

(1995) 09 AP CK 0034

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 987 of 1995

The Depot Manager, APSRTC

APPELLANT

Vs

P. Gangarajulu and Another

RESPONDENT

Date of Decision : 11-09-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1995) 3 ALD 1054 : (1996) 1 ALT 322

Hon'ble Judges : P.S. Mishra, C.J.;B. Sudershan Reddy, J

Bench : Division Bench

Advocate : I. Aga Reddy, for the Appellant; G. Vidyasagar and Government Pleader for Social Welfare and Labour, for the Respondent

Judgement

B. Sudershan Reddy, J.—The 1st respondent herein filed the writ petition questioning the correctness and legality of the Award made by the 2nd respondent herein i.e., Labour Court, Ananthapur dated 4-6-1988 in I.D. No. 300 of 1987. The 1st respondent was served with the charge sheet for the following charges at the time when he was working as Conductor in the appellant-Corporation:

"1. For having assaulted the Chief Inspector of Cuddapah Depot on 3-6-84 at 11-30hrs., in his office while discharging his legitimate duties which constitutes misconduct under Reg. 28(xi) of APSRTC Employees Conduct Reg. 1963;

2. For having unruly be have with the Chief Inspector, Cuddapah Depot on 3-6-84 at 11-30 hrs., in his office while discharging his legitimate duties which constitutes serious misconduct under Reg. 28(xxi) of APSRTC Employees Conduct Reg. 1963;

3. For having uttered filthy language against the Chief Inspector, Cuddapah Depot by entering into his office on 3-6-84 at 11-30 Hrs. While the Chief Inspector was discharging his legitimate duties which constitutes serious misconduct under Reg.28(xxxi) of APSRTC Employees conduct Reg.1963."

After holding an enquiry, the disciplinary authority, on the basis of the findings recorded by the Enquiry Officer and after taking into consideration the material and the evidence on record, passed an order dated 11-4-1985 removing the 1st respondent-writ petitioner from service of the Corporation. The Industrial Dispute raised before the Labour Court, Ananthapur in I.D. No. 300 of 1987 by the writ petitioner was disposed of on 4-6-1988 up-holding the order passed by the management of the appellant-corporation in removing the 1st respondent petitioner from service. The same was questioned in W.P. No. 4746 of 1989 and the petitioner is allowed by a learned single Judge of this Court and the impugned award dated 4-6-1988 was quashed. This writ appeal is preferred against the said judgment of the learned single Judge by the Corporation.

2. It is submitted by the learned Counsel for the Appellant-Corporation that the order passed by the learned single Judge suffers from legal infirmities. The learned Counsel submits that this Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, cannot go into the questions of facts and disturb the findings arrived at by the Labour Court. It is true that this Court in its certiorari jurisdiction, does not act in appellate jurisdiction but acts only in a supervisory capacity. It is fairly settled that it cannot review or re-weigh the evidence upon which the determination of the Tribunal is based. A perusal of the judgment of the learned single Judge would show that the learned Judge held:

"-- the reasons assigned by the learned Presiding Officer are totally perverse and the findings recorded by him are totally based on conjectures and surmises."

The learned Judge further found fault with the Award passed by the Labour Court holding that the Labour Court had wrongly fixed the burden of proof upon the petitioner with regard to the charge relating to the petitioner's absence from 2-6-1984 to 4-6-1984.

3. It is well settled that a finding could be said to be perverse only if it can be held that no reasonable man, in the facts and circumstances of the case, would reach to that conclusion as reached by the lower Court/Tribunal. There is no such finding by the learned single Judge. Findings based upon surmises and conjectures, no doubt, cannot be said to be the findings based upon evidence. But the question would be as to whether there is any evidence and materials on record and if so, whether the said materials and record were taken into consideration and the available evidence was properly appreciated by the Labour Court. If the materials are not taken into consideration and the evidence is not properly appreciated by the Labour Court, the same is liable to be corrected by this Court in exercise of its certiorari jurisdiction under Article 226 of the Constitution of India. But in the process, this Court cannot substitute its own opinion and arrive at a finding after going into the evidence. The only proper course would be to direct the Labour Court to consider all the materials available on record and appreciate the evidence properly and in accordance with law. This Court makes an enquiry whether there is any evidence at all in support of the impugned conclusions of the Labour Court. If the evidence and material is

available and the same is not taken into consideration by the Labour Court, a Writ of Certiorari would have to be issued quashing the Award but the same has to be remitted back to the concerned Labour Court for proper adjudication according to law. Any other approach would amount to this Court converting itself into a Court of Appeal and would be compelled to enter into impermissible areas and of considering the question of sufficiency or adequacy of evidence in support of a finding of fact arrived at by a competent Labour Court. The learned single Judge having held that the findings of the Labour Court are based upon mere conjectures and surmises ought to have remitted the matter to the Labour Court, Ananthapur for fresh consideration and disposal according to law. Evidently, it is a case where the Labour Court failed to consider the evidence and materials available on record.

4. For the aforesaid reasons, we set aside the order passed by the learned single Judge to the extent indicated above and remit the matter back to the Labour Court, Ananthapur to dispose of the Industrial Dispute raised by the 1st respondent-Writ Petitioner in accordance with law. The Labour Court is directed to advert itself and take into consideration the entire materials and evidence available on record after giving a reasonable opportunity to all the parties concerned. We have deliberately restrained ourselves in adverting even to the necessary facts for the reason that the matter has to be decided afresh by the Labour Court. It is needless to state that the Labour Court shall dispose of the Industrial Dispute in accordance with law uninfluenced by what is stated by us in the instant proceedings. As the award itself was passed on 4-6-1988, interests of justice requires that the Industrial Dispute should be disposed of expeditiously by the Labour Court preferably within a period of four months from the date of receipt of a copy of this Judgment. Writ Appeal is accordingly allowed to the extent indicated above. There shall be no order as to costs.