

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

W.P.No.445 of 2006

ORDER:

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This writ petition is filed stating that the 1st respondent is working as Booking Clerk in the theater owned by the father of petitioners by name G.Venkateswarlu and worked for two months in October and November, 1987 and thereafter abandoned the duty. However, the 1st respondent rejoined in their theatre in the month of February, 1988 and worked in the months of February and March, 1988 and received salary of Rs.405/- per month as per the provisions of Minimum Wages Act. It is stated that the 1st respondent has once again left the duties from April, 1988 onwards even without informing the management and thereby, abandoned the services. But the 1st respondent filed an application before the Assistant Commissioner of Labour, Ongole-the 3rd respondent herein alleging that his services were illegally terminated in the theatre owned by the petitioners. The same is numbered as S.E.No.2 of 1991 on the file Assistant Commissioner of Labour-cum-Authority under A.P. Shops and Establishment Act i.e. before the 3rd respondent and that said application was dismissed on 28-11-1996. Aggrieved by the said order, the 1st respondent preferred the appeal before the Deputy Commissioner of Labour, the 2nd respondent herein and the same was numbered as S.A.No.4 of 1997, which was allowed by order, dated 28-04-2001 and the matter was remanded to the 2nd respondent. The 2nd respondent passed order on 07-01-2002 granting compensation and back wages of Rs.34,581-50 ps. in lieu of reinstatement and the 1st respondent has attained the age of superannuation by the date of said order. Aggrieved by the same, the 1st respondent filed appeal before the 2nd respondent, which is numbered as S.A.No.6 of 2002. During the said proceedings, the father of the petitioner was expired. The case of the petitioners that the 2nd respondent without considering the facts and circumstances of the case passed order on 14-09-2005 enhancing the compensation from Rs.34,581-50 ps to Rs.1,61,892/-. Aggrieved by the same, the present writ petition is filed.

Learned counsel for the petitioners submits when the 1st respondent attained the age of superannuation by the time of passing orders by the 3rd respondent, the question of granting relief does not arise. He also submits that minimum wages existing as on 31-01-2001 cannot be granted. Because on 31-01-2001 on which

date, the 1st respondent has attained the age of superannuation. Only last drawn pay should be taken into account, while granting back wages. He also submits that since the 2nd respondent has not ordered reinstatement with continuity of service, the question of back wages does not arise. He also submits that service compensation for an amount of Rs.14,476/- is granted, though the provisions of Section 47(3) of A.P. Shops and Establishments Act, 1988 (for short “ the 1988 Act”) was already struck down by Supreme Court. In support of his contention, he relied on the judgment of **Grand Kakatiya Sheraton Hotel and Towers Employees and Workers Union v. Srinivasa Resorts Limited And others**^[1] and **Hindustan Steel Construction Limited v. Union of India and Ors.**^[2].

The matter was heard on 18-02-2016 and there was no appearance for the respondents on that day and the matter was posted for judgment. Again on 25-02-2016, adjournment is sought by the respondents. Even today, when the matter is called in the morning and after noon, there is no representation for the respondents.

In this case it is to be seen that though as per the provisions of Section 47(3) of the 1988 Act, every employee who had put in a continuous service of not less than one year was made eligible for service compensation (i) on voluntary cessation of his work after completion of 60 years of age, (ii) on his resignation, or (iii) on physical or mental infirmity duly certified by a registered medical practitioner, or (iv) on his death or disablement due to accident or disease. But the Apex Court in the judgment cited (1supra) struck down the provisions of said section. The compensation granted on that count to that extent for an amount of Rs.14,476/- is set aside. Section 17-B of the Industrial Disputes Act, 1947 (for short “the I.D.Act”) deals with payment of wages. In that context, this Court held para No.7 of the judgment cited (2 supra) as under:

“ In these circumstances the only legal consequence, that follows from Section 17-B is that, a person is entitled to wages during the pendency of the proceedings either before the High Court or the Supreme Court, in case the order of reinstatement ordered by the Tribunal is confirmed, on the basis of the revised wages, accorded after the date of retrenchment, termination or dismissal. But in case of an order of retrenchment, termination or dismissal assuming finality being confirmed by the highest Court he would not be entitled to any emoluments or remuneration in terms of the pay scales revised after such dates of termination, retrenchment or dismissal.”

In this case, it is not the case of grant of last drawn wages as per Section 17-B of the I.D.Act. In view of the same, the principle laid down by this Court has no application to the facts and circumstances of the present case.

As far as grant of back wages is concerned,

the appellate authority i.e. the 2nd respondent has taken the minimum wage as on 31-12-2001 i.e. Rs.2091-00 per month. Learned counsel for the petitioners submits that as on the date of termination, his wages were only at Rs.405/-. Since the wages are changing from time to time, I deem it appropriate that instead of taking Rs.2091/- per month as on 31-12-2001, the same is modified from allowing 50% back wages from 01-04-1990 to 31-12-2001 basing on the minimum wages to be paid to the 1st respondent instead of Rs.2091/- from the date of termination till the date of payment and as already stated above, to the extent of service compensation granted for Rs.14,476/- is set aside.

With the above observations, the writ petition is allowed to the extent indicated above. As a sequel thereto, miscellaneous petitions, if any, pending in this writ petition, shall stand closed.

A.RAJASHEKER REDDY,J

03-03-2016
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[\[1\]](#) (2009) 5 Supreme Court Cases 342

[\[2\]](#) 1998 (2) ALD 522