REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELALTE JURISDICTION

CIVIL APPEAL NO. 7406 OF 2008
[Arising out of Special Leave Petition (Civil) No. 8535 of 2007]

THE DEPOT MANAGER A.P.S.R.T.C. ….. APPELLANT

Versus

P. JAYARAM REDDY ….. RESPONDENT

J U D G M E N T

S.B. SINHA, J.

1. Leave granted.

2. Appellant is before us aggrieved by and dissatisfied with a judgment and order dated 30.9.2005 passed by a Division Bench of the High Court of Judicature of Andhra Pradesh at Hyderabad in Writ Appeal No. 2013 of 2004 affirming a judgment and order dated 26.6.2003 passed by a learned

single judge of the said Court allowing the Writ Petition filed by respondent herein challenging an award dated 9.8.1996 passed by the Presiding Officer, Labour Court II, Hyderabad in Industrial Dispute No. 183 of 1993 to the extent it denies the full back wages to the respondent.

3. The admitted fact of the matter is as under:

Respondent was appointed as a conductor of Siddipet Depot on casual basis. He was removed from service by an order dated 8.9.1987 for alleged commission of a misconduct relating to sale of tickets and other irregularities in respect thereof. However, a notification in the mean time was issued notifying 300 vacancies of conductors on 2.9.1987. The last date for filing an application for appointment pursuant thereto was fixed as 14.9.1987. He applied for the said post and eventually appointed by the appellant for its Zaheerabad Depot which is said to be 200 kilometers away from Siddipet Depot.

4. Indisputably, respondent did not disclose that he had earlier been removed from service on the charges of misconduct. His services were also regularized. However, later on the Corporation came to learn that the respondent had concealed the fact as regards his previous employment with it and his removal therefrom. A charge sheet was issued. Pursuant thereto, a departmental proceeding was initiated. In the said departmental proceeding, he was found guilty of the charges levelled against him. A second show cause notice was issued to which respondent showed cause. An order of removal from service was issued on or about 27.4.1992. An appeal preferred thereagainst was also dismissed by reason of order dated 20.10.1992.

5. Respondent filed an application before the Labour Court questioning the said order of removal as also the appellate order in terms of Section 2-A (2) of the Industrial Disputes Act, 1947 (for short, "the Act") praying for setting aside the order of removal and reinstatement with all benefits of continuity in service and back wages. One of the objections taken by appellant before the Labour Court was that respondent had obtained

employment upon concealing the facts of his previous employment. By reason of an award, the Labour Court although opined that the disciplinary proceeding held against the respondent was valid and proper and the principles of natural justice have been complied with, but relying on or on the basis of a decision of the Andhra Pradesh High Court dated 28.7.1987 that there being no column in the application form for supply of information with regard to previous employment, no misconduct can be said to have been committed by the employee in securing another employment, holding:

> "The contention of the corporation that the proforma in that fashion was notified nor requiring specifically to furnish information of the past employment of the candidate is intended mainly for the fresh candidate but not in case of an employee who was already removed for certain acts of misconduct committed and that the petitioner ought to have appealed to the high officials against his removal orders during the past employment for consideration but not to apply for appointment as a fresh candidate, cannot be accepted as rightly that when a particular information was asked to be furnished there was no duty and responsibility cast on a candidate seeking for employment. On an overall consideration of all the material made available on record this court cannot persuaded itself to accept the contentions of the respondent and to justify the impugned removal orders in question before us but on the other hand this Court is satisfied that the

> impugned punishment of removal imposed on the petitioner is very much harsh, disproportionate and unjustified rendering itself liable to be set aside and entitling the petitioner to be reinstated with all benefits except with full backwages."

6. A writ petition was preferred thereagainst by the respondent only contending that the benefit of payment of full back wages was denied to him. A learned single judge of the High Court of Judicature of Andhra Pradesh at Hyderabad allowed the said writ petition, opining:

> "The order removing him from service having been rightly held invalid the petitioner ought to have been granted the benefit of back wages too, for the period he was put out of service illegally and without any jurisdiction.
>
> On the above analysis the order of the Labour Court in I.D. No. 103/1993 dated 9.8.1998 to the extent it denies the full back wages to the petitioner is unsustainable and is set aside. It is brought to my notice by Sri Sai Ram Goud, learned counsel for the petitioner that the petitioner has obtained employment in November, 1996 soon after pronouncement of the award in I.D. No. 103/1993 and before publication of the award in G.O. Rt. No. 244 dated 3.2.1997 and that this fact has been informed to the respondent corporation. It is therefore very fairly contended by Sri Sairam Goud learned counsel for the petitioner that the entitlement of the petitioner for

> back wages would be only from 27.4.1992 to October 1996 the latter being the month after which he had obtained alternative and gain employment and was therefore no longer in service of the respondent corporation."

7. An intra court appeal preferred thereagainst by the appellant, as noticed hereinbefore, has been dismissed by reason of the impugned judgment.

8. Ms. Radha Rani, learned counsel appearing on behalf of the appellant would submit that in view of the fact that the Labour Court refused to exercise its discretionary jurisdiction in favour of the respondent in the matter of grant of back wages, the High Court should not have interfered therewith.

9. Mr. R.V. Kameshwaran, learned counsel appearing on behalf of the respondent, on the other hand, submitted that the order of removal having been passed by the Corporation ignoring the binding precedents of the

decision of the High Court of Judicature of Andhra Pradesh at Hyderabad, no interference with the impugned judgment is warranted.

10. Indisputably, the respondent was a casual employee. His services were terminated on the charges of grave misconduct. However, he was again appointed in ignorance thereof. It is one thing to say that the respondent had no duty to furnish information thereabout but it is another thing to say that the order of appointment was passed in ignorance of the fact that his services had been terminated on the charges of grave misconduct. The Labour Court did not arrive at a finding that the order of removal was mala fide or was made in colourable exercise of power or amounted to victimization of the employee or at the instance of a rival union.

11. An order of removal from services has some consequences. It may not bar future employment but the nature of the order and the consequences are required to be judged keeping in view the entire factual scenario. {see Dr. Dattatraya Mahadev Nadkarni since deceased by His L.Rs. vs. Municipal Corporation of Greater Bombay [(1992) 2 SCC 547].

12. Although on general principle, an order of removal may not bar future employment but indisputably the same would mean causing vacation of office as a result of misconduct or misbehaviour or any other similar cause. In a case where an employee occupying a position of trust is removed from the office, a loss of confidence in him may occur. Had appellant, therefore, any knowledge thereabout, the employee might not have been reappointed at all.

13. The learned Presiding Officer, Labour Court considered the entire matter. He opined that the punishment of removal from service imposed upon the respondent was 'very much harsh, disproportionate and unjustified'. There is no finding that the order of removal was wholly illegal and, thus, void ab initio. As noticed hereinbefore, the validity and/or legality of the domestic enquiry was upheld. The Labour Court in exercise of its power under Section 11A of the Act may substitute one punishment for the other in the event it comes to the conclusion that the quantum of punishment is disproportionate to the gravity of the misconduct wherewith

the delinquent employee was charged. It is one thing to say that the order of reinstatement with back wages is a logical corollary of a finding that the order of termination is wholly illegal and without jurisdiction but it is another thing to say that the punishment imposed being very harsh and disproportionate and, therefore, was found to be unjustified. Whereas in the former case, back wages may or may not be granted keeping in view the facts and circumstances of the case but in the latter the labour court may substitute one punishment for the other. The award of the labour court belongs to the second category of cases. If that be so, the High Court was bound to consider as to whether it should interfere with such a discretionary jurisdiction exercised by the Labour Court. It has not been found by the High Court that the discretionary jurisdiction exercised by the labour court was otherwise arbitrary or perverse. It posed unto itself a wrong question, namely, whether the respondent was in gainful employment or not and not the right question, namely, whether the jurisdiction has lawfully been exercised or not. The judgment and order passed by the High Court, therefore, amounted to misdirection in law.

14. In P.G.I. of Medical Education & Research, Chandigarh vs. Raj Kumar [(2001) 2 SCC 54], this Court held:

> "9. The Labour Court being the final court of facts came to a conclusion that payment of 60% wages would comply with the requirement of law. The finding of perversity or being erroneous or not in accordance with law shall have to be recorded with reasons in order to assail the finding of the Tribunal or the Labour Court. It is not for the High Court to go into the factual aspects of the matter and there is an existing limitation on the High Court to that effect. In the event, however the finding of fact is based on any misappreciation of evidence, that would be deemed to be an error of law which can be corrected by a writ of certiorari. The law is well settled to the effect that finding of the Labour Court cannot be challenge in a proceeding in a writ of certiorari on the ground that the relevant and material evidence adduced before the Labour Court was insufficient or inadequate though however perversity of the order would warrant intervention of the High Court. The observation, as above, stands well settled since the decision of this Court in Syed Yakoob v. K.S. Radhakrishna [AIR 1964 SC 477]"

{See also State of Rajasthan & ors. Vs. Sujata Malhotra [(2003) 9 SCC 286]}

15. Reliance has however been placed by the learned counsel for the respondent on a decision of this Court in J.K. Synthetics Ltd. vs. K.P. Agrawal & Anr. [(2007) 2 SCC 433] wherein it was held:

> "20. But there are two exceptions. The first is where the court sets aside the termination as a consequence of employee being exonerated or being found not guilty of the misconduct. Second is where the court reaches a conclusion that the inquiry was held in respect of a frivolous issue or petty misconduct, as a camouflage to get rid of the employee or victimize him, and the disproportionately excessive punishment is a result of such scheme or intention. In such cases, the principles relating to back-wages etc. will be the same as those applied in the cases of an illegal termination.
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> 21. In this case, the Labour Court found that a charge against the employee in respect of a serious misconduct was proved. It, however, felt that the punishment of dismissal was not warranted and therefore, imposed a lesser punishment of withholding the two annual increments. In such circumstances, award of back wages was neither automatic nor consequential. In fact, back wages was not warranted at all."

Thus, the said decision itself is an authority that grant of back wages is not automatic.

We may also notice that therein this Court emphasized that the Courts or the Tribunals while directing reinstatement are required to apply their judicial mind to the facts and circumstances to decide whether "continuity of service" and/or "consequential benefits" should also be directed; and as regards back wages whether the same should be awarded fully or only partially would depend upon the facts and circumstances of each case. The said decision therefore instead of assisting the case of the respondent, assists the case of the appellant.

16. In Amrit Vanaspati Co. Ltd. v. Khem Chand and Anr.[(2006) 6 SCC 325] , this Court held:

> "In our opinion, the High Court while exercising powers under writ jurisdiction cannot deal with aspects like whether the quantum of punishment meted out by the management to a workman for a particular misconduct is sufficient or not. This apart, the High Court while exercising powers under the writ jurisdiction cannot interfere with the factual findings of the Labour Court which are based on appreciation of facts adduced before it by leading evidence. In our opinion, the High Court has gravely erred in holding that the evidence of Respondent 1 was not considered by the Labour Court and had returned the finding that the evidence of Respondent 1 did not inspire any confidence. We are of the opinion that the High

> Court is not right in interfering with the well-considered order passed by the Labour Court confirming the order of dismissal."

{See also U.P.S.R.T.C. Vs. Ram Kishan Arora [(2007) 4 SCC 627]}

17. We furthermore must take into consideration certain subsequent events. Respondent did not join the services of appellant pursuant to the award of reinstatement. He obtained an alternative employment in October 1996. He is still continuing in the said job. He has already been paid a sum of Rs.83,954/- by way of back wages.

18. For the reasons aforementioned, the impugned judgment of the High Court cannot be sustained, and is set aside. The appeal is allowed accordingly. However, the amount of Rs.83,954/- already paid by way of back wages may not be recovered from the respondent.

In the facts and circumstances of the case, there shall be no order as to costs.

……..…..……J.
[S.B. Sinha]

..……..……J.
[Cyriac Joseph]

New Delhi;
December 18, 2008