

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 11021 of 2006

ORDER:

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Heard learned counsel for the petitioner, Government Pleader for Labour for respondent Nos.1 and 2 and learned counsel appearing for respondent No.3.

The present writ petition came to be filed seeking issuance of writ of Certiorari, calling for the records from the second respondent in A.P.S.E.No.8 of 2003 dated 01.12.2004 as modified by the orders of the first respondent in A.P.S.E.A.No.3 of 2005 dated 05.01.2006 and quash the same as illegal, arbitrary and violative of principles of natural justice.

The petitioner herein was a owner of Suvarna Foods which was closed in the month of March, 2003. Later, the said concern was taken by the mother-in-law of the petitioner by name G.Lakshmi and started running it from 01.04.2003 under the name and style as Suvarna Restaurent. While things stood thus, the third respondent herein raised a dispute before the Labour Officer under Section 50 of the Andhra Pradesh Shops and Establishments Act, 1988 (for short "the Act") for payment of Rs.19,649/- towards terminal benefits as he was removed from service with effect from 31.03.2003. After considering the oral and documentary evidence produced therein, it was held that the third respondent is entitled for an amount of Rs.9,622.40 which was directed to be paid within a period of 30 days from the date of receipt of the order. Aggrieved by the same, the petitioner herein filed A.P.S.E.A.No.3 of 2005, before the appellate authority under

Section 53 of the Act. By an order, dated 05.01.2006, the appellate authority dismissed the appeal, directing the petitioner to pay the awarded amount within 15 days. Challenging the same, the petitioner filed this present writ petition.

On 06.06.2006, this Court while admitting the writ petition suspended the impugned order subject to petitioner depositing 50% of the amount awarded, within a period of four weeks from that day.

The main ground urged by the learned counsel for the petitioner is that before terminating the services of the third respondent, he has given one month's notice, as such it cannot be said that there was violation of Section 47 (1) of the Act. He submits that when Suvarna Foods itself was closed the question of payment of money would not arise.

On the otherhand, learned counsel appearing for third respondent opposed the same contending that statutory requirements of Section 47 (1) of the Act are not complied with and as such the order under challenge warrants no interference.

Before proceeding further, it would be appropriate to refer to Section 47 (1) of the Act, which reads as under:

“47. Conditions for terminating the services of an employee, payment of service compensation for termination, retirement, resignation, disablement, etc., and payment of subsistence allowance for the period of suspension:

(1) No employer shall, without a reasonable cause, terminate the service of an employee who has been in his employment continuously for a period of not less than six months without giving such employee at least one month's notice in writing or wages in lieu thereof

and in respect of an employee who has been in his employment continuously for the period of not less than one year, a service compensation amounting to fifteen days average wages for each year of continuous employment:

Provided that every termination shall be made by the employer in writing and a copy of such termination order shall be furnished to the Inspector having jurisdiction over the area within three days of such termination.”

A reading of the section would show that without a reasonable cause, no employer shall terminate the service of an employee, who has been in his employment continuously for a period of not less than six months without giving one month's prior notice in writing or wages in lieu thereof.

Learned counsel for the petitioner submits that termination was due to change in the management of Suvarna Foods as such, it cannot be said that the action of the petitioner in terminating the services of the third respondent is un-reasonable or without any cause.

It is to be noted that the petitioner herein started Suvarna Foods in the year, 1998 and the third respondent herein joined as waiter in the said establishment on 20.09.2000 and worked there till he was terminated from service. Therefore, it is clear that the third respondent has put in morethan five years of service from the date of employment till the date of his termination. It is also an admitted fact that no notice in writing was issued to the third respondent herein while terminating his services. It was orally informed to the third respondent about his termination from 31.03.2003, due to change in the management. From the above, it is clear that the conditions which are required under Section 47 (1) of the Act are not fulfilled by the employer.

The argument of the learned counsel for the petitioner is that the removal of services of third respondent is reasonable due to change in the management also cannot be accepted for the reason that the management of Suvarna Foods changed from the hand of the petitioner to one G.Lakshmi, who is none other than the mother-in-law of the petitioner. The cause of termination is not reflected anywhere since the order of termination was never issued by the employer. What is the reasonable cause is a matter which neither the employer nor an employee can decide unilaterally. The termination order must disclose some cause for termination. If it is held to be unreasonable, the termination becomes unsustainable. Hence, a cause which is reasonable must be the basis for the order of termination.

As stated above, there is no order for termination. Everything happened on an alleged oral statement made by the employer. Hence, it cannot be said that there was any fulfillment of the conditions referred in Section 47 (1) of the Act. Having regard to the circumstances stated above, I see no reasons to interfere with the impugned order.

Accordingly, the writ petition is dismissed. No order as to costs. Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

**JUSTICE C. PRAVEEN
KUMAR**

26.11.2015
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