For the foregoing reasons, the first contention raised by the Petitioner also must fail.

7. It now remains to be seen whether the punishment of dismissal from service is justified or not. Normally, when the management as sell as the Labour Court have considered the question as to punishment and came to conclusion, this Court in exercise of the power of judicial review under Article 226 of the Constitution will not substitute its opinion with regard to the quantum of punishment unless the Court is satisfied that the punishment imposed is shockingly disproportionate to the gravity of the misconduct. There is no denying the fact that the misconduct alleged against the petitioner which has been also proved is grave in nature. It is, however, contended that several other employees who have been charged with similar misconduct were let off with comparatively minor punishments like stoppage of increments, warning etc. Some such instances have been cited. It is said that one C.N. Ashok Chandra who was initially dismissed from service on similar charges was subsequently reinstated taking a lenient view by awarding the punishment of one annual increment with cumulative effect and a warning. Similarly, one M Veeraswamy and M. Gopal who were dismissed, were later reinstated in service pursuant to the awards of the Labour Court. It is further stated that all the employees who have submitted false claims and availed L.T.C., were also let off with minor punishment even though they are the principal offenders. The learned Counsel for the petitioner has also submitted that the second charge relating to acceptance of illegal gratification by the petitioner from one Saiyanarayana has not been established

as no evidence has been led to prove the said charge and the only other charge which is established against the petitioner is that he failed to check and scrutinise properly the L.T.C., claims and passed the claim of some employees which resulted in pecuniary losses to the company. Even with regard to this charge it is stated that the entire amounts have been subsequently recovered from such employees and such no pecuniary loss was caused to the company. Having regard to these facts it is submitted that the extreme penalty of dismissal from service is not warranted and it is a fit case for awarding a lesser punishment other than dismissal or removal from service. I find sufficient force in this submission and I am satisfied that the extreme punishment of dismissal from service is not justified. -Accordingly, while upholding the finding of guilt recorded against the petitioner, the punishment of dismissal from service is set aside and the competent authority is directed to consider the imposition of any other lesser punishment other than dismissal and removal from service and pass appropriate orders in that behalf within two months from the date of receipt of a copy of this order.

8. Accordingly, the writ petition is disposed of No costs.