

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

WRIT PETITION No.853 OF 2003

ORDER:

In this writ petition filed under Article 226 of the Constitution of India, the petitioner seeks a writ of certiorari to quash the order dated 03.12.2002 passed in S.A.No.26 of 2002 by the Authority under A.P. Shops and Establishments Act, 1988-cum-Deputy Commissioner of Labour, Hyderabad (Twin Cities), whereby and wherein the order dated 06.3.2002 in S.E. Case No.17 of 1998 passed by the Assistant Commissioner of Labour-III, Hyderabad was confirmed.

2. The facts leading to filing of the writ petition, in brief, are as follows: The petitioner i.e, M/s.Meenaz Foot Wear, Abids, Hyderabad, has been doing business in ladies foot wear. The petitioner employed first respondent as salesman with effect from 01.4.1996. The first respondent started misbehaving with lady customers. While so, on 15.11.1997, the first respondent misbehaved with a lady customer and the same was brought to the notice of the management. The first respondent was advised to change his behaviour or else to leave the shop by collecting the service benefits. He left the shop without receiving the service benefits. After about 8 months, the first respondent approached the third respondent i.e., Assistant Commissioner of Labour-III, Hyderabad and filed S.E. Case No.17 of 1998. In that case, the petitioner has taken a specific stand that the first respondent left the shop without collecting terminal benefits.

3. The petitioner alleged that the third respondent allowed the Case on 06.3.2002 in a routine manner, and awarded a compensation of Rs.8,000/- to the first respondent in lieu of reinstatement. Feeling aggrieved by the order of the third respondent, the petitioner filed S.A. No.26 of 2002 before the second respondent i.e., the Deputy Commissioner of Labour. By the impugned order dated 03.12.2002, the second respondent dismissed the S.A. confirming the order passed by the third respondent. Hence, the present writ petition.

4. Heard Sri B.G.Ravindra Reddy, learned counsel for the petitioner, Sri K.K.Chakravarthy, learned counsel for the first respondent, and the learned Government Pleader for Labour, representing the respondent Nos.2 and 3.

5. The only contention of the learned counsel for the petitioner is that the first

respondent himself voluntarily left the shop, without collecting service benefits, which aspect was not taken into consideration by the respondent Nos.2 and 3.

6. It is not in dispute that the first respondent worked as salesman in the petitioner's footwear shop from 01.4.1996 to 15.11.1997. The case of the petitioner is that the first respondent misbehaved with lady customers and when cautioned to behave properly, he himself left the shop. The factum of employer–employee relationship between the petitioner and first respondent is not in dispute. The first respondent worked in the shop of petitioner for about 8 months. If really, the first respondent misbehaved with lady customers, proper course open to the petitioner is to issue show cause notice to the first respondent calling for his explanation as to why his services cannot be terminated on the ground of his misbehaviour with lady customers. It is not in dispute that the petitioner did not issue show cause notice to the first respondent.

7. Section 47 of A.P. Shops and Establishment Act, 1988 (for short, 'the Act') deals with conditions for terminating the services of an employee etc. Sub-section (1) thereof prohibits termination of service of an employee without issuing at least one month's notice if such employment continued for a period of six months. Admittedly, the first respondent was employed in the shop of petitioner for about 8 months.

8. Further Rule 20 of A.P. Shops and Establishment Rules, 1990 (for short, 'the Rules') provides the procedure for termination of services of an employee. As per Rule 20, employer shall not terminate the services of an employee without conducting an enquiry and before the enquiry charge sheet has to be issued and reasonable opportunity shall be given to the employee to adduce evidence.

9. Section 47 of the Act read with Rule 20 of the Rules postulates the procedure to be followed to terminate the services of an employee on the ground of misconduct. It is not the case of the petitioner that it conducted the enquiry with regard to alleged misconduct of the first respondent with lady customers. The petitioner, having admitted the employer–employee relationship between him and first respondent, ought not to have terminated the services of the first respondent without following the procedure referred to supra. The material placed before the court clinchingly establishes that the petitioner terminated the services of the first respondent in violation of the provisions of the Act and the Rules. It is not out of place to extract hereunder the relevant portion of the impugned order in page-3.

“Hence, I opine that it is a case of oral termination by the appellant-management without following the provisions of the A.P. S&E Act, 1988. The lower authority in his order held that *“Here the respondent openly admitted that he has asked the appellant not to attend the duties. Instead of asking the appellant to stop coming to the duty, the respondent ought to have taken action after conducting domestic enquiry into alleged misconduct”*.”.

10. The third respondent, after considering the material available on record, arrived at a conclusion that the petitioner orally terminated the services of the first respondent on the ground of misconduct, without following the procedure contemplated under the Act and the Rules, and awarded Rs.8,000/- to the first respondent in lieu of reinstatement. The third respondent assigned cogent and valid reasons to his findings. The said findings were rightly appreciated and affirmed by the second respondent in the appeal. There is no illegality or irregularity in the orders passed by the respondent Nos.2 and 3, warranting interference by this court while exercising jurisdiction under Article 226 of the Constitution of India. Viewed from any angle, the writ petition lacks merits and bona fides.

11. Hence, the writ petition is dismissed. No costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

T.SUNIL CHOWDARY, J

April 10, 2015.

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