

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 14117 of 2005

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.7 of 2002 dated 01.01.2004 as modified by the orders of the first respondent in A.P.S.E.A.No.5 of 2004 dated 28.02.2005 and quash the same as illegal, arbitrary and violative of principles of natural justice.

The petitioner herein was a owner of Suvarna Restaurent. The third respondent joined in service with the petitioner as Head Cook in the month of September, 2000. On 01.11.2002 the petitioner orally informed the third respondent that his services are terminated. Hence, 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.23,980/- towards terminal benefits as he was removed from service with effect from 01.11.2002. After considering the oral and documentary evidence produced therein, the Labour Court held that the third respondent is entitled for an amount of Rs.13,200/- 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.5 of 2004, before the appellate authority under Section 53 of the Act. By an

order, dated 28.02.005, the appellate authority dismissed the appeal, directing the petitioner to pay Rs.8,700/- within one month. Challenging the same, the petitioner filed this present writ petition.

On 01.07.2005, this Court while admitting the writ petition suspended the impugned order subject to the petitioner depositing Rs.4,500/-, within a period of four weeks from that day.

The main ground urged by the learned counsel for the petitioner is that the first respondent erred in proceeding against Suvarna Restaurent which was not in existence as on the date of filing of application before the primary authority. He submits that since Survarna Restaurent was not in existence by then, the question of paying an amount of Rs.8,700/- awarded by the Labour Court would not arise.

Per contra, learned counsel appearing for the third respondent opposed the same contending that though Suvarna Restaurent was not in existence, but Suvarna Foods was known in and around that area as Suvarna Restaurent.

A perusal of the material available on record would clearly disclose that though the proceedings were initiated against Suvarna Restaurent, the petitioner herein took notice and contested the same. A reading of the order under challenge would show that the arguments which is now advanced that Suvarna Foods and Suvarna Restaurent are different and that the respondents could not have initiated proceedings against Suvarna Restaurent was not raised in the counter filed before the Labour Court. Apart from that the material on record clearly discloses that Suvarna Foods also called as Suvarna Restaurent in and

around the said area and accepting the same, the petitioner also received notice and contested the matter. Therefore, the argument of the learned counsel for the petitioner cannot be accepted at this point of time.

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.

It is to be noted that the third respondent herein worked as Head Cook in the establishment of the petitioner since September, 2000 till he was terminated from service on

01.11.2002. Therefore, it is clear that the third respondent has put in more than two 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 given to the third respondent herein while terminating his services. 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 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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