THE HON'BLE SRI JUSTICE S.RAVI KUMAR

WRIT PETITION NO.19072 OF 2000

ORDER:

This petition is filed challenging orders in M.P.No.2 of 1996 dated 11.10.1999 on the file of the Presiding Officer, Labour Court, Guntur.

According to petitioners, second respondent worked as driver at Jaggayyapeta Depot of APSRTC, Krishna District and retired from service on medical grounds due to defective eye vision on 26.08.1992. After five years thereafter, the second respondent raised a stale dispute and filed M.P.No.2 of 1996 under Section 33 (c) (2) of the Industrial Disputes Act, 1947 ("the Act" for brevity), contending that he worked for 321 hours overtime during 1984 to 1988 while working at Jaggayyapeta Depot and 663 hours overtime during 1988 to 1991 while working at Machilipatnam Depot and that he is entitled for the overtime and that the petitioners wrongly deducted Rs.12,978/- from his retirement benefits and that he is entitled for those benefits and the Labour Court, Guntur, accepted the claim of the second respondent and directed the petitioners to pay Rs.12,978/- towards amount deducted from the retirement benefits and also to pay wages for overtime as claimed by the second respondent while taking into consideration the salary drawn by him during the relevant period.

According to petitioners, order of the Labour Court, Guntur, in M.P.No.2 of 1996 dated 11.10.1999 is bad in law, contrary to the facts on record, arbitrary, illegal and liable to be quashed.

Heard arguments.

Advocate for petitioners submitted that Presiding Officer of the Labour Court accepted claim of the employee on the basis of entries in the diaries prepared by him, which are not attested or signed by any of the officers of the Corporation, therefore, order granting wages for overtime is without any acceptable evidence and liable to be set aside. He further submitted that the Corporation has rightly deducted

Rs.13,000/- from the retirement benefits of the employee, as he availed excess earned leave while in service and by calculating the excess earned leave availed, this amount of Rs.13,000/- was deducted. But the Labour Court, without any evidence, directed the petitioners to pay a sum of Rs.12,978/- that was deducted from out of gratuity. He submits that Labour Court cannot maintain claim for overtime wages beyond the period of three months. Therefore, order of the Labour Court is liable to be set aside.

I have perused the material papers including the order of the Labour Court, Guntur, dated 11.10.1999.

The second respondent herein made a claim of wages, for overtime under two spells. Under the first spell, he claimed for 321 hours during the period from 1984 to 1988 and under the second spell, he claimed for 663 hours during the period from 1988 to 1991. He claimed that the management has not paid retirement compensation i.e., fifteen days' wages for every year of service as per the provisions of the Act and he claimed Rs.96,020/- under that head. The Labour Court has not accepted the claim of Rs.96,020/- and only accepted claim for overtime wages and claim for deduction of certain amount from the retirement benefits towards availment of excess earned leave. Challenging these two claims, present Writ Petition is filed.

The main contention of advocate for Corporation is that Labour Court without any evidence granted wages for overtime. As seen from the impugned order, Labour Court granted wages towards overtime based on documents Exs.P5 to P14. Employee, i.e., the second respondent herein, was examined as P.W.1 before the Labour Court and through him, Exs.P5 to P14 were marked.

In the evidence, P.W.1 stated that he maintained diaries for the overtime and those diaries were marked as Exs.P7 to P14. As seen from the record, Exs.P5 and P6, which are overtime chart and statement of overtime work for the years 1984 to 1991 are prepared on the basis of diary entries, which are not rebutted. P.W.1 was cross examined on behalf of the Corporation, wherein he stated that entries in the diary were not attested by any of the officers of the second respondent but the fact remains that diary entries Exs.P7 to P14, Exs.P5 and P6, show the details of the vehicle numbers and log numbers to prove kilometres travelled during the relevant period as overtime, which the Labour Court has considered and accepted that employee turned out work by doing overtime. Only one witness was examined on behalf of the Corporation and Exs.P5 to P14 produced by the employee were not rebutted and considering the same, the Labour Court has accepted the claim of the employee for overtime. Therefore, objection of Corporation that Labour Court allowed the claim for overtime without any evidence cannot be sustained.

The next contention of the advocate for Corporation is that the claim for overtime has to be made within three months from the due date but employee has not made that claim within three months and hence, the claim is barred by time.

As seen from the order of the Presiding Officer of the Labour Court, the very same objection was also raised before him and by considering the provisions under Section 33 (c) (2) of the Act, the objection with regard to limitation was rejected. As seen from the provisions of the Industrial Disputes Act, particularly Section 33 (c) (2) of the Act, three months period is prescribed to make the claim before the employer but not before the Labour Court. As rightly observed by the Labour Court, objection of Corporation is not tenable in view of Section 33 (c) (2) of the Act. I do not find any wrong in the approach of the Labour Court in considering the objection relating to limitation.

Admittedly, next claim is regarding deduction made from gratuity. Corporation has deducted a sum of Rs.13,000/- from the retirement benefits of the employee and according to Corporation, the employee has availed excess earned leave. As seen from the material, the Corporation has not issued any notice to the employee before effecting such deduction. It appears, the management has deducted a sum of Rs.871/- towards excess earned leave availed, a sum of Rs.12,007/- as per the audit objection and a sum of Rs.100/- towards damages caused to the Corporation. There is no evidence substantiating the deduction under the three heads referred above. Learned Presiding Officer, while accepting the contention of the petitioners that the deduction of those amounts without giving any opportunity to the employee is violative of principles of natural justice and on that ground directed the Corporation to pay Rs.12,978/-, which the Corporation has deducted arbitrarily.

I do not find any wrong in the order of the Labour Court, Guntur, for directing the Corporation to pay a sum of Rs.12,978/- deducted arbitrarily from the retirement benefits of the employee. On an overall scrutiny of the entire material, the objections pointed out on behalf of the petitioners cannot be sustained. There is no illegality in the order of the Labour Court, Guntur, dated 11.10.1999. As such the Writ Petition is devoid of merits.

For the reasons above, the Writ Petition is dismissed but under the circumstances without costs. Miscellaneous petitions, if any, pending shall stand dismissed.

(S.RAVI KUMAR, J)

27th August 2015
RRB