
(2013) 12 AP CK 0131

In the Andhra Pradesh High Court

Case No : Writ Petition No"s. 2800 of 2003 and 20276 of 2005

The Management of Engine Valves Limited

APPELLANT

Vs

Industrial Tribunal-II and N. Krishna (workman)

RESPONDENT

Date of Decision : 12-12-2013

Acts Referred:

Citation : (2014) 2 ALD 260 : (2014) 1 ALT 622

Hon'ble Judges : K.G. Shankar, J

Bench : Single Bench

Advocate : S. Ravindranath, for the Appellant; V. Narasimha Goud, for the Respondent

Final Decision : Disposed Off

Judgement

K.G. Shankar, J.—These two writ petitions are disposed of through this common order. The former writ petition in W.P. No. 2800 of 2003 was laid by the employer against the workman. W.P. No. 20276 of 2005, which is the latter writ petition, was filed by the workman against the employer. In both the cases, the award of the Industrial Tribunal-II, Hyderabad (the Tribunal, for short), dated 30-3-2002 in I.D. No. 179 of 2000 is questioned. Hence, both the writ petitions are disposed of through this common order. The employer is a manufacturer of Engine Valves supplied to the automobile industry. About 250 workers have been engaged by the employer. The workman, by name N. Krishna was one among them.

2. The workman was appointed on casual basis from 02-6-1987 till 02-8-1987. The employer later took the workman as a trainee from 03-8-1987 till 03-8-1989. He was put on probation for a period of one year on 03-8-1989. Subsequently, the probation of the workman was declared.

3. A charge-sheet was issued to the workman on the ground that he was guilty of low production. He was dismissed from service on 28-01-1993. However, a settlement was arrived at between the employer and the workman on 21-7-1994 u/s 18(1) of the Industrial Disputes Act, 1947 (the Act, for short), consequent

upon which the workman was reinstated as a fresh employee. On 25-4-1994, a fresh charge-sheet was issued against the workman on the ground that he was unauthorisedly absent without intimation to the reliever. The workman was allegedly absent for various dates between 28-02-1994 and 24-8-1994. A domestic enquiry was conducted against the workman. In the meanwhile, another charge-sheet was issued to the workman on 28-01-1995 that he willfully indulged in low production. In respect of unauthorized absence from duty, the workman was found guilty through the enquiry report dated 10-3-1995. He was found guilty for low production through enquiry report dated 30-6-1995.

4. A combined Show Cause Notice was issued to the workman on 07-8-1995. On 22-8-1995, the workman offered his explanation. Not satisfied with the explanation offered by the workman, the Disciplinary Authority passed orders dismissing the workman through orders dated 04-11-1995. However, industrial dispute in I.D. No. 103 of 1994 was pending before the Tribunal by then. Consequently, the employer filed M.P. No. 1 of 1996 u/s 33(2)(b) of the Act before the Tribunal. On 10-12-1997, the Tribunal held that the enquiries were properly conducted. On 16-02-1998, M.P. No. 1 of 1996 was allowed. Assailing the same, the workman raised I.D. No. 59 of 1998 u/s 2-A(2) of the Act before Labour Court-III, Hyderabad. The same was subsequently transferred to Labour Court-I, Hyderabad and was renumbered as I.D. 435 of 2000. It was again transferred to Industrial Tribunal-II, Hyderabad and was renumbered as I.D. 179 of 2000.

5. In I.D. No. 179 of 2000, the Tribunal held on 06-12-2001 that the enquiry was properly conducted. The Tribunal, however, held that the findings were perverse. Consequently, the workman was ordered to be reinstated without back wages, continuity of service and attendant benefits, so much so, the Tribunal ordered the reinstatement of the workman as a fresh candidate. Questioning the award, the employer filed W.P. No. 2800 of 2003 contending that once orders were passed in M.P. No. 1 of 1996 u/s 33(2)(b) of the Act, I.D. No. 179 of 2000 is not maintainable. The workman, in his turn, filed W.P. No. 20276 of 2005 contending that when the order of the Enquiry Officer was perverse, the Tribunal ought to have ordered reinstatement of the workman with back wages.

6. The learned counsel for both sides are in advantageous position in each turn since they appeared before the Tribunal in M.P. No. 1 of 1996 as well as I.D. No. 179 of 2000. Sri S. Ravindranath, learned counsel for the employer, contended that the only question that can be considered u/s 33 of the Act is whether there was proper enquiry or otherwise. The Tribunal examines questions, viz., (1) whether the employer paid one month wages to the employee, (2) whether the employer made application simultaneously and (3) whether the employer followed Standing Orders. Thus, the Tribunal examines u/s 33(2)(b) of the Act whether the employer prima facie made out the grounds enunciated above and passes an order in favour of the employer if the employer made out the grounds.

7. The learned counsel for the employer contended that once it is held in M.P. No.

1 of 1996 that the employer has prima facie proved its case, subsequent industrial dispute by the workman is hit by the principles of res judicata. It is contended by the learned counsel for the employer that the workman raised identical contentions in M.P. No. 1 of 1996 as well as in I.D. No. 179 of 2000 and that as I.D. No. 179 of 2000 is hit by res judicata, the workman is not entitled to reinstatement. He also submitted that the workman allowed the orders in M.P. No. 1 of 1996 dated 16-02-1998 to become final and that the workman therefore cannot question the same again through separate industrial dispute.

8. This aspect was brought to the notice of the Tribunal in the industrial dispute. The orders in M.P. No. 1 of 1996 were marked as Ex. M-50 in the industrial dispute. However, the Tribunal deemed it appropriate to order reinstatement of the workman holding that there was no evidence to support the charges. The Tribunal, inter alia, held that the workman assumed at the time of the enquiry that he would mend his ways and concluded that once further opportunities were given to the workman, it was deemed that the employer condoned the unauthorized absence as well as low production, so much so, the charges were not proved.

9. The main plank of the attack by the employer is res judicata. In *Testeels Ltd. Vs. N.M. Desai and Another*, , the Full Bench held that application under the proviso of Section 33(2)(b) of the Act was not an interlocutory proceeding but was an independent proceeding. It is the contention of the learned counsel for the employer that the orders in M.P. No. 1 of 1996 are orders in a main proceeding and that they therefore operate as res judicata. In *Workmen of The Straw Board Manufacturing Co. Ltd. Vs. Straw Board Manufacturing Co. Ltd.*, , it was noticed that the principles of Section 11 C.P.C. are applicable to the industrial adjudication (vide para 27 of the judgment). Similar view was expressed in *The Punjab Co-operative Bank Ltd. Vs. R.S. Bhatia (Dead) through Lrs.*, (vide para 5 of the judgment). It thus is contended by the learned counsel for the employer that the principles of res judicata apply to the present case.

10. It may, however, be noticed that the findings u/s 33(2)(b) proviso are prima facie findings. In *Cholan Roadways Limited Vs. G. Thirugnanasambandam*, , it was observed that while exercising the jurisdiction u/s 33(2)(b) of the Act, the Tribunal examines whether a prima facie case has been made out regarding the validity or otherwise of the domestic enquiry held against the workman and that it would not therefore operate as res judicata in an industrial dispute where the question needs to be considered elaborately.

11. A learned single Judge of this Court in *Management of Bharat Heavy Electricals Ltd. Vs. Labour Court-II and Another*, held that the order passed by the Tribunal u/s 33(2)(b) of the Act granting approval of the termination/dismissal order cannot bar the workman from invoking the provision u/s 2-A(2) or Section 10 of the Act and that the Tribunal is not debarred from examining the validity of the order of termination/dismissal in an application u/s 2-A(2) or Section 10 of the Act. In *Hindusthan Aeronautics Ltd. Vs. Additional Industrial*

Tribunal-cum-Labour Court and Another, , similar view was expressed by the same learned Judge who disposed of the earlier case.

12. I consider that orders in proceedings u/s 33(2)(b) proviso do not operate as res judicata in a proceeding u/s 2-A(2) of the Act since the proceedings u/s 2-A(2) of the Act are exhaustive whereas the Tribunal examines the limited question of prima facie case in a petition u/s 33(2)(b) proviso. Consequently, the primary objection raised by the learned counsel for the employer is not sustainable and is accordingly rejected.

13. Regarding the low production, the employer relied upon Ex. M-49 settlement entered into by the employer and workman u/s 18 of the Act with reference to the norms of production. The Tribunal noticed that whereas the workman is N. Krishna, Ex. M-49 was by one G. Krishna. The Tribunal consequently held that the employee did not enter into any agreement regarding the norms of production and that the employee cannot be subject to disciplinary proceedings for low production. I do not find any ground to differ with the view expressed in the industrial dispute. The employer is not able to offer any explanation as to how a settlement entered into by an employee by name G. Krishna would bind the employee whose name is N. Krishna. Any finding that the workman was guilty of indulging in low production consequently is not sustainable. The Tribunal was justified in holding that the finding that the workman was guilty of low production was perverse where the workman never entered into a settlement regarding the norms of production.

14. It would appear that the workman sought for reinstatement by invoking Section 11-A of the Act. The learned counsel for the employer submitted that the Tribunal can interfere if the order of the employer/Enquiry Officer is perverse. He also pointed out that the powers u/s 11-A of the Act are different from the dispute raised u/s 2-A of the Act. He also submitted that the workman ought to have raised a dispute u/s 33-A(b) of the Act.

15. Sri V. Narasimha Goud, learned counsel for the workman contended that Section 33-A of the Act can be invoked in the event the employer contravenes Section 33(2)(b) or Section 33(1) of the Act and not otherwise. Section 33-A of the Act deals with special provisions for adjudication as to change of conditions of service during the pendency of proceedings u/s 33 of the Act. The workman has not been agitating that his conditions of service were changed during the pendency of the proceedings u/s 33(2)(b) of the Act. Section 33-A of the Act therefore is not relevant for the present dispute.

16. The learned counsel for the employer submitted that dismissal of the workman from service is just and reasonable. In L and T Komatsu Ltd. Vs. N. Udayakumar, , relied upon by the learned counsel for the employer, it was held that the habitual absenteeism was tantamount to gross violation of discipline and that dismissal from service of such a delinquent was justified. The learned counsel for the employee pointed out that from 12-5-1994 till 28-8-1994, which

was the first span during which the workman remained absent, the period of absence was only for 22 days and that the same was not continuous but sporadic. He also submitted that even out of these 22 days, on 21-6-1994 the petitioner could not submit a Casual Leave application. The Tribunal in I.D. No. 179 of 2000 considered that the grounds of absence were quite reasonable and held that the charges were not proved. I am afraid that the order of the Tribunal in the industrial dispute does not deserve to be interfered with.

17. Inter alia, the learned counsel for the employee submitted that the Tribunal did not give any reason in the award in I.D. No. 179 of 2000 as to why it was deferring from the view taken in M.P. No. 1 of 1996. The reasons are obvious. In M.P. No. 1 of 1996, the Tribunal was considering the prima facie case whereas in I.D. No. 179 of 2000, the Tribunal went further and examined whether there was evidence for proving the charges against the employee. The award of the Tribunal in I.D. No. 179 of 2000 that the employer failed to establish the misconduct of the employee therefore deserves to be sustained.

18. However, where the employee was in fact dismissed on one occasion and was reinstated through a settlement u/s 18(1) of the Act and where the employee could not give proper production, albeit he is not guilty of low production since there was no settlement between the employee and the employer, the order of the Tribunal ordering reinstatement without back wages is justified. I consider that it would be appropriate to order reinstatement with continuity of service and attendant benefits where the misconduct has not been established. Accordingly, the writ petitions are disposed of holding that the award of the Tribunal in I.D. No. 179 of 2000 is sustained and is confirmed with the modification of reinstatement of the employee with continuity of service and attendant benefits but without back wages. The miscellaneous petitions pending, if any, shall stand closed. No costs.