

(2014) 07 AP CK 0035

In the Andhra Pradesh High Court

Case No : Writ Appeal Nos. 1062 and 1063 of 2014

The Editor, Andhra Prabha Daily

APPELLANT

Vs

Additional Industrial Tribunal cum Additional Labour Court

RESPONDENT

Date of Decision : 18-07-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 11A, 17B, 2A(2)

Citation : (2015) 3 ALD 592 : (2015) 3 LLN 706

Hon'ble Judges : L.N. Reddy, J; Challa Kodanda Ram, J

Bench : Division Bench

Advocate : S. Ravindranath and M. Pitchaiah, Advocate for the Appellant; G. Vidyasagar, Senior Counsel, Srinivasa Rao Bodduluri and S. Ravindranath, Advocate for the Respondent

Judgement

L. Narasimha Reddy, J.—These two writ appeals are filed against the common order dated 28-02-2014 passed by the learned single Judge in Writ Petition Nos. 3229 and 4902 of 2003 dismissing both the writ petitions.

2. For the sake of convenience, the parties are referred to as arrayed in Writ Appeal (SR) No. 93041 of 2014.

3. The relevant facts, in brief, are as under:

"The 2nd respondent (for short "the respondent") was working as Deputy News Editor in Andhra Prabha daily newspaper published by the appellant. A charge-sheet was issued to him on 26-09-2000 alleging acts of indiscipline. The disciplinary authority was not satisfied with the explanation submitted by the respondent. Therefore, an Enquiry Officer was appointed and domestic enquiry was held. The Enquiry Officer filed a report dated 01-01-2001 holding that some of the charges framed against the respondent are proved. Taking the same into account, the disciplinary authority passed order dated 06-03-2001 dismissing the respondent from service."

4. The respondent filed I.D. No. 95 of 2001 before the Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad (for short "the Labour Court") under Section 2-A(2) of the Industrial Disputes Act, 1947 (for short "the Act") challenging the order of dismissal. The I.D. was contested by the appellant. Through its Award dated 21-08-2002, the Labour Court has set aside the order of dismissal and directed reinstatement of the respondent with continuity of service and attendant benefits. However, back wages were denied.

5. The respondent filed Writ Petition No. 3229 of 2003 feeling aggrieved by denial of back wages. The appellant on the other hand filed Writ Petition No. 4904 of 2003 challenging the Award passed by the Tribunal setting aside the order of dismissal and granting relief to the respondent. The learned single Judge dismissed both the writ petitions. Hence, the appellant on the one hand and the respondent on the other hand filed two separate appeals.

6. Sri S. Ravindranath, learned counsel for the appellant submits that the Enquiry Officer recorded specific findings on the acts of serious misconduct on the part of the respondent and the Labour Court grossly erred in taking the view that the findings are not supported by evidence. He submits that though the Labour Court is entitled to re-appreciate the evidence on record, it is not supposed to ignore, or blink at, an important piece of evidence and come to totally untenable conclusions. He submits that the record of the domestic enquiry reflects the text of abusive language used by the respondent, whereas the Labour Court took the view that the same is not borne out by the record. Learned counsel submits that being a responsible employee occupying senior position, the respondent was supposed to act with discipline and his acts and omissions were totally objectionable.

7. Sri Srinivas Bodduluri, learned counsel represented the respondent in WA (SR) No. 63578 of 2014 and Sri Pitchai, learned counsel, in the other appeal. They submit that the Labour Court has verified the entire record and arrived at proper conclusions and there do not exist any grounds for interference. Learned counsel submit that the charges themselves were vague, general, unspecific and bereft of any details.

8. Some uncertainty existed as to the structure and composition of the appellant on account of mergers and takeovers. However, the same is not canvassed before this Court.

9. The respondent was working as Deputy News Editor with the appellant. A charge-sheet dated 26-09-2000 was issued to him with ten allegations. They related to slowing down of work, instigation of other workers to slow down, acts of insubordination, maligning of the management, delay of production, holding of meetings within the premises, acts of drunkenness, riotous or disorderly behaviour, use of abusive and disrespectful language, refusal to receive charge-sheet and acts of causing prejudice to the interests of the company. In the domestic enquiry, five witnesses were examined and EXs.M-1 to M-10 were filed

on behalf of the appellant. The respondent did not examine any witnesses but filed two documents. The Enquiry Officer held that out of the ten charges, seven charges are proved and three were not proved.

10. Taking the findings of the Enquiry Officer into account, the disciplinary authority passed order dated 06-03-2001 dismissing the respondent from service.

11. The remedy under Section 2-A(2) of the Industrial Disputes Act, 1947 (for short "the Act") was availed by the respondent by filing I.D. No. 95 of 2001. The Labour Court framed the following points for its consideration:

"1. Whether the action of the respondent in removing the workman from service is justified or not?

2. If not to what relief the workman is entitled for?

12. No oral evidence was adduced before the Labour Court. Exs. W-1 to W-4 were filed on behalf of the respondent and Exs. M-1 to M-6 were filed on behalf of the appellant. A finding was recorded to the effect that the domestic enquiry does not suffer from any procedural infirmity. The Labour Court has re-appreciated the evidence recorded in the domestic enquiry and arrived at the conclusion that the charges are not proved. It is important to mention that as many as seven charges were held proved in the enquiry, but the discussion was confined only to the one relating to abusive language. The relevant paragraphs read:

"In this case, the news editor Sri Madan Mohan has stated in the domestic enquiry that he has given a report against the workman in respect of his behaviour, but he is silent about the abused language and stated that he did not elaborate those words because he cannot write such words as an educated man. If such is the case, the abused language which was used by the workman is not borne by record in any manner, so in the absence of any record it is highly impossible to hold that the workman used filthy language or abused language against the News Editor.

As seen from the statement of M.W. 2 D. Raghavendra Time Keeper as well as M.W. 3 K. Kumar being Sr. Assistant, in their evidence it is not found place that the workman has used abusing language against the Chief Editor. More over MW 2 himself admitted that he himself conducted a meeting on the open terrace of the office along with others and he is silent about the conducting of meeting by the workman. Similarly the evidence of MW 3 is running on the same lines. Therefore, this charge is also not proved. The statement of M.W. 4 Sundaran, Acting Editor, is also silent that the workman has used abusive language and simply stated that the workman shouted and used intemperate language and in spite of repeated advise he did not heed to his advise and continued the same. By this evidence it is clearly established that the workman did not use the filthy language."

13. The ultimate conclusion was drawn at para 12 as under:

"In this case the actual words alleged to have been used by the workman either in the complaint or anywhere in the evidence of MWs 1 to 4 does not found false. It is clearly shows that the enquiry is on vague and indefinite charges. Moreover the news Editor is both complaints, who initiated disciplinary action cannot be a judge in his own cause, as per the judgment reported in AIR 1993 D.C. 215."

14. The Labour Court did not indicate as to which of the seven charges can be said to have not been proved. On the basis of such vague and general observations, the order of dismissal was set aside and the relief of reinstatement into service with continuity of service and attendant benefits was granted.

15. The Labour Court, no doubt, happens to be the final Court on facts in the industrial disputes and the finding recorded by the Labour Court cannot be interfered with by the High Court, in exercise of jurisdiction, under Article 226 of the Constitution of India, unless there is a serious lapse in it.

16. Though the Labour Court is conferred with the power to re-appreciate the evidence which formed part of the domestic enquiry, it is too well-settled a proposition of law, that where two views are possible on a given set of facts and the Enquiry Officer has taken one view, the Labour Court cannot set aside the finding on mere existence of the possibility of taking the other view. It is only when the findings recorded by the Enquiry Officer are totally perverse or where the findings are not based on any evidence whatsoever, that the Labour court can set aside the same and record its own findings.

17. In the instant case, the manner in which the Labour Court has undertaken re-appreciation of evidence has already been indicated. Since it proceeded on the assumption that the abusive words attributed to the respondent were not spoken to by any witness in the evidence, we have gone through the entire record of the Enquiry Officer as well as the connected documents. It reveals that abusive language of uncivilised and highly objectionable level was used by the respondent. The charges were framed with reference to the relevant provisions of the disciplinary regulations. As a matter of fact, even in the explanation submitted by him, the respondent seems to have repeated the same tendency and at a later stage, he wanted the Enquiry Officer to delete that portion. The complainant and other witnesses supported the allegations.

18. One of the contentions urged on behalf of the respondent is that the so-called abusive words said to have been uttered by the respondent were not mentioned in the charge-sheet and the disciplinary authority is precluded from making the same, as part of the record in the enquiry. This plea is totally untenable. The charges contain the gist of the misconduct on the part of the charged employee. It is only in the course of the domestic enquiry, that further elaboration would be made. This in fact, is the case with the pleadings in a suit also. It is only the broad contentions that are to be pleaded and the evidence part of it is to be placed before the Court, at a later point of time.

19. In the instant case, the Enquiry Officer has extracted the relevant portion of

the complaint which reads:

"An undesirable and embarrassing incident took place in AP Editorial last evening when a Deputy News Editor Damodar Prasad created ugly scenes in my room as well as the editorial Department.

I understand it all began with the News Editor Daman Mohan Rao questioning Damodar Prasad for taking photographs of the damaged portions of the historic Charminar on different pages in the issue of September 25, 2000. The DNE retorted to a tone of challenging the authority of NE to point it out and even refused to take a memo from him for the blunder. When I called him later to find out why did he behave so, Damodar Prasad began shouting in rude and intemperate language. The display of his lung power indeed startled me. Immediately I objected to his behaviour and repeatedly asked him not to shout. When he did not pay heed to my advice, I asked him to get out of my room.

To my further shock, even while leaving my room and later in the editorial hall he was heard shouting for a long time. This is rank misbehaviour not expected of a senior journalist of the rank of DNE and can cause indiscipline among other staff if left unchecked. Therefore, please initiate necessary disciplinary action against Damodar Prasad."

20. The actual words that are said to have been spoken to by the respondent are contained in the statements of the concerned witnesses.

21. Under these circumstances, we are of the view that the Award passed by the Labour Court, holding that the charges against the respondent were not proved in the domestic enquiry, cannot be sustained in law.

22. At the most, it can be a case of exercise of power under Section 11-A of the Act. It is brought to our notice that the respondent has since been attained the age of superannuation. During the pendency of the writ petition, he was paid the wages under Section 17-B of the Act. For all practical purposes, the matter has to be treated as though it is being considered under Section 11-A of the Act, in the circumstances, by the Labour Court.

23. We, therefore, dismiss Writ Appeal (SR) No. 93041 of 2014 filed by the respondent and partly allow Writ Appeal (SR) No. 63578 of 2014 holding that,

"(a) the Award in I.D. No. 95 of 2001 shall stand modified to the effect that the findings recorded in the domestic enquiry are upheld, but granting the relief of setting aside the order of dismissal, directing reinstatement into service, confining, the monetary benefits to the extent of the wages paid under Section 17-B of the Act till the respondent attained the age of superannuation; and directing that

(b) the respondent shall also be entitled to be paid the retirement benefits, within a period of two months."

24. The miscellaneous petitions pending in these appeals shall also stand

disposed of. There shall be no order as to costs.