

**THE HON'BLE SRI JUSTICE DILIP B. BHOSALE**

**AND**

**THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO**

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**WRIT APPEAL Nos.1508 and 1600 of 2014**

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**COMMON JUDGMENT:** (Per Hon'ble Sri Justice A.Ramalingeswara Rao)

These two Writ Appeals filed by the appellant are being disposed of by this common order as they arise out of a common order dated 17.11.2014 passed by the learned single Judge in two Writ Petition Nos.24040 and 24065 of 2013 filed by respondent Nos.1 and 2 herein and Writ Petition No.5601 of 2014 filed by the appellant herein. W.A.No.1508 of 2014 arises out of the order in W.P.No.24040 of 2013 and W.A.No.1600 of 2014 arises out of the order in W.P.No.5601 of 2014.

The appellant was working as a Managing Consultant with respondent Nos.1 and 2 by virtue of an offer-cum-appointment letter dated 30.08.2010. He joined the service of respondent Nos.1 and 2 on 13.09.2010. He was re-designated as Senior ERP Specialist on 28.01.2011 and as Senior Management Consultant for EMC Global Project, a client of respondent Nos.1 and 2, who was having an on-site EMC contract. The contract for providing SAP Application Development and Sringsource Integration Program was entered for a period of three years from March 2010 to March 2013. The appellant was deployed for the said program. He submitted resignation to his post on 11.10.2011.

The appellant filed an application under Section 51 of the Andhra Pradesh Shops and Establishments Act, 1988 (for short, the Act), before the Assistant Commissioner of Labour, Vikarabad, in S.E.No.1 of 2012, against respondent Nos.1 and 2 herein seeking a direction for payment of an amount of Rs.6,71,857/- towards the following:

“1.Notice pay for two months as stipulated under the appointment letter dated 30/08/2010 = Rs.2,87,662/-

2.Provident fund for total period Rs.1,36,650/-.

3.Variable pay from 01/10/2010 to 30/08/2011 Rs.1,60,000/- as per appointment letter.

4.E.L.Encashment for 15½ days Rs.87,545/-.”

The said application was allowed for an amount of Rs.2,45,745/- by order dated 07.01.2013. Against the said order, the appellant preferred S.E.Appeal No.1 of 2013 before the Appellate Authority appointed under Section 53(1) of the Act and the Deputy Commissioner of Labour, Ranga Reddy District so far as it went against him. The appellate authority, by his order dated 26.07.2013, held that the appellant was entitled to receive a sum of Rs.23,33,333/- towards unpaid wages/delayed salary for the period from 01.11.2011 to 31.12.2012 and respondent Nos.2 and 3 therein were held jointly and severally liable to pay the said amount. Challenging the same, respondent Nos.1 and 2 herein filed W.P.No.24040 of 2013. The appellant filed W.P.No.5601 of 2014 challenging the order in S.E.Appeal No.1 of 2013 dated 26.07.2013 to the extent of not imposing compensation up to ten times as illegal and for a direction to respondent Nos.1 and 2 herein to pay compensation up to ten times to an extent of Rs.2,33,33,333/- to him.

The appellant also filed an application on 07.12.2011 under Section 48(1) of the Act before the Assistant Commissioner of Labour, Vikarabad, challenging the resignation dated 11.10.2011 stating that it was obtained from him under duress and sought reinstatement into service with full back-wages and continuity of service and it was numbered as S.E.Case No.7 of 2011. The same was dismissed by order dated 05.11.2012 holding that as per G.O.Ms.No.53, dated 26.03.2007, exemption was granted with regard to application of sub-sections (1), (2), (3) and (4) of Section 47 of the Act to the employer and hence the Authority appointed under Section 48 of the Act has no jurisdiction.

Challenging the said order, the appellant preferred S.A.No.1 of 2013 before the Appellate Authority – cum – Deputy Commissioner of Labour, Ranga Reddy District. The Appellate Authority allowed S.A.No.1 of 2013 by order dated 22.07.2013 and remanded the matter back to the Assistant Commissioner of Labour. Challenging the said remand order, respondent Nos.1 and 2 herein filed W.P.No.24065 of 2013.

Learned single Judge considered the above three Writ Petitions and allowed W.P.Nos.24040 and 24065 of 2013 filed by respondent Nos.1 and 2 herein and dismissed W.P.No.5601 of 2014 filed by the appellant by a common order dated 17.11.2014. The appellant did not prefer any appeal against the order in W.P.No.24065 of 2013, as a result of which, the application filed by the appellant on 07.12.2011 under Section 48(1) of the Act did not survive for consideration.

The appellant appeared in person before us and contended that the learned single Judge erred in holding that it was not open to the employee to raise a plea regarding wages from 01.11.2011 to 31.03.2013 and seek a sum of Rs.23,33,333/- in S.E.Appeal No.1 of 2013 before the Deputy Commissioner of Labour. The learned Counsel appearing for respondent Nos.1 and 2, on the other hand, submitted that the very application of the appellant before the Assistant Commissioner of Labour was only for a sum of Rs.6,71,857/-, and the Appellate Authority cannot grant any relief beyond what was prayed by the appellant and hence, the order of the Appellate Authority in S.E.Appeal No.1 of 2013 was illegal and the learned single Judge was correct in setting aside the said order.

We have perused the application filed by the appellant and, as noted above, he sought for payment of an amount of Rs.6,71,857- under four heads. The Assistant Commissioner of Labour, by his order dated 07.01.2013, allowed an amount of Rs.2,45,745/- under heads 3 and 4. With regard to PF amount of Rs.1,36,650/-, it was held that pursuant to the application made by the appellant, the PF authorities remitted an amount of Rs.1,00,883/- after effecting

deductions amounting to Rs.43,113/- towards TDS and cess on the TDS, and the said amount was transferred to the appellant's account through cheque No.73, dated 16.10.2012. It was also held that since there was a separate department implementing the provisions of the Employees Provident Fund Act, 1952, he has no jurisdiction to decide the said issue. With regard to the notice pay, it was held that the appellant, by his letter of resignation, asked that he may be relieved with effect from 04.11.2011 and he cannot seek notice pay in those circumstances. He further held that the claim of the appellant that his resignation was obtained by force cannot be decided in a proceedings claiming amounts consequent to his resignation, since it was a question of fact, and the question whether the resignation was obtained by force or was it given voluntarily has to be proved. If it was obtained under duress, it amounts to illegal termination. But, this issue has to be decided first to claim the notice pay. Since, the application of the appellant in S.E.Case No.7 of 2011 was dismissed by order dated 05.11.2012 basing on G.O.Ms.No.53, dated 26.03.2007, he cannot decide that issue. When the Assistant Commissioner decided the claim thus, the appellant preferred an appeal before the Deputy Commissioner of Labour seeking two months notice pay and the unpaid salary/delayed wages to an extent of 24,88,671/-. The Appellate Authority held that rejection of two months notice pay by the lower authority does not warrant any interference. However, with regard to the payment of wages from 01.11.2011 to 31.12.2012, it was held that respondent Nos.1 and 2 herein ought to have cross examined A.W-1 to elicit the requisite information and also led its rebuttal evidence to defeat the claim of the appellant. It was also held that the lower authority had passed an order negating the claim of working days from 01.11.2011 to 31.12.2012 ignoring the affidavit evidence of A.W-1 filed on 31.12.2012 in lieu of chief examination. It was further held that, though the onsite EMC Contract was in force till 31.03.2013, since the affidavit was confined to Rs.23,33,333/- towards unpaid salary/delayed wages for the period from 01.11.2011 to 31.12.2012, he was held to be entitled for the said amount.

The basis for ordering such amount was the affidavit of evidence of A.W-1 filed by the appellant before the Assistant Commissioner on 31.12.2012. He did not seek any amendment of his claim petition, but claimed that amount in

the said affidavit during enquiry of his petition. The Assistant Commissioner rightly considered the value of such an affidavit and ignored the claim made in the affidavit but allowed the claim of the appellant to an extent of Rs.2,45,745/-, as aforementioned. However, the appellate authority commented that the lower authority has not followed the basics of C.P.C and ordered payment of the said amount of Rs.23,33,333/- without proper claim and opportunity to respondent Nos.1 and 2, and in view of the same the learned single Judge has rightly set aside the order of the Appellate Authority when it was challenged in W.P.No.24040 of 2013. When there is no basis for the claim of Rs.23,33,333/- in the claim filed before the Assistant Commissioner of Labour, there cannot be any basis for Rs.2,33,33,333/-, as claimed by the appellant in W.P.No.5601 of 2014. We are satisfied that the learned single Judge has rightly allowed the Writ Petitions filed by respondent Nos.1 and 2 and dismissed the Writ Petition filed by the appellant.

We find no merit in the Writ Appeals preferred by the appellant against the orders in W.P.No.24040 of 2013 and W.P.No.5601 of 2014 and, accordingly, dismiss both the Writ Appeals. The miscellaneous petitions pending, if any, stand closed. There shall be no order as to costs.

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**(DILIP B. BHOSALE, J)**

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**(A.RAMALINGESWARA RAO, J)**

16.04.2015

vs

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