

THE HON'BLE SRI JUSTICE RAJA ELANGO

WRIT PETITION No.11479 of 2015

ORDER:

1. This writ petition is filed challenging the inaction of respondents 1 and 3 in initiating any steps to recover the amounts as per the orders passed by the 3rd respondent in APSE No.3 of 2010 dated 7.8.2011.

2. It is stated in the affidavit that the petitioner joined as Net Work Administrator in the 2nd respondent-company and worked as such till termination of his services by order dated 5.8.2010. Questioning the said order of termination, the petitioner filed First Appeal viz., APSE No.3 of 2010 before the 3rd respondent. The 3rd respondent passed orders on 7.8.2011 setting aside the termination order and directing to reinstate the petitioner with full back wages. In pursuance of the orders of the 3rd respondent, the petitioner was reinstated into service on 26.9.2011. Again, the 2nd respondent terminated the services of the petitioner on the ground that the 1st respondent set aside the order dated 7.8.2011 passed by the 3rd respondent, by allowing the Second Appeal. On that, the petitioner filed W.P.No.8423 of 2012 and obtained stay of order passed by the 1st respondent. Ultimately, the said writ petition was allowed and the matter was remanded to the 1st respondent. Aggrieved by the same, the 2nd respondent filed WA No.1452 of 2012 and the said WA was dismissed. The 2nd respondent has failed to deposit any amount or the last drawn wages from the date of the termination of the petitioner. Respondents 1 and 3 failed to take any steps for implementing the order dated 7.8.2011.

3. Heard and perused the material available on record.

4. The petitioner was reinstated into service in pursuance of the order dated 7.8.2011 passed by the 3rd respondent. The 2nd respondent challenged the order

dated 7.8.2011 in the Second Appeal before the 1st respondent. The 1st respondent allowed the Second Appeal setting aside the order dated 7.8.2011. The petitioner questioned the order of the 1st respondent in W.P.No.8423 of 2012. This Court set aside the order of the 1st respondent in the Second Appeal and remanded the matter to the 1st respondent on the following grounds:

(i) Section 48(3) of the Andhra Pradesh Shops and Establishments Act, 1988 mandates that arrears of salary must be deposited as a condition precedent for presenting the second appeal. But M/s. Samudra Software Limited-respondent did not comply with the said condition.

(ii) There was delay in presenting the second appeal. But the 1st respondent did not pay any attention to the aspect of limitation. There was no independent consideration of the condone delay application. Therefore, the second appellate authority shall in the first instance consider the condone delay application filed by the company on its own merits after giving opportunity to both sides.”

Aggrieved by the said order, though the 2nd respondent filed WA No.1452 of 2012, the same was dismissed. Hence, the order in W.P.No.8423 of 2012 has become final.

5. Now, it is the case of the petitioner that the 2nd respondent has failed to deposit any amount and therefore, he moved an application before the 3rd respondent, but his application was returned on the ground that the same should be filed before the 1st respondent as the second appeal is pending. Though the petitioner filed an application before the 1st respondent, no steps were taken to implement the order dated 7.8.2011. In spite of the directions of the Joint Commissioner of Labour in this regard, the 1st respondent did not take any action.

6. Considering the above facts and circumstances of the case, without expressing any opinion on the merits of the case, this Court feels just and proper to direct the 3rd respondent to take appropriate steps to get the order dated 7.8.2011 executed.

7. Accordingly, the Writ Petition is disposed of directing the 3rd respondent to take appropriate steps to execute the order 7.8.2011 passed in APSE No.3 of 2010, within a period of three months from the date of receipt of a copy of this order, if the arrears of salary has not been deposited in the Second Appeal, which is said to be pending. If the 3rd respondent fails to take steps within the time stipulated above, the petitioner is at liberty to avail remedies that are available to him. There shall be no order as to costs. Consequently, the miscellaneous petitions pending, if any, shall stand closed.

8. It is also made clear that in case, the arrears of salary has already been deposited in the Second Appeal, the petitioner is at liberty to move appropriate application before the 1st respondent. On such application being filed, the 1st respondent shall pass appropriate orders in accordance with law.

RAJA ELANGO, J

Dated:21st April, 2015

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