(2004) 10 AP CK 0057

In the Andhra Pradesh High Court

Case No : Writ Petition No''s. 18845 and 23036 of 2003

The Managing Director, A.P. Dairy Development, Cooperation Federation Ltd. — APPELLANT

Vs

The Presiding Officer, Additional Industrial Tribunal-cum-Labour Court and T.G. Koteshwara Reddy — RESPONDENT

Date of Decision : 28-10-2004

Acts Referred:

Citation : (2005) 2 ALT 168

Hon'ble Judges : V. Eswaraiah, J

Bench : Single Bench

Advocate : N. Rajeswar Rao, for the Appellant; G.P. for Labour and Party-in-person for the Respondent No. 2, for the Respondent

Final Decision : Dismissed

Judgement

V. Eswaraiah, J.—Both the Writ Petitions are disposed of by a common order.

2. The petitioner-Management i.e. the Managing Director, A.P. Dairy Development Cooperative Federat! ion Ltd. filed W.P. No. 18845 of 2003 and the petitioner-workman viz. T.G.Koteswara Reddy filed the W.P. No. 23036 of 2003 against the Award dated 21.1.2003 in I.D. No. 54 of 2001 on the file of the Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad. Both the Writ Petitions were filed against the I.D. No. 54 of 2001. The Management filed the said Writ Petition questioning the Award passed by the Labour Court directing the Management to reinstate the workman i.e. petitioner in W.P. No. 23036 of 2003 into service with continuity of service and attendant benefits and further directing to refund an amount of Rs.74,482/- which was recovered towards the shortage of molasses. The petitioner-workman filed the said Writ Petition aggrieved by the Award passed by the Labour Court in sofaras it went against him with regard to non-payment of back wages.

3. The petitioner in W.P. No. 23036 of 2003 viz. T.G.Koteswara Reddy joined the

service of A.P. Dairy Development Coop. Federation Limited in the year 1973 and he was posted as Godown Assistant at Feed Mixing Plant, Gadwal of Mahaboobnagar District. While he was working as Godown Assistant at Feed Mixing Plant, Gadwal one Mr. Quasimuddin Siddiqui, the then Manager of Feed Mixing Plant, Gadwal, retired from service on 31.3.1995. One V. Ramalingam, Manager, MCC, Mahaboobnagar was kept in-charge of Feed Mixing Plant, Gadwal. During that period, the petitioner-workman in W.P. No. 23036 of 2003 i.e. T.G. Koteswara Reddy, Godown Assistant was looking after the operations of the plant. The said T.G. Koteswara Reddy was also posted as Manager of Feed Mixing Plant, Gadwal on 1.6.1995 and functioned there up to 1.7.1995. Thereafter, he joined as Deputy Director, Mahaboobnagar Milk shed. On verification of the stocks on 7.7.1995, it was found that there was shortage of certain materials particularly 65 tonnes of molasses. Sri V. Ramalingam was in charge manager and he handed over the full charge to K.Prabhaker, regular Manager. The Regular Manager verified the stock ag! ain on 18.7.1995 in the presence of in-charge manager and found the said shortage of molasses. It is further stated that for the shortage of molasses, an amount of Rs.74,482/- was paid by the workman on 17.7.1995 towards the cost of 65 tonnes of molasses.

4. On the said allegations, the following charges have been framed against the workman i.e. T.G.Koteswara Reddy for committing theft of molasses.

"Article of Charge I

Sri T.G. Koteswara Reddy has been functioning as Godown Assistant since October,1981 at F.M.P. Gadwal. He is responsible for the receipts, disposals and stocks on hand in the godown of the F.M.P. in respect of the products and raw material like molasses, Jowar, salt, gunny bags etc., when Sri Quasimuddin Siddiqui the Manager , F.M.P. Gadwal had retired from service on 31.3.1995 Sri N. Namalingam, Manager, M.C.C. Mahabubnagar was kept in-charge of F.M.P., Gadwal. During this period Sri T.G. Koteswara Reddy, Godown Asst. was looking after the entire operations of the plant. Dr K. Prabhakar was posted as Manager of F.M.P. Gadwal who joined on1.6.1995 and proceeded on E.L. till 1.7.1995. Soon after his joining, the Deputy director, Mahabubnagar Milk Shed has instructed him to verify the stocks physically and report. Sri K. Prabhakar, Manager verified the stocks on 7.7.1995 with the assistance of Sri T.G.Koteswara Reddy, Godown Asst. and found shortages of certain raw materials as detailed below. The in-charge Manager Sri N. Ramalingam who was on E.L. was asked to cancel his leave and was instructed to hand over charge to the regular Manager, Sri K. Prabhakar. On 17.7.1995, the in-charge, Manager has handed over full charge to Sri K. Prabhakar regular Manager, the regular Manager, Sri K. Prabhakar verified the stocks physically again on 18.7.1995 in the presence of the in-charge Manager Sri N. Ramalingam and found some of the materials which were in shortage on 7.7.1995 were made good by 18.7.1995. The shortages of materials as on 7.7.1995 and 18.7.1995 are as follows:

He accepted his responsibility for the shortage of molasses and remitted a sum of Rs.74,482/- vide D.D. No. 0777421 dated 17.7.1995 towards cost of 65 MTs of Mollasses @ Rs.1100/- per M.T.plus 4.17% tax as against the actual rate of Rs.2,350-06 per M.T. balance amount of Rs.87,976-90 (Rs.1,62,458-00 - 74,482-00) is yet to be made good. Thus he committed theft, fraud and acted dishonesty in connection with the property of the Federation and also breached rules and regulations. Hence, this charge.

ARTICLE OF CHARGE II

That Sri T.G. Koteswara Reddy, Godown Asst. FMP Gadwal transported 127 M.T of Molasses from Nandyal sugar factory from 2.7.1995 to 11.7.1995 on his own accord and without permission from his superiors, viz. Manager or Dy. Director. The actual storage capacity of the Molasses tank at the FMP Gadwal is 270 MT but the book balance of Molasses as on17.7.1995 is 285 MTs and thus he failed to observe the capacity of the storage tank while transporting molasses stocks from Nandyal Sugar Factory. Thus, he neglected his duties, breached the law applicable to his work and also breached the r! ules and regulations. Hence, this charge.

5. A detailed explanation has been filed by the work-man T.G.Koteswara Reddy to the said charges. But, dissatisfied with the explanation given by the workman, the Management has appointed the Enquiry Officer. The Enquiry Officer, after conducting the enquiry held that the aforesaid charges were proved against the workman. Basing on the enquiry report, a show-cause notice proposing the punishment of dismissing from service besides recovery of balance cost of shortage of molasses was issued to the workman. The workman filed an explanation stating that under the threat only some amount towards the cost of the alleged shortage of molasses was recovered from him without conducting enquiry and without fixing the responsibility and therefore, remitting the cost of the alleged shortage of molasses is without any basis and the same is liable to be refunded. It is stated that there are serious lapses and irregularities committed while conducting the enquiry by the enquiry officer. It is specifically stated that the enquiry was ordered to enquire into the charges against Mohd. Hamid Ali-General Manager, V. Ramalingam-Manager, Sri Quasimuddin Siddiqui, Manager and the workman-T.G. Koteshwara Reddy. But, no action has been taken against the said three persons who are also in charge and responsible for the shortage of the alleged molasses. Nf v. o enquiry was conducted against Sri Quasimuddin Siddique-Manager in Feed Mixing Plant and he has retired. V. Ramalignam, who is In-charge Manager of the Feed Mixing Plant also retired on voluntary retirement baf v. sis and no action has been taken against him. Sri Md. Hameed Ali-Deputy Director, who is superior Officer and supervising officer, also retired and no action has been taken against him. It is further stated that framing of charges were not specific about the alleged shortage of raw feeding ingredients and there are glaring differences in the value of the alleged shortage of material. The Enquiry Officer failed to take into consideration all these facts and also failed to appreciate the possibility of involvement of the aforesaid three persons and

the impossibility of involvement of a single person namely T.G. Koteswara Reddy. But, the Enquiry Officer did not find it proper to consider the said aspects and erroneously held that the charges were proved against T.G. Koteswara Reddy alone. In fact, the Managers are responsible for the receipt and accounts of the stocks of the molasses. But, no responsibility has been fixed on them in the enquiry and therefore, it cannot be said that T.G. Koteswara Reddy alone was responsible for the shortage of molasses, who is in charge for a short period. The shortage of molasses was also not exactly measured. However, M. Prabhaker was only the manager during the relevant period and there is no specific finding when the shortage was occurred either during the period of in-charge manager or the regular manager and therefore, it cannot be said by any stretch of imagination that T.G. Koteswara Reddy was alone responsible for the shortage of molasses. Admittedly, no action has been taken against the concerned persons and the action taken against T.G. Koteswara Reddy alone is improper, without any justification and against the principles of natural justice. But, without dealing with any of the contentions of the explanation, the Managing Director of A.P. Dairy Development Coop. Federation Ltd. passed the order dated 16.10.2000 on the ground that T.G. Koteswara Reddy himself has accepted the shortage of 65 tonnes of molasses and remitted a sum of Rs.74,482/- and in view of the admission of T.G.Koteswara Reddy, the charges are held to be proved and accordingly, the said punishment of dismissal from service besides recovery of Rs.87,976/- was imposed.

6. This Court, by order-dated 10.11.2003, granted interim suspension of the said order dated 16.10.2000 directing the reinstatement of T.G. Koteswara Reddy into service forthwith. Pursuant to the said order of this Court dated 10.11.200! 3 in W.PM.P. No. 23556 of 2003 and W.P.M.P. No. 3486 of 2003 filed by T.G. Koteswara Reddy in W.P. No. 18845 of 2003, the Managing Director of A.P. Dairy Development Coop Federation Ltd. issued proceedings dated 24.2.2004 reinstating the said T.G.Koteswara Reddy as Godown Assistant and allotted him to the Deputy Director, Mahboobnagar. Thus, T.G. Koteswara Reddy is presently working and he is in service of A.P. Dairy Development Coop Federation as Godown Assistant.

7. The question that arises for consideration in both the Writ Petitions is whether the Award dated 21.1.2003 in I.D. No. 54 of 2001 passed by the Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad suffers from any incurable defects warranting interference?

8. The points that were framed by the Tribunal in the said I.D. No. 54 of 2001 for consideration are:

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?

9. Before the Tribunal, in I.D. No. 54 of 2001, the Management-Managing

Director, A.P. Dairy Development Coop. Federation Ltd. filed the documents Exs: M-1 to M-6 i.e. charge sheet, explanation to the charge sheet, enquiry report, show cause notice, explanation to the show cause notice and dismissal order. The Tribunal only appreciated the material evidence on record and rightly held that the Enquiry Officer failed to give any finding as to when the shortage of molasses was occurred. The Enquiry Officer only observed that the shortage might have occurred after 1995 and if that being so, during the period of which Manager the shortage of molasses occurred was not specifically stated. The allegation in the charge memo is that the shortage of 65 tonnes of molasses was occurred during the period of 1981 to 1996, but the charge sheet was not issued to other employees who were responsible on par with the workman T.G. Koteswara Reddy. With regard to the second charge also, absolutely there is no allegation with regard to fraudulent act on the part of the workman for the transportation of the alleged shortage of molasses and there is no allegation that the workman himself sold away the molasses some-where. The alleged theft of molasses by the workman is not at all proved. In fact, in the enquiry report, it was categorically mentioned that the Deputy Director who is supposed to supervise the administration has unfortunately failed to do so and allowed the irregularities. So it amounts to the negligence on the part of other persons also and therefore it cannot be said that the workman T.G. Koteswara Reddy alone is negligent. The Tribunal without allowing any further evidence, only appreciated the legality of the charge memo explanation and the final order of the dismissal, therefore, I am of the considered view that the Tribunal has rightly come to the conclusion that the charges are not specific as to which period the shortage of molasses and other materials were missing and the evidence on record is also not clear that the workman T.G. Koteswara Reddy was alone responsible for the shortage. The record shows that the materials were transported from Nandyal Sugar Factory to Gadwal by lorry whose number was also mentioned, but none of the persons who attested the entries were examined. It is further observed that as per the material available on record that the other personnel who are in-charge of the Feed Mixing Plant were also responsible for missing of molasses, but leaving them without punishment and punishing the workman T.G. Koteswara Reddy is quite unreasonable, unnatural and against the principles of natural justice. The management failed to produce the stock registers and other registers and the statement of Prabhaker-Manager, which was recorded during the course of domestic enquiry to find out the real position. In the absence of the above records, it cannot be held that the workman could only commit the misconduct. Moreover, no security staff was examined to know whether the workman has carried out molasses and other materials as attributed on any date. Therefore, the punishment of removal from the service is without any basis and on the said material it cannot be said that the charges are proved against the workman. I am of the considered view that the Tribunal has not committed any irregularity or illegality-warranting interference of the Award passed by the Tribunal and the Tribunal has rightly held that the charges are not proved against the workman and the said findings of the Tribunal are not perverse. Therefore, the judgment of the Supreme Court relied on by the Standing Counsel for A.P. Dairy Development Coop Federation Ltd. In the case of STATE BANK OF INDIA v. TARUN KUMAR BANERJEE AND ORS. 2000 LABIC. 3136 (SC) and the Judgment of the Madras High Court in the case of ANNA TRANSPORT CORPORATION LTD. SALEM v. PRESIDING OFFICER,LABOUR COURT, v. COIMBATORE AND ANR., 2000-II-LLJ 902 have no application to the facts of the present case. I am of the view that the Tribunal has rightly interfered with the decision of the employer as the findings arrived at by the Enquiry Officer are perverse and the management is guilty of victimization and unfair labour practice as they have chosen to take action against T.G. Koteswara Reddy alone leaving the other three equally responsible and connected persons. Therefore, I do not see any merits in both the writ petitions and the workman T.G.Koteswara Reddy is also not entitled to back wages as rightly denied by the Tribunal.

10. Accordingly, both the Writ Petitions are dismissed. There shall be no order as to costs.

