IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY NINETH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION No. 6159 of 1998

Between:

G. Mohan Reddy S/o Agam Reddy
R/o 1-9-44, Bowenpally,
Secunderabad–11.

..... PETITIONER

AND

1 The Presiding Officer, Labour Court No.III,
Chandra Vihar Buildings, M.J. Road,
Hyderabad.
2 The Managing Director, M/s. Cheminor Drugs Ltd.,
Plot No.9/A, Phase-III, IDA Jeedimetla,
Hyderabad-854

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to call for the records pertaining to the award Dt: 26-12-1996 in I.D.No.726/1993 passed by the learned 1st Respondent published under Sec.17 of the Industrial Disputes Act 1947 on 10-4-1997 and quash the same by issuance of Writ of Certiorari or any other Writ, Order, direction in granting compensation of 12 months pay Net Salary calculating the salary as on the date of dismissal instead of re-instatement with full back-wages and continuity of service and all other attendant benefits and consequently direct the 2nd Respondent to re-instate into service with full back wages, continuity of service with all other attendant benefits.

Counsel for the Petitioner: Mr.V.NARASIMHA GOUD

Counsel for the Respondent No.1: G.P. for Labour

Counsel for the Respondent No.2: MR.C.R.SRIDHARAN

The Court made the following :

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O R D E R:

This writ petition is filed by the workman being aggrieved by the Award of the Labour Court-III, Hyderabad in I.D.No.726 of 1993, dated 26-12-1996.

By the impugned Award, the order of dismissal passed by the respondent-Management against the petitioner-workman was upheld; however, in the circumstances, the management was directed to pay 12 months net salary calculating the same as on the date of dismissal as compensation, apart from other benefits, if any, available to the workman as per law. Petitioner is aggrieved as to denial of reinstatement, continuity of service and other benefits.

According to the petitioner, he joined the service of the 2nd respondent-company on 16-10-1984 as Boiler Operator. He was a member of the Cheminor Drugs Employees Union and was elected as General Secretary of the union. In the capacity of the General Secretary of the Union, he submitted representations dated 21-8-1992, 14-12-1992, 23-12-1992 and finally on 24-12-1992 requesting the 2nd respondent-management to increase the man power by providing extra Helpers for maintenance of boilers, since the company is manufacturing bulk drugs, which involves continuous process. The management bore grudge against him for the genuine activities undertaken and were waiting for a chance. While so, on 23-12-1992 in the night shift, the management suspended three boiler operators. The employees agitated against the management for their action of suspending the three boiler operators and there was commotion among the employees and they resorted to tool down strike and the decision was taken by all the employees put together. Therefore, the management issued a charge sheet-cum-suspension order dated 29-12-1992 against him alleging wilful insubordination, inciting other workers to go on strike in contravention of the provisions of law, riotous and disorderly behaviour during the working hours at the establishment and wilfully damaging the property of the establishment. *Inter alia,* petitioner also stated that the relevant documents on which the charges were based were not supplied to him and he was handicapped for submitting the explanation effectively. However, he submitted his explanation with great difficulty. He explained that he did not incite other workers to resort 'tool

down strike' and as such, he never disobeyed the orders of any superiors and never behaved riotously or disorderly during working hours and also never damaged willfully any property of the establishment. The respondent-management without assigning any reasons and ignoring his explanation, ordered for an inquiry and the Inquiry Officer has not furnished the list of witnesses or the list of documents, which they relied upon in support of the charges. Ultimately, final order was passed dismissing him from service on 26-7-1993. Though several other persons were charged for the similar misconduct, they were taken on duty, whereas severe punishment of dismissal from service was imposed against him.

A detailed counter affidavit was filed by the management before the Labour Court denying the allegations made by the petitioner and asserting that there is a settlement between the Union and the Management with regard to the service conditions and the strike resorted to was illegal. The inquiry was conducted after giving adequate opportunity to the petitioner and the Inquiry Officer found that the charges levelled against the petitioner were proved. The past record of the petitioner was also not good. Therefore, it is not desirable to reinstate him in any circumstances. Before the Labour Court, no oral evidence was adduced by either party, but Exs.W1 to W6 were marked on behalf of the petitioner-workman and Exs.M1 to M26 were marked for the respondent-management. There is no dispute that no strike can be undertaken without giving advance notice, since the industry is a notified industry under Section 2(n) of the Industrial Disputes Act,1947. Thus, the strike was construed to be an illegal one. The Labour Court recorded a finding that Exs.M1 and M3 clearly show that the petitioner participated in the strike, though the Inquiry Officer came to the conclusion that the petitioner is responsible for organizing the strike. There was no material to show that the petitioner was solely responsible for the strike affecting the production and in violation of the provisions of the Act. It is further observed that the totality of the reading of material shows that the petitioner was part and parcel of the spontaneous strike, but was not completely responsible for strike. The misconduct established was only to the extent that the petitioner participated in the strike, but not organized it. However, the Labour Court favoured the argument of the management that the petitioner had shown complete disobedience to the management and if indiscipline is allowed, the management cannot run the industry; therefore, they are not prepared to reinstate the petitioner, if the Labour Court finds that the misconduct is not proved. In other words, management expressed lack of confidence in the workman. Ultimately, it was held

that the punishment was disproportionate and in lieu of reinstatement, the petitioner was granted 12 months salary towards compensation.

Learned counsel for the petitioner vehemently contends that once the Labour Court comes to the conclusion that there was no material to show that the petitioner was solely responsible for the strike affecting the production and in violation of the strike notice, it ought to have directed the management to reinstate the petitioner into service with continuity of service, back wages and other benefits. Accepting the contention of the learned counsel for the management that they have lost confidence in the workman, granting compensation only for 12 months was not proper. Therefore, the impugned Award is arbitrary and illegal and the same is liable to be set aside and a declaration needs to be made that the petitioner is entitled for reinstatement with continuity of service, back wages and other attendant benefits. There are some other workmen, who were charge sheeted for the same misconduct, but they were taken on duty, whereas the petitioner was discriminated. Similarly placed persons cannot be discriminated, since the Labour Court found that there was no material that the petitioner was responsible for organizing the strike. In support of his contentions, he relied upon the decisions in **BURN & CO. LTD. v. THEIR WORKMEN, HIND CONSTRUCTION & ENGINEERING CO.LTD. v. THEIR WORKMEN COLOUR CHEM v. A.L.ALASPURKAR** and **DIVISIONAL MANAGER, APSRTC v. E.RAGA REDDY.**

In **BURN & CO.LTD** case (1 supra), the apex Court held as follows:

"10. Concerning the remaining 4 persons it was strongly urged that they had participated in an illegal strike and had incited such a strike. The finding of the Tribunal, however, was clear that there was no dependable evidence against these workmen that they had incited the workers to participate in the strike. The question, therefore, is whether mere participation in an illegal strike would be a sufficient ground on which we should reverse the award of the Tribunal that the order of suspension in the case of these persons could not be upheld. It is to be remembered that although the strike was illegal, a very large number of workmen had gone on strike. All of them had been taken back when the Works were reopened, except the 7 persons covered by Item 18. On the findings, the evidence was very weak to show that any overt action was taken by these four persons apart from their joining in the strike along with other workmen. The evidence did not specifically bring home any charge of incitement against these persons. It cannot be said that mere participation in the strike would justify their suspension or dismissal, particularly when no clear distinction can be made between these persons and the very large number of workmen who had been taken back into service although they had participated in the strike. We do not think that the finding of the Tribunal that the order of suspension against these persons cannot be upheld is so patently erroneous in law as to justify our interference with the award of the Tribunal in this respect. The award of the Tribunal so far as these workmen are concerned is, accordingly, upheld."

In **HIND CONSTRUCTION CO.** case (2 supra), the Apex Court held as under:

"**5.** The next question is whether the Tribunal was justified in interfering with the punishment of dismissal after it had come to the conclusion that the workmen had gone on a strike even though the strike was not illegal. Reference is made to a number of cases in which the principles for the guidance of the Tribunals in such matters have been laid down by this Court. It is now settled law that the Tribunal is not to examine the finding or the quantum of punishment because the whole of the dispute is not really open before the Tribunal as it is ordinarily before a Court of appeal. The Tribunal's powers have been stated by this Court in a large number of cases and it has been ruled that the Tribunal can only interfere if the conduct of the employer shows lack of bona fides or victimization of employee or employees or unfair labour practice. The Tribunal may in a strong case interfere with a basic error on a point of fact or a perverse finding, but it cannot substitute its own appraisal of the evidence for that of the officer conducting the domestic enquiry though it may interfere where the principles of natural justice or fair play have not been followed or where the enquiry is so perverted in its procedure as to amount to no enquiry at all. In respect of punishment it has been ruled that the award of punishment for misconduct under the standing orders, if any, is a matter for the management to decide and if there is any justification for the punishment imposed the Tribunal should not interfere. The Tribunal is not required to consider the propriety or adequacy of the punishment or whether it is excessive or too severe. But where the punishment is shockingly disproportionate, regard being had to the particular conduct and the past record or is such, as no reasonable employer would ever impose in like circumstances, the Tribunal may treat the imposition of such punishment as itself showing victimization or unfair labour practice."

In **COLOUR CHEM'**s case (3 supra), it was held by the Supreme Court as under:

"So far as this point is concerned it has to be held that when the punishment of dismissal was shockingly disproportionate to the charges held proved against them reinstatement with continuity of service was the least that could have been ordered in their favour. There is no question of appellant losing confidence in them. In this connection learned senior counsel for the appellant tried to submit that apart from going to sleep in the early hours of the morning when the night shift was coming to a close the machine was kept working and that would have created a hazard for the working of the plant and possibility of explosion was likely to arise. So far as this contention is concerned it must be stated that this was not the case of the management while framing the charge-sheets against the workmen. Not only that, there is not a whisper about the said eventuality and possibility in the evidence led by the management before the Labour Court. But that apart no such contention, even though mentioned in the written objections before the Labour Court, was ever pressed in service for consideration before the Labour Court at the stage of arguments, nor any decision was invited on this aspect. No such contention was also canvassed by the appellant in revision before the Industrial Court or before the High Court. This contention, therefore, must be treated to be clearly an afterthought and appears to have been rightly given up in subsequent stages of the trial by the management itself. All that was alleged by its witness before the Court was that because of the respondents going to sleep and allowing the machine to work without pouring raw material therein the production went down to some extent. That has nothing to do with the working of the unattended machine becoming a hazard or inviting possibility of any explosion. Under these circumstances and especially looking to the past service record of the respondents it could not be said that the management would lose confidence in these workmen. The work which they were doing was not of any confidential nature which an operator has to carry out in the plant. It was a manual work which could be entrusted to

anyone. Consequently the submission of learned senior counsel for the appellant, that in lieu of reinstatement compensation may be awarded to the respondents, cannot be countenanced. It must, therefore, he held that the Labour Court was quite justified in ordering reinstatement of respondent-workmen with continuity of service. However because of the misconduct committed by them, of sleeping while on duty in the night shift the Labour Court has imposed the penalty of depriving the workmen, respondents Nos. 3 and 4 respectively, of 60% and 50% of the back wages. After the award they have been granted 100% back wages till reinstatement. But, in our view, as respondents Nos. 3 and 4 went to sleep while on duty and that too not alone but in company of the entire staff of 10 mazdoors, they deserve to be further punished by being deprived of at least some part of back wages even after the award of the Labour Court till actual reinstatement. Interest of justice would be served in our view, if respondent No. 3 is directed to be paid only 40% of the back wages even after the award of the Labour Court till actual reinstatement pursuant to our present order. Similarly respondent No. 4 will be entitled to only 50% back wages even after the date of the Labour Court's award till actual reinstatement as per the present order. In addition thereto, the appellant-management will be entitled to give written warnings to both these respondents when they are reinstated in service not to repeat such misconducts in future. The imposition of this type of additional penalty, in our view, would be sufficient in the facts and circumstances of the case and will operate as suitable corrective for the respondent-employees. They have suffered enough since more than 14 years. They are out of service for all these 14 years. At the time when they went to sleep in the night shift they were pretty young. Now they have naturally grown up in age and with passage of years more maturity must have dawned on them. Under these circumstances the cut in the back wages as imposed by the Labour Court and as further imposed by us would be quite sufficient to act as deterrent for them so that such misconducts may not be committed by them in future. The third point is answered as aforesaid by holding that the order of re-instatement is justified but the order of back wages as ordered by the Labour Court requires to be modified to the aforesaid extent."

I n **DIVISIONAL MANAGER, APSRTC** case (4 supra), this Court held that the Labour Court/Industrial Tribunal after introduction of Section 11-A of the Act is clothed with necessary power and jurisdiction to reappraise the material available on record and substitute its own findings for that of the disciplinary authority and the power exercised by the Labour Court/Industrial Tribunal is akin to that of an appellate Court. The Labour Court/Tribunal is duty bound to reappreciate the evidence even in cases where the workman files a Memo conceding as to the validity of the domestic inquiry.

On the other hand, learned counsel for the 2nd respondent submits that the finding of the Labour Court that there was no material to show that the petitioner was solely responsible for the strike affecting the production was only a misreading of evidence

before it and the petitioner did obstruct and instigate the persons to participate in the illegal strike. He also submits that a strike even for one day is illegal, if it is not preceded by notice as per the provisions of the Act and once the petitioner was responsible for such a strike, the dismissal order cannot be said to be bad in law. In support of his contention, he relied upon the decisions in ***Bengal Bhatdee Coal Co. v. Ram Probesh Singh, C.M.C.H. Employees' Union v. C.M. College, Vellore Association*** and ***Depot Manager, APSRTC v. G.Rajaiah.***

In **Bengal Bhatdee Coal Co** case (5 supra), the Apex Court held as under:

> **"6.** Now there is no doubt that though in a case of proved misconduct, normally the imposition of a penalty may be within the discretion of the management there may be cases where the punishment of dismissal for the misconduct proved may be so unconscionable or so grossly out of proportion to the nature of offence that the tribunal may be able to draw an inference of victimization merely from the punishment inflicted. But we are of opinion that the present is not such a case and no inference of victimization can be made merely from the fact that punishment of dismissal was imposed in this case and not either fine or suspension. It is not in dispute that a strike was going on during those days when the misconduct was committed. It was the case of the appellant that the strike was unjustified and illegal and it appears that the Regional Labour Commissioner Central, Dhanbad, agreed with this view of the appellant. It was during such a strike that the misconduct in question took place and the misconduct was that these thirteen workmen physically obstructed other workmen who were willing to work from doing their work by sitting down between the tramlines. This was in our opinion serious misconduct on the part of the thirteen workmen and if it is found as it has been found proved punishment, dismissal would be perfectly justified. It cannot therefore be said looking the nature of the offence that the punishment inflicted in this case was grossly out of proportion or was unconscionable, and the tribunal was not justified in coming to the conclusion that this was a case of victimization because the appellant decided to dismiss these workmen and was not prepared to let them off with fine or suspension.

In ***Christian Medical College Hospital Employees' Union v. C.M.C. Vellore Assn.,*** *(6 supra),* the Supreme Court held as under:

> "……..A reference under the Act has to be made by the Government either when both parties requested the Government to refer an industrial dispute for adjudication or only when it is satisfied that there exists an industrial dispute. When an industrial dispute exists or is apprehended, the conciliation officer should first consider whether it can be settled after hearing both the parties and it is only when his efforts to bring about a settlement fail and he makes a report accordingly to the appropriate Government, the Government is called upon to take a decision on the question whether the case is a fit one for reference to the Industrial Tribunal or the Labour Court. It is only when a reference is made by the Government the Industrial Tribunal or the Labour Court gets jurisdiction to decide a case. It cannot, therefore, be said that each and every dispute raised by a workman would automatically end up in a reference to the Industrial Tribunal or the Labour Court. Secondly, the circumstances in which the Industrial Tribunal or the Labour Court may set aside the decision arrived at by the management in the course of a domestic enquiry held by the management into an act of misconduct of a workman are evolved by a series of judicial decisions. In *Indian Iron & Steel Co. Ltd.* v. *Workmen*[3] this Court has observed that the powers of an industrial tribunal to interfere in cases of dismissal of a workman by the management are not unlimited and the

> Tribunal does not act as a court of appeal and substitute its own judgment for that of the management. It will interfere (*a*) where there is want of good faith; (*b*) when there is victimisation or unfair labour practice; (*c*) when the management has been guilty of the basic error or violation of the principles of natural justice; and (*d*) when on the materials before the court the finding is completely baseless or perverse. It cannot, therefore, be said that the Industrial Tribunal or the Labour Court will function arbitrarily and interfere with every decision of the management as regards dismissal or discharge of a workman arrived at in a disciplinary enquiry. The power exercisable by the Industrial Tribunal or the Labour Court cannot, therefore, be equated with the power of "veto" conferred on the Vice-Chancellor under clause (*b*) of either of the two sub-sections of Section 51-A of the Gujarat University Act, 1949. As we have already said earlier the decision of the Industrial Tribunal or the Labour Court is open to judicial review by the High Court and by this Court on appeal. Section 11-A which has been introduced since then into the Act which confers the power on the Industrial Tribunal or the Labour Court to substitute a lesser punishment in lieu of the order of discharge or dismissal passed by the management again cannot be considered as conferring an arbitrary power on the Industrial Tribunal or the Labour Court. The power under Section 11-A of the Act has to be exercised judicially and the Industrial Tribunal or the Labour Court is expected to interfere with the decision of a management under Section 11-A of the Act only when it is satisfied that the punishment imposed by the management is highly disproportionate to the degree of guilt of the workman concerned. The Industrial Tribunal or the Labour Court has to give reasons for its decision. The decision of the Industrial Tribunal or of the Labour Court is again, as already said, subject to judicial review by the High Court and this Court.

In **DEPOT MANAGER, APSRTC** case (7 supra), this Court held that no absolute power is conferred upon the Labour Court to interfere with the order of punishment imposed by the disciplinary authority for some undisclosed reasons and in fact, no such power is conferred upon the Labour Court to interfere with the orders of disciplinary authority in an arbitrary and capricious manner.

In this regard, learned counsel for the petitioner also drawn attention of the Court to the very Inquiry Officer's report on which reliance was placed by the Labour Court and states that absolutely there was no evidence to show that the petitioner has organized or in any way responsible for the strike. Before the Inquiry Officer, four witnesses were examined on behalf of the management. M.W.2 – Senior Vice President (Plant Operations) categorically stated that the petitioner and others physically obstructed all workers, who were coming to attend 'A' shift duty on 24-12-1992. In the cross-examination also, this witness reiterated that the petitioner physically obstructed all workmen, who were attending the 'A' shift duty on 24-12-1992. M.W.3 – Production Manager – stated that among others, petitioner, C.Narasimha, K.Mallesh, Srinivasa Reddy, V.Ranga Swamy, M.Nagaraju, D.Arjuna Rao and M. Venkata Rao were also in the security and apart from them M/s.G.Parameswara Rao, T.Lingam and P.D.Anandam, who were not on duty were also sitting in the security. He also stated that it was observed by him that the

petitioner and others physically obstructed the workmen, who were entering the factory for reporting duty for 'A' shift on 24-12-1992. During the cross-examination, he asserted that four workers including the petitioner obstructed the workmen, who were coming for 'A' shift duty. He reiterated that the petitioner instigated and physically obstructed all workmen, who were coming to report for 'A' shift duty on 24-12-1992. Even in the evidence of M.W.4, who was working as Helper, it came to light that the petitioner obstructed him at 6.00 a.m. on 24-12-1992 at the security gate. On 24-12-1992 he had a weekly-off, but one Narasimha Reddy asked him to come to duty; therefore, he came to duty. He has been working in the factory since 12-5-1992. At the time when the petitioner obstructed him from entering into the factory, there were three officials. Though the petitioner did not threaten him, but the petitioner told him that they were going on strike and, therefore, casual workers should not enter the factory and while saying so, the petitioner took him out by holding his hand. On this evidence, the Inquiry Officer held that the allegation regarding instigating loyal workers to go on strike was established and the petitioner made an effort to show that the action was spontaneous, though he did not dispute the fact that the strike was illegal due to violation of the provisions of the Act and settlement dated 30-9-1991.

As stated above, learned counsel for the management states that the Labour Court has misread the evidence and came to an erroneous conclusion that there was no evidence to show that the petitioner organized the strike or incited the workers to go on strike. I am in full agreement with the submissions made by the learned counsel for the respondent-management in the light of the evidence recorded in the domestic enquiry. The domestic enquiry was held to be valid by the Labour Court. Further, learned counsel for the petitioner states that absolutely there was no evidence to find that there was loss of confidence. There was no factual foundation to come to such a conclusion by the Labour Court. Neither this was pleaded nor it was the case of the management before the Labour Court. Per contra, learned counsel for 2nd respondent drawn attention of the Court to the counter filed by the management before the Labour Court, wherein it was stated that the petitioner was responsible for serious indiscipline in the factory among the workers and in the interest of industrial peace and harmony, it was not desirable to reinstate him under any circumstances. Learned counsel for the management says that once this is the pleading, though the words 'loss of confidence' were not mentioned, would not make any difference,

since in categorical terms, it was stated that it was not desirable to reinstate the petitioner into service under any circumstances, since the petitioner was responsible for organizing a strike, which was illegal and such an employee cannot be re-employed by the management.

Be that as it may, though several judgments were relied upon by both sides as stated above, the fact remains that the strike which the petitioner organized and obstructed other workers from attending duty and also participated himself, was illegal and the same was proved during the domestic inquiry. This Court also, on examination of the Inquiry Officer's report and the evidence let in before the Labour Court, find that there was such an evidence that the petitioner himself obstructed and instigated the other workmen to participate in the illegal strike. The Constitution Bench of the apex Court in **Bengal Bhatdee Coal Co** case (5 supra), has held that once it is an illegal strike, the workman does not deserve any lenience to be shown. In the said case also, the strike was for one day and it was declared as an illegal one. In view of the above, the contention of the petitioner that he was discriminated need not be gone into. The decisions relied upon by the learned counsel for the petitioner are of no help to the petitioner. In the circumstances, I am not inclined to disturb the findings recorded by the Labour Court to grant any further relief to the petitioner.

For all the above reasons, the writ petition fails and is accordingly dismissed. There shall be no order as to costs.

29th October,2004

Prk

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Presiding Officer, Labour Court No.III,
Chandra Vihar Buildings, M.J. Road,
Hyderabad.

2. The Managing Director, M/s.Cheminor Drugs Ltd., Plot No.9/A, Phase-III, IDA Jeedimetla, Hyderabad-854.
3. 2CCs to G.P. for Labour, High Court Buildings, Hyderabad (OUT)

4. 2CD copies