

THE HON'BLE SRI JUSTICE R.KANTHA RAO

WRIT PETITION No.22181 of 2014

ORDER:

This writ petition is filed by the petitioner under Article 226 of the Constitution of India seeking a writ of Certiorari to set aside the order dated 16.07.2014 in PW No.5 of 2013 passed by the 2nd respondent as being illegal, arbitrary, unwarranted and consequently to direct the respondents to allow the petitioner to continue in work with the 4th respondent, to recover the wages from 01.12.2010 till the settlement/realisation and compensation, to order for probe into the affairs of the 2nd respondent and 3rd respondent under Sections 52, 119, 166, and 167 of IPC.

2. It is further prayed to direct the 4th respondent to resume the petitioner into work and after initially compensating him with sustainable monetary expenses of Rs.30,020/- accrued during the proceedings before the 2nd and 3rd respondents till 31.07.2014, pending disposal of the writ petition.

3. The brief facts mentioned in the affidavit filed in support of the writ petition are as follows:

On 26.11.2010 the petitioner signed the offer letter issued by the 4th respondent Company offering employment as Manager and accordingly joined work on 29.11.2010. While he was working as Manager, the management of the 4th respondent in December, 2010 asked the petitioner to leave the work forcibly without showing any reason and without there being any fault on the part of the petitioner. His services were neither terminated nor closed by the 4th respondent.

4. In January, 2012 the petitioner approached the Joint Commissioner of Labour, Twin Cities, Hyderabad and filed a claim petition on the ground that the 4th respondent was not paying salary and was also not issuing any relieving order. The second respondent after having conversation with the 4th respondent management, asked the petitioner to go home by assuring that his claim would be enquired into,

on that the petitioner left Hyderabad to his native place.

5. In the absence of the petitioner, the 4th respondent management presented false evidence and documents such as letter and E.mail on 07.02.2012 before the second respondent, basing on such false evidence, the 4th respondent management, misrepresented the second respondent as if the petitioner worked only for (4) days with the 4th respondent.

6. Thereafter, the 4th respondent communicated the petitioner through correspondence that they deposited an amount of Rs.50,000/- in the office of the 2nd respondent through cheque and asked him to accept the said amount. The petitioner did not accept the said amount and the same is lying with the second respondent.

7. The second respondent directed the petitioner to revise Form 'A' to claim Rs.24,58,624/- which includes the wages prevailing at that time and accordingly, he revised Form 'A' claiming Rs.24,58,624/-. On 30.12.2013 the petitioner furnished detailed information before the 2nd respondent regarding the quantum of his claim amount for which he is entitled under the provisions of A.P. Shops and Establishments Act, 1988. The second respondent simply closed the case on mere ground that he has no pecuniary jurisdiction and dismissed the claim of the petitioner. Hence, the writ petition.

8. The second respondent filed counter-affidavit contending inter alia as follows:

The second respondent is the authority under the Payment of Wages Act, 1936 and also Joint Commissioner of Labour, Twin Cities, Hyderabad. The petitioner filed application under Section 15(2) of Payment of Wages Act, 1936 vide PW 5 of 2013 claiming an amount of Rs.24,58,624/- towards salary for the months of December,2010 to October, 2013 from the 4th respondent. After full-fledged adjudication, the second respondent dismissed the application filed by the petitioner by order dated 16.07.2014.

It is contended by the second respondent that the pleadings in the application submitted by the petitioner as well as the evidence adduced by him shows that he was drawing an amount of Rs.50,000/- per month towards salary. As per Section 16 of the Payment of Wages Act, the Act applies to wages payable to an employed person in respect of wages of an amount of Rs.15,000/- per month. Therefore,

according to the second respondent, the petitioner who was admittedly appointed on a salary of Rs.50,000/- per month cannot maintain an application under the Payment of Wages Act, 1936 before the second respondent. The facts viz. that the second respondent got changed the amount into Rs.24,58,624/- had a phone conversation with the management of the 4th respondent etc. are flatly denied. According to the second respondent, the petitioner himself filed an application claiming an amount of Rs.24,58,624/-. It is submitted by him that after full-fledged trial basing on the material available on record including the depositions of both parties, the second respondent came to a conclusion that the salary of the petitioner was Rs.50,000/- per month and therefore, the second respondent has no jurisdiction to entertain the said application under Section 15(2) of the Act and accordingly dismissed the application filed by him. The allegation made by the petitioner that the second respondent assured him about change of provisions from Payment of Wages Act to A.P. Shops and Establishments Act is denied by the second respondent. It is submitted by the second respondent that the petitioner having filed a claim petition under the provisions of Payment of Wages Act, cannot take shelter under the provisions of A.P. Shops and Establishments Act and that the petitioner ought to have approached the civil Court instead of filing the case before the second respondent who has no jurisdiction to entertain the claim. The allegation that the second respondent unilaterally reopened the case is denied by the second respondent. It is submitted by the second respondent that he allowed the petition filed by the 4th respondent seeking to set aside the *ex parte* order and thereafter enquired the matter on merits by giving opportunity to both parties and following the principles of natural justice. Contending as above, the second respondent sought to dismiss the writ petition on the ground that it is not maintainable.

9. The 4th respondent filed counter contending as under:

It is true that the petitioner was appointed by the 4th respondent as Manager vide offer letter dated 26.11.2010. The petitioner worked with the 4th respondent hardly for four days from 29.11.2010 to 03.12.2010. Thereafter, the petitioner disassociated with the 4th respondent company and tendered his resignation on 06.01.2011. The petitioner himself on his own volition has tendered his resignation by mail dated 06.01.2011 and in view of his voluntary withdrawal from services of the respondent company, the claim of the petitioner against the 4th respondent is

unsustainable in law and the present writ petition is filed only to extract money on frivolous and baseless grounds. The exchange of mails between the petitioner and the 4th respondent clearly show that the petitioner has no claim whatsoever against the 4th respondent and it is not in default in any manner and the said facts have not been placed by the petitioner before the Court. The second respondent has enquired into the issue and appraised the evidence on record in proper perspective, heard the parties and dismissed the claim of the petitioner as not maintainable and hence, the order passed by the second respondent is strictly in accordance with law.

It is further submitted that though the petitioner only worked for four days by attending the orientation training and thereafter failed to attend to his duties, the company on humanitarian grounds agreed to pay Rs.50,000/- and the said amount was deposited with the second respondent vide letter 07.02.2012 by communicating the same to the petitioner. The petitioner instead of receiving the same, demanded an amount of Rs.1,14,000/- without any basis. As the petitioner's claim would not come under the purview of Payment of Wages Act and as the second respondent inherently lacks the jurisdiction to adjudicate the claim of the petitioner, rightly dismissed the same. The writ petition is devoid of any merit and is liable to be dismissed as it is not maintainable.

10. I have heard the party-in-person and the learned counsel appearing for the respondents 2 and 4.

11. The claim of the petitioner contains several disputed questions. The main disputed question being the period which he worked in the 4th respondent company as Manager. The 4th respondent having admitted that the petitioner was appointed as Manager, specifically mentioned in the counter that the petitioner worked only for 4 days and thereafter, on his own tendered resignation on 06.01.2011. Whereas the petitioner contends that he worked in the 4th respondent's company from 29.11.2010 to December, 2010. The petitioner is also not specific as to how many months or days he worked with the 4th respondent. The order passed by the second respondent clearly shows that the 4th respondent adduced evidence before the 2nd respondent in the course of enquiry in the claim petition submitted by the petitioner showing that the petitioner worked only for four days and tendered his resignation on 06.1.2011. Absolutely, no material was placed on record by the petitioner to show

that he was forcibly sent out of the job. Further, the petitioner did not place any material showing that the second respondent asked him to file revised form to claim an amount of Rs.24,58,624/-. According to the second respondent, it is an utter falsehood and that the petitioner himself submitted a claim petition under Section 15(2) of the Payment of Wages Act claiming an amount of Rs.24,58,624/-.

12. The petitioner sought several reliefs in the writ petition without placing on record any material basing on which such reliefs can be granted by this Court. When the second respondent dismissed the claim petition submitted by the petitioner under Section 15(2) of the Payment of Wages Act on the ground that he has no jurisdiction to entertain the claim, the petitioner should have approached the appropriate Forum or civil Court seeking redressal of his grievance.

13. This Court while exercising jurisdiction under Article 226 of the Constitution of India is not supposed to indulge in appreciation of evidence as it would not decide the disputed questions of fact. Therefore, in the considered view of this Court, the writ petition filed by the petitioner is not maintainable and is liable to be dismissed.

14. Consequently, the writ petition is dismissed without any order as to costs. The miscellaneous petitions, if any, pending in this writ petition shall stand closed.

R.KANTHA RAO, J

Date:13.11.2015

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THE HON'BLE SRI JUSTICE R.KANTHA RAO

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