

THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

W.P.No.3529 OF 2006

ORDER:

Heard and perused the record.

2. This writ petition is filed seeking issuance of a writ of Certiorari calling for the records relating to an Award, dated 4.3.2005, passed in I.D.No.21 of 2002 by respondent No.2, which was published in G.O.Rt.No.939 Labour, Employment Training & Factories (Lab.I) Department, dated 2.5.2005, and consequently to set aside the oral termination, dated 9.10.2000, and directing reinstatement of respondent No.1 as Watchman on consolidated pay of Rs.600/- per month with back wages at that rate from 01.03.2002 onwards.

3. The facts, which lead to filing of the present writ petition, are as under:

Respondent No.1 worked as a temporary Night Watchman from 1979 to August, 2000 in the petitioner School which is an unaided post. The post of Watchman is not in the staff pattern issued by the District Educational Officer (D.E.O). Respondent No.1 was paid from the contingent miscellaneous expenditure sanctioned by the Government to this school. The petitioner Institution is an aided one and the salaries of permanent staff are paid directly to the incumbents from the bank on the basis of pay bill prepared and approved by the D.E.O. The contingency amount released by the Government is not regular and whenever it is released, it will be adjusted towards miscellaneous expenditure incurred by this school including salary of respondent No.1.

It is said that respondent No.1 without applying for leave on

8.10.2000 and 9.10.2000 left the job by taking all his belongings from his room without any prior intimation or leave application. It is said that service rules are not applicable to the case of respondent No.1 as he was working as a temporary Watchman in an unaided post. He discontinued from attending the duties and himself left the job on his own accord and as such no termination orders were issued. It is said that he never submitted any representation either in writing or in oral requesting reinstatement into service. Hence, it is urged that granting of back wages to respondent No.1 without work does not arise.

It is averred that respondent No.2, without appreciating the legal aspects raised by the petitioner, directed the petitioner Institution to reinstate respondent No.1 into service as Watchman on consolidated pay of Rs.600/- per month with back wages from 1.3.2002 onwards and the same is without jurisdiction and is liable to be quashed. Hence, the present Writ Petition.

4. A counter-affidavit came to be filed before the Labour Court disputing the averments.

5. During the course of trial, the workman examined himself as W.W.1 and got marked Exs.W.1 and W.2 whereas the petitioner was got examined as M.W.1 and no documentary evidence was adduced on its behalf.

6. After considering the evidence available on record, the Labour Court set aside the oral termination order, dated 9.10.2000, and directed the petitioner to reinstate respondent No.1 into service on consolidated pay of Rs.600/- per month with back wages from 01.03.2002 onwards. Challenging the same, the petitioner School filed the present writ petition.

7. The grievance of the petitioner is that respondent No.1 has voluntarily left the job without applying for any leave and as such, the

order under challenge is liable to be set aside. Further, it is stated in the affidavit that the petitioner School in which respondent No.1 was engaged temporarily as Night Watchman on consolidated pay basis is under the control of the Education Department and as such, it would not come within the purview of the Industrial Disputes Act, 1947.

8. A perusal of the material placed before the Court would show that W.W.1, in his evidence, stated that he was appointed on consolidated pay. In support thereof, he filed Ex.W-1 – service certificate. From the said certificate, it is clear that respondent No.1 was appointed as a Watchman from 10.8.1979 on consolidated pay of Rs.600/- and the services of respondent No.1 were found to be satisfactory. Respondent No.1 worked in the Institution till 8.10.2000 and that he applied for leave on 9.10.2000. It is his case that the petitioner Institution has not issued any memo asking him to report for duty. It is the case of the petitioner that respondent No.1 was not present on the day the college people attended for excursion and respondent No.1 left by locking the doors.

9. One fact which is to be noted is that there was no order of any termination passed by the petitioner. It is a fact that neither one month's notice was given nor any retrenchment compensation was paid prior to termination on 9.10.2000 or thereafter. The petitioner, being an aided school of Government of Andhra Pradesh, has not taken any steps to terminate respondent No.1 as per law. It is also not the case of petitioner that respondent No.1 was gainfully employed elsewhere. Since the petitioner clearly violated the provisions of Section 25 F of the Industrial Disputes Act and as there is no written order of termination, the order under challenge warrants no interference of this Court and the writ petition is liable to be dismissed.

10. Accordingly, the Writ Petition is dismissed. There shall be no order as to costs. Miscellaneous Petitions pending, if any, in this writ petition shall stand closed.

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THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

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DATE: 17.12.2015

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