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Court : Andhra Pradesh

Decided On : Jun-30-2003

Reported in : 2003(4)ALD776; 2003(6)ALT233; (2003)IIILLJ1143AP

Judge : D.S.R. Varma, J.

Acts : Industrial Disputes Act - Sections 11A

Appeal No. : WP Nos. 8856 and 9552 of 1995 and CC No. 1581 of 2001

Appellant : P. Bhaskar

Respondent : Asst. General Manager, Syndicate Bank Zonal Office and anr.

Advocate for Def. : K. Murlidhar Reddy, Adv. for Respondent No. 2 in WP No. 9552 of 1995, ;K. Srinivasa Murthy, Adv. for Respondent No. 1 in WP No. 8856 of 1995 and CC No. 1581 of 2001 and ;Government Pleader for ;Labour

Advocate for Pet/Ap. : K. Murlidhar Reddy, Adv. in WP No. 8856 of 1995 and CC No. 1581 of 2001 and ;K. Srinivasa Murthy, Adv. in WP No. 9552 of 1995

Judgement :

ORDER

D.S.R. Varma, J.

1. Heard both the sides.

Since the issue involved in the writ petitions is connected and the parties are common, I am disposing of both the writ petitions by this common order. Further since the contempt case also depends on the outcome of the writ petitions, it is also being disposed of by this common order.

2. W.P. No. 8856/1995 is filed by the workman challenging the award passed by the 2nd respondent -Tribunal in I.D.No. 41/ 1991 dated 28.9.1994, in denying the back wages while granting reinstatement with continuity of service.

3. W.P. No. 9552/1995 is filed by the Management - Syndicate Bank questioning the very same award of the Tribunal in granting reinstatement with continuity of service.

4. This Court by order dated 19.4.2001 in WPMRNo. 9517/2001 in W.P. No. 9552/1995 modified the earlier interim order dated 5.2.1996 and directed that the petitioner shall be paid dearness allowance at the increased rates from time to time including other allowances as per Section 17B read with Section 2(rr) of the Industrial Disputes Act. The workman complaining that this order has been violated, filed the contempt case in C.C.No. 1581/2001.

5. For convenience, the parties are referred to as the Workman and the Management.

6. The brief facts that lead to the filing of the dispute are that the Workman while working as Attender in the respondent - Bank, was charge-sheeted on 20.12.1986 alleging that he demanded illegal gratification for processing the loan applications of eight beneficiaries. The workman offered his explanation denying the allegations. Subsequently an enquiry was conducted and in the enquiry the workman was found guilty of the charges levelled against him. Consequently the disciplinary authority terminated him from service on 5.10.1989. Aggrieved by the said termination, the workman filed an appeal to the appellate authority and the same was rejected by order dated 20.1.1990. Challenging the same, he raised a dispute before the Industrial Tribunal.

7. The Tribunal having gone into the merits of the case, recorded a finding that 'in the light of the evidence recorded by the Enquiry Officer and in view of the above observations made by this Tribunal, I am of the clear opinion that the petitioner workman is guilty of the charges of obtaining illegal gratification from the loan beneficiaries.' Further the Tribunal though held that the misconduct committed by the petitioner has to be viewed seriously, observed that since the respondent - Bank is a model employer, can afford an opportunity to the workman to reform himself by reinstating him into service. Accordingly the Tribunal set aside the order of dismissal and granted reinstatement of service with continuity of service, but without back wages.

8. The learned Counsel for the workman contended that the enquiry was not conducted properly and the same is contrary to the principles of natural justice. He further contended that the enquiry was conducted after three years from the date of issuance of the charge-sheet and hence the same is vitiated owing to inordinate delay. He further contended that the Tribunal ought to have taken the past conduct of the workman and granted back wages. He submitted that, in fact the workman is only an Attender and it is the Manager of the respondent-Bank who is responsible and he should have been terminated from service and not the workman. With these submissions, the learned Counsel for the workman prayed for granting of back wages.

9. On the other hand the Counsel for the Management contended that the award of the Tribunal in granting reinstatement with continuity of service while upholding the findings of the enquiry officer with regard to the guilt of the workman, is illegal and unjust and is liable to be set aside.

10. As regards the contention of the Counsel for the workman that the enquiry was not conducted properly, it is to be seen that no such averment is made before the Tribunal and the ground raised was that the order of dismissal was illegal and invalid, because the Management while imposing the maximum punishment of dismissal, did not take into account the past conduct of the workman, which is mandatory as per the bipartite settlement and hence the punishment was disproportionate and not commensurate with the gravity of the charges levelled

against the workman. The further ground taken before the Tribunal was that the workman did not commit any misconduct, much less gross and that he did not commit any act, which is prejudicial to the interest of the bank.

11. The well settled principle is that the objection as regards the validity of the domestic enquiry has to be taken at the earliest point of time, which obviously is before the appellate authority or the Tribunal. From the perusal of the impugned award it could be seen that the workman did not question the validity of the enquiry and also did not agitate that the principles of natural justice have been violated and even in the present writ petition also, he did not choose to take these grounds, except stating that the enquiry was conducted three years after the issuance of the charge-sheet.

12. From the impugned award, it could be seen that, in the domestic enquiry the Management examined ten witnesses and the workman cross-examined all the witnesses. It was recorded by the Tribunal that the workman, except putting some unconnected questions, did not deny the allegation that he collected illegal gratification from the loan beneficiaries. Therefore basing on the evidence available on record, the Tribunal held that the entire evidence was sufficient to hold that the workman obtained illegal gratification. Therefore, the contention of the Counsel for the workman that the enquiry was not conducted properly and is against the principles of natural justice, has no legs to stand.

13. Further merely conducting an enquiry three years after the issuance of the charge sheet does not by itself vitiate the enquiry conducted and the findings thereof. If there are proper reasons before the Management to conduct the enquiry after three years, the enquiry has to be held valid. In other words if the reasons for such delay are not totally attributable to the Management alone, or if any valid reasons are present, then conducting an enquiry even after three years is always permissible. It is to be noted that sometimes for various administrative reasons and also for collecting some material or for want of explanation from the delinquent, the enquiry may get delayed and delay of course in such cases per se does not vitiate the very enquiry or absolve the delinquent from the charges levelled against him. Therefore, the contention of the learned Counsel for the

workman that the enquiry is vitiated owing to delay, cannot be countenanced.

14. The further contention of the Counsel for the workman is that the punishment imposed is disproportionate and hence the Tribunal ought to have granted back wages along with reinstatement and continuity of service. It is to be seen that the Tribunal basing on the evidence on record upheld the findings of the enquiry officer with regard to the guilt of the workman. However, obviously exercising its discretionary jurisdiction under Section 11A of the Act, granted the above said relief. Whether the Tribunal can grant reinstatement while upholding the guilt of the workman, is another question, which is to be looked into. Therefore, the claim of the workman for back wages cannot be considered and is hereby rejected and consequently the W.P.No. 8856/1995 filed by the workman is liable to be rejected.

15. Now the contention of the Counsel for the Management in W.P. No. 9552/1995 is that, the Tribunal having found the workman guilty, ought not have awarded lesser punishment than the one imposed by the disciplinary authority i.e., the dismissal. He further submitted that the Tribunal ought not have taken a lenient view while exercising the jurisdiction under Section 11A of the Act, in view of the seriousness of the charges levelled against the petitioner.

16. I find some force in the above contention of the learned Counsel for the Management. It is to be noted that for the viability of the institutions like the banks and other financial organizations, the trust and confidence of the general public is the vital factor. So when the employee of such organization is found to have accepted illegal gratification for the purpose of processing the loan applications, the confidence of not only the Management, but also the general public reposed on such organization would get shattered and the repercussions would be far reaching and this may also lead to total collapse of such institutions. Therefore, misconduct involving illegal gratification in such organizations, has to be viewed seriously and be stemmed down with iron hand, unlike the charges of disobedience or unauthorized absence etc.

17. In the present case though the Tribunal has rightly recorded the finding with regard the guilt of the workman, went wrong in opining that as a model employer the bank can afford an opportunity to the workman in reforming himself by

reinstating him into service. As already observed, for the very survival of the financial institutions like the banks and the other allied organizations, the faith of the general public is paramount. Therefore, once the guilt is held to be proved in charges of illegal gratification, for reinstatement, apart from the above reason given by the Tribunal, even if some other reasons are given, the same cannot be appreciated.

18. It is also to be seen that the quantum of loss caused to the Management is also immaterial for interfering in the cases of present nature. Further even the offences punishable under the penal code are much inferior when compared to that of offences like accepting illegal gratification, bribery etc., since the former affects only the personal rights of an individual or group, but the later affects the whole society.

19. For the foregoing reasons, held that the award of the Tribunal in granting reinstatement with continuity of service, while upholding the guilt of the workman is illegal and erroneous. My view is also strengthened by the judgment of the Apex Court in, U.P. State Road Transport Corpn. v. Subhash Chandra Sharma, (2003) 3 SCC 324, wherein it was held as under:

9. It was certainly a serious charge of misconduct against the respondent. In such circumstances, the Labour Court was not justified in interfering with the order of removal of the respondent from the service when the charge against him stood proved. Rather we find that the discretion exercised by the Labour Court in the circumstances of the present case was capricious and arbitrary and certainly not justified.

20. Accordingly I pass the order as under:

The order of dismissal imposed by the disciplinary authority is restored and the award of the Tribunal is set aside.

21. Hence, the W.P.No. 9552/1995 filed by the Management is allowed and the W.P. No. 8856/1995 filed by the workman is dismissed. In the circumstances of the case, mere shall be no order as to costs.

22. In view of the above, no orders need be passed in the contempt case and the same is also closed.

23. In view of the fact that the workman is only an Attender and considering his economic status, I feel it not expedient to direct the workman to repay the wages received by him during the pendency of the writ petition and hence there shall be no order to that effect.

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