

THE HON'BLE SRI JUSTICE SANJAY KUMAR

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WRIT PETITION No.14118 of 2005

ORDER:

This writ petition was filed assailing the order dated 07.04.2005 passed by the Second Appellate Authority under Section 48(3) of the Andhra Pradesh Shops and Establishments Act, 1988-cum-Deputy Commissioner of Labour, Hyderabad, in Case No.S.A.13/2004. By the said order, the Second Appellate Authority directed the petitioner – Management to pay the 3rd respondent – workman a sum of Rs.40,000/-, as compensation in lieu of reinstatement.

By order dated 01.07.2005, this Court granted interim suspension of the impugned order subject to the condition that the petitioner – Management deposits a sum of Rs.10,000/-. Thereafter, by order dated 20.11.2008, passed upon the vacate stay petition filed by the 3rd respondent – workman, this Court directed a further deposit of Rs.10,000/- by the petitioner – Management and permitted the 3rd respondent – workman to withdraw the same.

The facts of the case, to the extent relevant, are as under:

The 3rd respondent – workman worked as a Steward in the Hotel run by the petitioner – Management and his services were terminated on 04.02.2002. The petitioner – Management admitted that the 3rd respondent – workman was employed from 19.02.2000 to 04.02.2002. However, the reason for his removal from service is in dispute. The 3rd respondent – workman stated that his removal was affected due to his demand for minimum wages, whereas the petitioner – Management asserted that the

3rd respondent – workman was unauthorizedly absent from duty and seeking condonation of such absence, he offered a liquor bottle to the Manager requesting him not to take action against him for his unauthorised absence. This aspect of the matter was not only mentioned by the petitioner – Manager in its counter, but was stated by both the witnesses examined by it (RWs.1 and 2). It is an admitted fact that the 3rd respondent – workman did not rebut this stand of the petitioner – Management.

The Authority under the Andhra Pradesh Shops and Establishments Act, 1988 (for brevity, 'the Act of 1988'), being the Assistant Commissioner of Labour – III, Hyderabad, in Case No.S.E.5/2002, filed by the 3rd respondent – workman, held that there was a valid reason for termination of his services, but as the proper procedure had not been followed in that regard, the

3rd respondent – workman would be entitled to one month's pay in lieu of notice and one month's wages as compensation – in total, two months wages. The Authority specifically observed that the act of bribing the Manager was a serious misconduct and therefore, reinstatement of the 3rd respondent – workman could not be granted. Having received the two months' wages totalling to over Rs.9,000/-, the 3rd respondent – workman then filed Case No.S.A.13/2004 before the Second Appellate Authority. Affirming all the findings recorded by the Authority, the Second Appellate Authority enhanced the amount to Rs.40,000/-. Perusal of the order under challenge reflects that no reasons whatsoever are forthcoming as to why the Second Appellate Authority enhanced the compensation to this figure. Though discretion is vested in this regard in the authorities under the Act of 1988, such discretion has to be exercised judiciously and should be supported by due reasoning. In the present case, no reasons whatsoever are forthcoming as to how the Second Appellate Authority

has arrived at this figure.

Given the gravity of the misconduct established against the 3rd respondent – workman, i.e. trying to bribe the Manager by offering him liquor, the Second Appellate Authority was not justified in awarding compensation on purely sympathetic considerations. It is no doubt true that there was no order of dismissal passed against the 3rd respondent – workman and therefore, the procedure adopted by the petitioner – Management was not lawful and thereby, the 3rd respondent – workman was denied his terminal benefits also.

Given the totality of the facts and circumstances of the case, this Court is of the opinion that the interest of justice would be adequately served by limiting the compensation payable by the petitioner – Management to the 3rd respondent – workman to the amounts already paid till date. The 3rd respondent – workman has, in all, been paid a sum of over Rs.29,000/-.

The writ petition is accordingly allowed to the extent of modifying the compensation payable to the 3rd respondent – workman to the sum aforesaid. In the event the amount has not been withdrawn as yet, liberty is granted to the 3rd respondent - workman to withdraw the same.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

Date:30.10.2015

GJ