

The General Manager. Vs. Sri Mohd.Fareed and Another

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Court : Andhra Pradesh

Decided On : Oct-21-2010

Judge : L.Narasimha Reddy, J.

Acts : [Industrial Disputes Act, 1947](#) - Sections 2-A(2), 11-A, 17-B

Appeal No. : Writ Petition No.816 of 2004

Appellant : The General Manager.

Respondent : Sri Mohd.Fareed and Another

Advocate for Def. : G.Vidyasagar, Adv.

Advocate for Pet/Ap. : K.Srinivasa Murthy, Adv.

Judgement :

ORDER:

The father of the 1st respondent (for short 'the respondent') was working as Conveyor Operator in the Singareni Collieries Company Limited, the petitioner herein. He was retired on medical grounds. There existed a facility to provide employment to the dependants of medically invalidated employees. The respondent was appointed as Badli Filler under that scheme, by order, dated 14.06.1992.

The petitioner served a charge sheet on the respondent, on 12.08.1993, alleging that he submitted a fraudulent medical certificate said to have been issued to his father. The respondent submitted his explanation, denying the allegation. Domestic Enquiry was conducted and the charge was held proved. Thereafter, the petitioner passed an order, dated 02.07.1999, dismissing the respondent from service. The respondent raised an industrial dispute under Section 2-A(2) of the [Industrial Disputes Act, 1947](#) (for short 'the Act'), before the Labour Court, Godavarikhani. It was pleaded that the charge framed against him was not proved, at all, and the punishment imposed against him is totally disproportionate. The I.D. was opposed by the petitioner. The Labour Court passed award, dated 07.04.2003, setting aside the order of dismissal and directing reinstatement of the respondent without back wages. The award is challenged in this Writ Petition.

Sri K.Srinivasa Murthy, learned counsel for the petitioner, submits that the Labour Court ought not to have entertained the I.D., since the appropriate Government, viz., the petitioner is, the Central Government. On merits, it is stated that the Labour Court, on the one hand, found that the charge was not proved, and on the other hand, did not give opportunity to the petitioner to lead evidence. He contends that though no oral evidence was adduced, the documentary evidence, that constituted the record of the Enquiry Officer, was sufficient to prove the charge. Sri G.Vidya Sagar, learned Standing Counsel for the respondent, on the other hand, submits that Section 2-A(2) of the Act applies, even where the appropriate Government is the Central Government. He contends that the Labour Court recorded a clear finding to the effect that the charge framed against the respondent was not proved. Learned counsel further submits that the respondent was denied all the wages for the past several years, and the award does not warrant any interference.

Though the contention, as to the applicability of Section 2-A(2) of the Act to the proceedings, where appropriate Government is the Central Government, is raised, it is not pressed during the course of hearing. Hence, it is not dealt with, in detail.

The respondent came to be appointed, almost on compassionate grounds, on account of the retirement of his father, from the service of the petitioner, on

medical grounds. Hardly within one year, from the date of his appointment, a charge sheet was served upon him, alleging that the medical unfit certificate of his father is found to be fake, and not genuine. The respondent submitted his explanation and not satisfied with that, the petitioner ordered domestic enquiry.

A detailed report was submitted by the Enquiry Officer on 29.05.1997. A perusal of the same discloses that, except the Presenting Officer, no other witness has spoken to the charge levelled against the respondent. Though as many as 12 documents were referred to, in the enquiry, no witness has spoken to those documents. The Enquiry Officer, however, held that the charge is proved, and this was followed by an order of dismissal. The respondent assailed the order of dismissal on several grounds. One of it was that, the charge framed against him was not proved. The Labour Court accepted that.

It is urged on behalf of the petitioner that, the Labour Court was under obligation to give an opportunity to the petitioner to lead the evidence, afresh. This contention cannot be accepted. The reason is that the respondent did not complain of any procedural defect in the enquiry. In this context, a clear distinction needs to be maintained between the complaint, as to the procedural defect in a domestic enquiry, on the one hand, and the plea, that the charge that has not been proved in the enquiry, on the other. The first one relates, mostly to procedural defects, whereas the second one pertains to the very absence or insufficiency of evidence, to prove the charge.

It is only in the case of the former, that the Labour Court, if convinced, can record a finding to the effect that the domestic enquiry is defective, and in that event, require the employer to lead evidence. After such evidence is adduced, the Labour Court shall have to proceed to exercise power under Section 11-A of the Act. Where, however, a workman alleges that the charge against him was not proved in the domestic enquiry, the Labour Court shall not be under obligation to give opportunity to the management, or the employer to lead evidence. It has only to concentrate, as to whether the evidence on record is sufficient, to hold that the charge is proved.

In the instant case, the charge against the respondent was that, he filed a fake medical certificate pertaining to his father. The petitioner was under obligation to prove that charge by examining the persons, who came to the conclusion, or confirmed the opinion that the certificate is fake. The case was presented before the Enquiry Officer by the Presenting Officer. Not a single witness was examined. For all practical purposes, the Presenting Officer answers the description of a counsel, and by no stretch of imagination, he can be treated as witness, much less, he can vouch for the correctness or otherwise of the documents, produced by him. It is only the persons who are the custodians of the concerned records, or who are acquainted with the facts of the case, that can be examined as witnesses and who can throw light upon a truth or otherwise of the allegation or charge. Once it has emerged that no person was examined in support of the charge, the inescapable conclusion is that, the charge was not proved at all. The Labour Court noticed this serious flaw, and held that the charge against the respondent was not proved. This Court is not inclined to take any different view.

While admitting the writ petition, this Court granted interim stay subject to compliance with Section 17-B of the Act. It is stated that the respondent is being paid the wages as per that provision. It is felt that there is no need to direct the payment of the balance of wages, since no work was extracted from him, during the pendency of the writ petition. Hence, the Writ Petition is dismissed, upholding the award, dated 07.04.2003, passed by the Labour Court. It is, however, directed that the petitioner shall reinstate the respondent within a period of four weeks from today. The petitioner shall not be under obligation to pay difference of wages, for the period during which, the writ petition was pending.

His pay, however, shall be fixed, by taking into account, the length of service. There shall be no order as costs.

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