
(2002) 07 AP CK 0095

In the Andhra Pradesh High Court

Case No : Writ Petition No. 22076 of 1996

The Depot Manager, A.P.S.R.T.C.

APPELLANT

Vs

Smt. A. Vijay Kumari and Others

RESPONDENT

Date of Decision : 23-07-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 11A, 2A(2)

Citation : (2002) 07 AP CK 0095

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : A. Vyjaynathi, SC, for the Appellant; GP for Labour, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—The 1st respondent, who is since dead, was working as Conductor in Hakimpet Depot of APSRTC. On the ground that he remained unauthorisedly absent from 30-01-1989 to 03-03-1989, he was issued a charge sheet and after holding an enquiry, he was removed from service through orders, dated 28-09-1989. The 1st respondent carried the matter in appeal to the Divisional Manager and the same was dismissed. Again the matter was carried in review to the Regional Manager who is the reviewing authority and the reviewing authority affirmed the order of removal and, however, directed that the petitioner therein be appointed afresh.

2. The 1st respondent raised an industrial dispute before the Labour Court-III, Hyderabad, which was numbered as I.D.No.625 of 1992. The Labour Court, Hyderabad, through its order, dated 21-03-1994 held that the domestic enquiry conducted by the petitioner herein was vitiated and accordingly directed reinstatement of the 1st respondent without back wages, but with continuity of service. The same is challenged in the present writ petition.

3. The first contention of the petitioner is, that once the 1st respondent has

accepted the fresh appointment as ordered by the reviewing authority, it was not open to him to raise an industrial dispute u/s 2-A(2) of the Industrial Disputes Act. The second contention of the petitioner is that the finding of the Labour Court, that the enquiry was vitiated is not proper. It is thirdly contended that, while the 1st respondent was working as Conductor and when he was removed from service, the Labour Court has directed his reinstatement as Depot Clerk and that the same cannot be sustained. It is further contended that once the Labour Court found that the charge leveled against the 1st respondent is proved, it was not open for the Labour Court to modify the finding.

4. Heard the learned Standing Counsel for APSRTC and the learned counsel for the 1st respondent Sri P. Sridhar Rao.

5. The first contention is as regards the maintainability of the industrial dispute itself. It is contended by the petitioner that the employee was entitled to raise an industrial dispute only when he faces the order of removal, dismissal or reduction in rank. Inasmuch as the 1st respondent was appointed by the petitioner by the date of his raising the industrial dispute, the industrial dispute was not maintainable.

6. It is true that an employee is permitted to circumvent the usual procedure of raising an industrial dispute i.e., by initiating the matter before the Conciliation Officer, thereafter through reference to the Government etc., only in case of removal, dismissal and reduction in rank as contemplated u/s 2-A(2) of the Industrial Disputes Act. There is no quarrel with this legal proposition. However, it needs to be verified, as to whether the 1st respondent was facing an order of removal as on the date of his raising the industrial dispute. On the basis that the 1st respondent was ordered to be reappointed, the petitioner submits that the order of removal stood modified to that extent and it cannot be said that the order of removal still continued to exist.

7. The contention of the petitioner could have been acceptable, had the order of reappointment been in substitution or in super-session of the order of removal. However, here is a case, where the Regional Manager i.e., the Reviewing Authority had upheld the order of removal. As a matter of compassion he directed reappointment of the 1st respondent afresh. Therefore, even after reappointment of the 1st respondent, the order of removal continued to exist. In that view of the matter, it cannot be said that the industrial dispute raised by the 1st respondent was not permissible. A reference in this regard may be had to the Judgments of this Court in "P. HABEEB SAHEB v. APSRTC"¹ and the one in W.P.No.14708 of 1995, dated 29-07-1999. This Court consistently took the view that, where the Appellate Authority or the Reviewing Authority upholds the order of punishment, but provided some relief while sustaining the order of punishment, it cannot be said that the order of punishment ceases to exist. In that view of the matter, the contention of the petitioner, in this regard, cannot be accepted.

8. It is further contended that having found that the enquiry undertaken by the petitioner was vitiated, the Labour Court itself recorded the finding that the 1st respondent was guilty of misconduct. According to the petitioner, once such a finding was recorded, it was not open to the Labour Court to set aside the order of removal. It should not be forgotten that, every misconduct, even if proved, cannot result in removal or dismissal of the employee. Several factors, such as the gravity of the misconduct held proved, the previous conduct of the employee, the extenuating circumstances are required to be taken into account while considering the question of imposition of punishment. The Labour Court is specifically conferred with special powers u/s 11-A of the Act. Unless it is held that exercise of such power by the Labour Court, in this regard, was either perverse or was vitiated on account of non-application of mind, the discretion exercised by the Labour Court cannot be interfered with by the High Court in a writ petition under Article 226 of the Constitution of India.

9. The next contention is, as regards the direction of the Labour Court reinstating the 1st respondent in the post of Depot Clerk. Admittedly the 1st respondent was holding the post of Conductor when he was removed from service. That being so, it was not open for the Labour Court to direct the reinstatement of the 1st respondent as Depot Clerk. If the 1st respondent was facing any difficulty for resuming the duties of Conductor on being reinstated, it was for the employer, the petitioner herein to take appropriate steps. It is not within the purview or the powers of Labour Court to direct reinstatement into the post other than the one which the employee was holding at the time of his removal. One fact that needs to be taken into account is, that the 1st respondent died during the pendency of the writ petition. What remains to be done is only the matter of extension of financial benefits to the legal representatives of the deceased. The petitioner is directed to calculate the financial benefits payable to the 1st respondent and extend the same to his legal representatives who are impleaded as respondent Nos.3 to 5 in the writ petition, within a period of two months from the date of receipt of this order.

10. Therefore, the Award of the Labour Court, to the extent indicated above is set aside and the direction shall stand modified to the one of reinstatement of the 1st respondent to the post of Conductor. In all other respects, the Award of the Labour Court shall stand the same. The writ petition is allowed to the extent indicated above.