

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

WRIT PETITION No.14372 of 2000

Date:07.11.2015

Between:

M/s. Sri Bajarang Jute Mills Ltd.,
Pattabhipuram, Guntur,
Guntur District rep by its Director
Davu Gopal Lunani
S/o.Late Siva Gopal Lumani.

... Petitioner.

AND

The Presiding Officer,
Hon'ble Labour Court,
Guntur and others.

...Respondents.

The Court made the following:

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

WRIT PETITION No.14372 of 2000

ORDER:

This writ is filed to quash orders of Labour Court, Guntur dated 21-03-2000 in I.D.No.135/95.

2. Petitioner herein is a Company and it's Director filed his affidavit contending that petitioner-company is engaged in manufacturing Jute Twine & Bags and became industrially sick within the meaning of Sick Industries (Special Provisions) Act, 1985 under

the Erstwhile Management. Board for Industrial and Financial Reconstruction (B.I.F.R) constituted under the Act 1985 sanctioned a Scheme for Rehabilitation of the Sick Mill under Section 18 of the provisions of the Act 1985.

The company was kept under closure from 01-04-1991 to 21-12-1994 by the erstwhile management headed by Mr. M.L. Bhuvalka as it's Chairman-cum-Managing Director. As per the terms of the sanctioned scheme, BIFR by its order dated 16-06-1994 directed the Industries Department, Government of Andhra Pradesh to take possession of the mill and hand over the management to East India Commercial Company Limited and accordingly new management took over possession of M/s. Sri Bajrang Jute Mills Limited, Guntur and commenced it's operations from 21-12-1994. Before passing sanctioned scheme, the trade unions in the mill signed a Memorandum of Understanding (M.O.U) on 29-01-1994 and the same was made part of the scheme. As per the terms of the Memorandum of Understanding, new management agreed to employ all the permanent and Budli workmen on the rolls of the company as on the date of reopening of the mill. Name of second respondent who resigned under the old employer was copied by mistake into the new muster rolls before commencement of operations i.e., on 21-12-1994. Second respondent came to attend duty for the first time on 18-02-1995 to the night shift at about 10:00 P.M., but the muster clerk on duty has not allowed him. As per the records, second respondent who worked as Silver Feeder in the Spinning Department under the erstwhile management has resigned and received an amount of Rs.17,478/- towards gratuity on 27-05-1994. This amount was paid under cheque drawn on C/D/A/c.No.29002 of Sri Bajrang Jute Mills Gratuity Fund on Union Bank of India, Extension Counter. The cheque was signed by the two

of the trustees of the said gratuity fund and second respondent encashed the same, therefore, as per the terms of the Memorandum of Understanding, second respondent is not entitled to any employment under the new management, but he filed a false representation before the Assistant Commissioner of Labour, Guntur-II on 04-03-1995 who conciliated the matter and he submitted a report about the failure of conciliation to the Deputy Commissioner of Labour, Guntur and thereupon, the Deputy Commissioner of Labour, without applying mind, referred the issue to the Labour Court on 24-10-1995 and the Reference was numbered as I.D.No.135/95 and the labour Court, Guntur, without properly appreciating the material and real issue, under the erroneous impression that the second respondent was terminated without justifiable ground, ordered for his reinstatement, therefore, the Award of the Labour Court, dated 21-03-2000 is null and void and in operative and liable to be quashed.

3. Advocate for petitioner mainly contended that the second respondent received gratuity of Rs.17,478/- on 27-05-1994 and settlement of gratuity would arise only in case of superannuation or voluntary retirement or resignation or termination of the employee and when second respondent received gratuity, it has to presume that he is no more a employee from 27-05-1994. He further submitted that the petitioner is new employer, who took over a mill w.e.f., 21-12-1994 and the second respondent was not an employee of the old employer as on 21-12-1994, therefore, the labour Court was not right in ordering reinstatement. He further submitted that when the factum of employment and termination were in dispute, there could have been a reference, but here in this case, the reference has been drawn up without any application of mind since as per the material, the second respondent was not an employee and as such, the

reference taken up by the Tribunal is incorrect. It is further submitted that second respondent relinquished his employment therefore, ordering reinstatement by the Tribunal is not at all correct.

4. Now the point that would arise for my consideration in this writ petition is whether the order of the labour Court, Guntur is legal and if not is it liable to be quashed?.

5. **Point:-** As seen from the material, second respondent joined service of M/s.Sri Bajarang Jute Mills on 19-05-1971 in Spinning Department. Management of this mill stopped running of the mill and that has been referred to the Board for Industrial and Financial Reconstruction, New Delhi (B.I.F.R). Later, it was declared as sick industry as per the provisions of Sick Industrial Companies (Special Provisions) Act, 1985. B.I.F.R sanctioned a rehabilitation scheme for revival of the sick mill by order dated 16-06-1994. As per the said scheme, East India Commercial Company, Eluru (New Management) took over the mill and new employer commenced operations of the mill from 21-12-1994.

A Memorandum of Understanding was signed on 29-01-1994 by the Trade Unions with the new promoter as per which, those employees who were on the rolls of the company as on the date of reopening of the mill by the new employer are entitled for employment under new employer. The main contention of the petitioner herein is that second respondent received Rs.17,478/- as gratuity on his voluntary retirement. The same objection was also raised before the labour Court, Guntur and the petitioner herein relied on Ex.M1 before the labour Court, which was the cheque issued by the Trustee of Gratuity Fund. The employer has not produced any other material before the labour Court to show that second respondent took voluntary retirement, if really that was a fact there should have been an

application from the second respondent requesting for voluntary retirement and the management should have passed some orders on that application. Admittedly, no such records were produced before the labour Court though the evidence disclosed that the old records were handed over to the new management. Labour Court, on verification of the attendance register and wage register, noticed that the name of the second respondent herein was found on the rolls from 15-12-1994 to 20-03-1995. As per the Memorandum of Understanding, the employees that were on the rolls of the company as on the date of reopening of the mill by the new employer are entitled for employment under the new management and they have to be treated as still in service. Admittedly, new management commenced the operations with effect from 21-12-1994, so by that date, the name of second respondent was on rolls both in the attendance register and wage register. The petitioner offered some explanation for containing the name of second respondent in the attendance register and wage register, that was not accepted by the labour Court as the petitioner failed to place any evidence substantiating the explanation offered in respect of entries in the attendance register and wage register. Labour Court also noticed that the service register of the second respondent was not produced and if really there was voluntary retirement and the amount was paid towards final settlement, service register must contain these entries, for the reasons best known to the petitioner, such relevant records are not produced before the labour Court.

6. Though new employment took over the mill and started operations in the mill from 21-12-1994, the spinning section where second respondent was working actually started functioning from 28-01-1995. Both attendance register and wage register disclose that name of second respondent was on the rolls till 20-03-1995. Learned

Presiding Officer of the Labour Court has elaborately considered all the aspects including the plea of payment of gratuity and held since the name of the second respondent was on rolls, he has to be treated in service as on the date of taking over of the mill by the new management. As per the material, the contention of the second respondent is that he was prevented from attending duty when he approached the mill on 18-02-1995 and considering the material, labour Court observed such prevention is not legal and valid and on that ground, labour Court ordered for reinstatement of the second respondent. I do not find any illegality in the order of the labour Court and the direction of the labour Court is correct as per the material available on record, in particular attendance register and wage register. Therefore, the contention of the petitioner that labour Court erroneously ordered reinstatement of the second respondent cannot be accepted and for these reasons, I am of the view that the writ is liable to be dismissed as devoid of merits.

7. Accordingly, the writ petition is dismissed as devoid of merits.
No costs.

8. As a sequel, miscellaneous petitions, if any, pending in this writ petition, shall stand dismissed.

JUSTICE S. RAVI KUMAR

Date:07.11.2015

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