

(2010) 11 AP CK 0072

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 12349 of 2010 and 15817 of 2010

The Techno Electrics, a unit of Samrakshana Electricals Ltd. APPELLANT

Vs

Chairman-cum-Presiding Officer and B.R. Adhikari
 RESPONDENT
B.R. Adhikari Vs The Techno Electrics, a unit of Samrakshana
Electricals Ltd. and Addl. Industrial Tribunal cum Addl. Labour
Court.

Date of Decision : 02-11-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (2011) 1 ALD 757 : (2011) 130 FLR 183 : (2011) 3 LLJ 575

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : V. Hari Haran, in Writ Petition No. 12349 of 2010 and Party in Person in W.P. No. 15817 of 2010, for the Appellant; GP For Labour and Party-In-person, for Respondent No. 2. in Writ Petition No. 12349 of 2010 V. Hari Haran and GP For Labour in W.P. No. 15817 of 2010, for the Respondent

Judgement

L. Narasimha Reddy, J.—These two writ petitions are filed challenging the award dated 26-03-2010 passed by the Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad (for short "the Labour Court"), in I.D. No. 104 of 2009, which in turn was published in G.O. Rt. No. 465 of 2009, Labour Employment Training and Factories (LAB.I) Department, dated 12-04-2010. For the sake of convenience, the parties herein are referred to, as arrayed in W.P. No. 12349 of 2010.

2. The brief facts are that, the 2nd Respondent (for short "the Respondent") was employed as Security Guard by the Petitioner-company in the year 1987. He was dismissed from service on 30-03-2002. Aggrieved by that, the Respondent filed I.D. No. 38 of 2002 before the Labour Court. An award was passed on 10-11-2004 setting aside the order of dismissal and directing the appointment of the Respondent, afresh. The Petitioner, on the one hand, and the Respondent, on the other hand, filed W.P. Nos. 4704 and 10085 of 2005, respectively, challenging

the award, to the extent they felt aggrieved by it. Both the writ petitions were dismissed, and writ appeal filed by the Respondent was rejected. The award was ultimately upheld by the Supreme Court in SLP (Civil) No. 2856 of 2009, on 13-07-2009.

3. The Respondent was appointed in pursuance of the award passed in I.D. No. 38 of 2002, even while proceedings were pending before the Courts. A charge-sheet dated 07-08-2006 was issued to him, alleging certain acts of misconduct. It is stated that the Respondent did not submit explanation to the same. Domestic enquiry was conducted ex parte, since he is said to have refused to participate. A report was submitted, stating that the charges framed against the Respondent are proved. Second show cause notice dated 12-11-2007 was issued proposing punishment of dismissal. Respondent submitted reply dated 16-11-2007. The Petitioner passed an order dated 12-07-2007, dismissing the Respondent from service. I.D. No. 104 of 2009 was filed against it.

4. The Labour Court passed the impugned award setting aside the order of dismissal, and directed that the Petitioner to appoint the Respondent afresh, as Security Guard. It denied continuity of service, attendant benefits and without back wages to the Respondent.

5. The Petitioner contends that the Labour Court held that there is no defect in the domestic enquiry and it did not interfere with the finding on the charges, and still, directed appointment of the Respondent, may be as a fresh candidate. It is urged that the reasons mentioned by the Labour Court in support of its conclusions, or as to the nature of relief, are untenable and without any basis.

6. The Respondent, who also filed independent writ petition, apart from defending the award, in so far as it is in his favour, contends that the domestic enquiry was ex parte in nature and the Labour Court ought to have granted complete relief of reinstatement into service with, back wages, and all attendant benefits.

7. Sri V. Hari Haran, learned Counsel for the Petitioner submits that the acts and omissions on the part of the Respondent are very serious in nature, and ever since he joined the service, he has been resorting to acts of misconduct. He contends that, being on the security wing of the organization, the Respondent was supposed to maintain utmost discipline, but has quarreled with the management and the fellow-employees, to the extent of causing injuries. Learned Counsel submits that, even after holding that the domestic enquiry was valid, and taking note of the rulings of the Hon'ble Supreme Court, cited by the Petitioner, the Labour Court directed the appointment of the Respondent only on the basis that, no allegations of misappropriation were made against him. He further submits that the award passed by the Labour Court is untenable.

8. The Respondent appeared in person. He has referred to the various proceedings that have ensued, ever since he joined the service of the Petitioner. According to him, the Petitioner was not happy with the award passed by the

Labour Court in I.D. No. 38 of 2002, and after it complied with the award, almost under compulsion, has been searching for excuses or grounds to get rid of him. He contends that the allegations of misconduct, alleged against him, particularly with reference to the incident that occurred on 18-07-2006 are not true, and as a matter of fact, it was an employee by name, Nazeer Khan, that has assaulted and chased him out of the factory premises. He submits that with a deliberate intention to proceed ex parte in the domestic enquiry, charge-sheet was not served upon him, and he was denied opportunity to participate in the proceedings. The Respondent further submits that the very fact that he replied to the second show cause notice discloses that he was very much available and eager to participate in the proceedings, and it is only on account of the pre-planned steps taken by the Petitioner, that he could not participate in the enquiry. He submits that the Labour Court ought to have granted the relief of reinstatement into service with full back wages and attendant benefits, and there was no justification, for denial of the same, by the Labour Court.

9. The service of the Respondent with the Petitioner appears to have been smooth for a period of four years, after he joined the service as a security guard in June, 1987. From 2001 onwards, the trouble started. A charge-sheet/suspension order was served upon him on 09-11-2001. After conducting domestic enquiry, the Petitioner removed the Respondent from service. That led to filing of I.D. No. 38 of 2002. Relief of fresh appointment was granted by the Labour Court and the award was upheld, when challenged by the Petitioner as well as the Respondent. After he was appointed afresh, in compliance with the award, disciplinary proceedings were initiated for the second time. Much before the proceedings instituted before the Courts, against the award, assumed finality, the Respondent came to be removed from service, once again.

10. The basis for initiation of proceedings against the Respondent was an incident; that is alleged to have taken place, on 18-07-2006. While the Petitioner contends that the Respondent picked up quarrel with other security guards and has assaulted one of them, the version of the Respondent is exactly the opposite. Though a charge-sheet was issued by the Petitioner, the Respondent denies the receipt of the same, as well as the notices of hearing, in the domestic enquiry. The charges were held proved. It is only at a stage subsequent to the domestic enquiry, that he received a show cause notice, through which, punishment of dismissal was proposed. His reply did not find favour with the Petitioner and an order of dismissal from service was passed. Aggrieved thereby, he filed I.D. No. 104 of 2009.

11. The Labour Court referred to the charges and the service of charge-sheet upon the Respondent. However, it did not bestow its attention to the manner in which the enquiry was conducted. It is not in dispute that the proceedings were ex parte in nature. Though it is alleged that the Respondent was served with notice of appearance in the enquiry, and that publication thereof was made, the fact that he received the second show cause notice and submitted his reply,

ought to have been considered by the Labour Court, before it recorded a finding that the domestic enquiry is valid. The plea of the Respondent that it was he, who was beaten and chased by an employee, by name, Nazeer Khan, and that no police case was registered in relation to the said incident, could have been examined, if only evidence was required to be adduced, before the Labour Court.

12. Another important aspect is that the Respondent is a migrant from Nepal and he cannot be expected to muster adequate support from the locals, overcoming the might of the Petitioner. His allegation that he was singled out and harassed as a measure of retaliation for his approaching the Labour Court challenging the order of dismissal passed earlier, cannot be brushed aside. Therefore, this Court is not in agreement with the finding of the Labour Court, that the domestic enquiry is valid.

13. On behalf of the Petitioner, considerable number of precedents were cited before the Labour Court, which are to the effect that acts of indiscipline, and particularly of assault cannot be tolerated. However, before the principle is applied, the Court must be sure, that the allegation in this regard is proved, in accordance with law. It is not at all safe to hold such serious allegations as proved, on the basis of ex parte proceedings.

14. The Labour Court appears to have been impressed, mostly by the plight of the Respondent in moulding the relief, in exercise of power u/s 11A of the Industrial Disputes Act. The reason mentioned by it, that the precedents relied upon by the Petitioner herein cannot be applied, since there are no allegations of misappropriation against the Respondent; cannot be countenanced. However, without even mentioning that, it could have granted the relief, if there exists any factors in favour of the Respondent, assuming that the charges against him, are proved. The power of the Labour Court u/s 11A of the Industrial Disputes Act is so wide, that a punishment of lesser magnitude can be imposed by it even while upholding the findings in the domestic enquiry.

15. This Court is of the view that the case on hand has several typical features. On the one hand, it cannot be said that the allegations of misconduct against the Respondent are without basis and on the other hand, it cannot be said that the findings thereon can be sustained in law. The observations made by this Court in the preceding paragraphs would certainly justify remand of the matter to the Labour Court. However, the plight of the Respondent is such that, in the open Court he virtually lamented, that his family is under the verge of starvation. The possibility of directing reinstatement into service was seriously considered. The fact however remains that the Respondent was working in the security wing and it is not at all in the interest of the Petitioner and the Respondent to restore the relationship of employer and employee when the relation between them is so strained for the past one decade. At the same time, the Respondent cannot be denied the relief. Faced with this difficulty in striking a balance between the two extreme situations, this Court felt that an order directing payment of a fairly good amount to the Respondent, in lieu of reinstatement or fresh appointment,

would meet the ends of justice. It is conscious of the fact that, what it proposes to do, does not fully accord with the ordinary course of adjudication of awards passed by the Labour Courts. However, it is felt that, peculiar facts of the case would justify it.

16. Hence, the writ petitions are disposed of, modifying the award passed by the Labour Court, in I.D. No. 104 of 2009 to the effect that the Petitioner shall pay a sum of Rs. 3 lakhs (Three lakhs) to the Respondent, in full and final settlement of the dispute between them, within four weeks from today. Out of this amount, Rs. 1 lakh (One lakh) shall be paid to the Respondent, and Rs. 50,000/- (Fifty thousand) each, in the form of F.D. Rs, for a period of two years, taken out in a Nationalised Bank, to the wife and three children of the Respondent. The Respondent shall be entitled to be paid the provident fund, if any, that has accumulated to his account.

17. There shall be no order as to costs.