

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

WRIT PETITION No.2007 of 2002

Between:

Hartex Rubber Limited

... Petitioner

and

The Presiding Officer

Labour Court-II and another

... Respondents

DATE OF JUDGEMENT PRONOUNCED: 19-07-2015

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

1. Whether Reporters of Local newspapers
may be allowed to see the Judgment? Yes/No

2. Whether the copies of judgment may be Yes/No
marked to Law Reporters/Journals?

3. Whether Their Ladyship/Lordship wish to Yes/No
see the fair copy of the Judgment?

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*** HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**

+ WRIT PETITION No.2007 of 2002

% 09-07-2015

Hartex Rubber Limitedpetitioner

Vs.

\$ The Presiding Officer

Labour Court-II and another

.... Respondents

!Counsel for the petitioners : Sri Salloni Ramesh

Counsel for the Respondents: Learned Government Pleader for Labour

Sri B.Ravinder Reddy for respondent No.2

<Gist :

>Head Note:

? Cases referred:

2006(1) ALD 685

² 1964-II-LLJ-120 SC

³ F.J.R. VOL.65 Page 13

⁴ 2000(1) ALD 336

⁵ 2000(4) ALD 595

⁶ 1968 II LLJ Page 98

⁷ FJR (Volume 65) Page 13

⁸ 1995(3) ALD 310

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

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WRIT PETITION No.2007 of 2002

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ORDER:

This writ petition is filed against the order dated 16.01.2002 in E.P.No.4

of 2001 in I.D.No.50 of 1996 passed by the Labour Court, Hyderabad, wherein the Labour Court directed the writ petitioner to pay the wages of the 2nd respondent for the period of delay in implementing the award dated 26.03.1999, wherein reinstatement of the 2nd respondent became effective from 29.06.1999.

2. The facts, in nutshell, which are necessary for disposal of the writ petition are:

As per the award dated 26.03.1999 in I.D.No.50 of 1996, the writ petitioner was to reinstate the 2nd respondent herein into service which became effective from 29.06.1999 and the 2nd respondent was taken into service on 01.11.2001. The 2nd respondent filed E.P.No.4 of 2001 under Section 11-B of the Industrial Disputes Act, 1947 (for short 'the Act') claiming wages for the period of delay in implementing the award from 29.06.1999, from which date the award dated 26.03.1999 became effective till he was actually reinstated on 01.11.2001. The said E.P. was allowed directing the petitioner to pay wages from 29.06.1999 to 01.11.2011. Aggrieved by the same, this writ petition is filed.

3. Learned counsel for the petitioner submits that application filed under Section 11-B of the Act is not maintainable. It is also contended that the 2nd respondent has to approach the petitioner expressing his willingness to work and unless the 2nd respondent performs duty, he is not entitled for wages for the period which he has not worked. He also submits that no provision in the Act provides for issuing of posting orders of reinstatement and the workman has to report for duty and then only he is entitled for wages. In support of his contention he relied upon the judgments in **Depot Manager, APSRTC, Nirmal Depot, Adilabad District v. Mirza Basheer Baig and another, Bombay Steel Rolling Mills Ltd. v. Khemchand Rajkumar Steel Mills, Pahorpur Yards Labour Union, Calcutta** and **Annamma Thomas v. T.Joseph**.

4. On the other hand, Sri B.G.Ravindra Reddy, learned counsel appearing for the 2nd respondent submits that by virtue of Section 11-B of the Act, Labour Court or a Tribunal has the power of a civil Court to execute the award or settlement as a decree of a civil Court. He also submits that it is the duty of the employer to issue notice to the workman to report for duty since the

award dated 26.03.1994 provides for direction to the employer to reinstate the workman into service. In support of his contentions, he relied upon the judgments reported in **Sirpur Paper Mills Ltd. Kagaznagar, Adilabad District v. Chairman, Industrial Tribunal-cum-Labour Court, Godavarikhani, Adilabad District** and **E.Munu Swamy v. Depot Manager, APSRTC, Kukatpally Depot, Hyderabad**.

5. There is no dispute that as per award dated 26.03.1994 passed in I.D.No.50 of 1996, there was a direction to the petitioner to reinstate the 2nd respondent into service and the said award was published on 29.05.1999 and as per Section 17 of the Act the said award comes into effect on 29.06.1999. In this case it is admitted fact that writ petitioner has not issued any notice to the 2nd respondent nor any posting orders were sent asking him to join the duty. Ex.M2 is only notice, which is affixed to the notice board of the writ petitioner company.

6. Section 25-HH of the Act reads as follows:

“Condition of reinstatement in service by an award of Labour Court or Tribunal:- Where a workman is reinstated in service by an award of a Labour Court or Tribunal the work man shall be deemed to be in service from the date specified in the award whether or not the workman was earlier reinstated by the employer and his wages shall be recovered in the manner provided in Section 33-C.”

7. So by virtue of Section 25-HH, which is a State amendment (Amendment Act 32 of 1987), the 2nd respondent is deemed to be in service from 29.06.1999 because the same will come into effect after 30 days from the date of publication of the award in the Gazette i.e., 29.05.1999, as per section 17 of the Act and entitled to recover wages. Even as per the judgment of this Court relied on by the 2nd respondent reported in **E.Munu Swamy v. Depot Manager, APSRTC, Kukatpally Depot, Hyderabad** (5 supra), the management is obligated to issue posting order to the workman immediately after the award is published in the Gazette. In view of same, judgment of Madras High Court and Kerala High Court cited by learned counsel for petitioner in **Peer Mohamed & Co., Madras and Mohamed Hussain and Annamma Thomas v. T.Joseph**

have no application.

8. Since no notice was issued to the 2nd respondent by the writ petitioner asking him to join the duty and as per Section 25-HH of the Act, he was deemed to be in service and his wages are to be recovered. But, in the present case, the petitioner filed E.P. under Section 11-B, which reads as follows:

“11-B. Power of Labour Court or Tribunal to execute its award by decree:- A Labour Court or a Tribunal shall have the power of a Civil Court to execute its award or any settlement as a decree of a civil court.”

9. This Court in **Sirpur Paper Mills Ltd. Kagaznagar, Adilabad District v. Chairman, Industrial Tribunal-cum-Labour Court, Godavarikhani, Adilabad District** (4 supra), in exactly similar circumstances held that E.P. under Section 11-B is maintainable in respect of claim for wages, pursuant to the award passed by the lower Court.

10. In **Depot Manager, APSRTC, Nirmal Depot, Adilabad District v. Mirza Basheer Baig and another** (1 supra), upon which reliance is placed by the learned counsel for the petitioner, the writ petitioner therein opposed application under Section 33-C(2) of the Act and this Court held that the same is not maintainable, but, in the present case, the 2nd respondent filed E.P. under Section 11-B, as such, the said decision is not applicable to the facts of the present case.

11. The judgment relied upon by the learned counsel for the petitioner in **Bombay Steel Rolling Mills Ltd. v. Khemchand Rajkumar Steel Mills, Pahorpur Yards Labour Union, Calcutta** (2 supra) is rendered in different contest and as such the said decision is not applicable to the facts of the present case. In the decision relied upon by the learned counsel for the petitioner in **Sunsip Limited, rep. by Chief Executive v. The Presiding Officer, Additional Labour Court, Hyderabad**, as the matter was remanded to Labour Court since Additional Labour Court passed order in E.P. filed under section 11-B of the Act, as such the same has no application to the facts of the case.

12. In view of the same, I do not see any merit in the writ petition, and the same is liable to be dismissed.

13. Accordingly, this Writ Petition is dismissed. No costs. Miscellaneous petitions, pending if any, shall stand closed.

A.RAJASHEKER REDDY, J

Date: 09-07-2015

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