

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

WRIT PETITION No.13931 of 2004

ORDER:

The writ petition is filed under Article 226 of the Constitution of India seeking a writ of Certiorari after calling for the records in I.D.No.330 of 2002 dated 20.03.2004 on the file of the first respondent – Industrial Tribunal-cum-Labour Court, Ananthapur, wherein and whereby the termination order passed by the second respondent was confirmed and set aside the same by reinstating the petitioner into service with continuity of service, backwages and attendant benefits.

The facts leadings to filing of the present writ petition are briefly as follows:

The petitioner was appointed as a cleaner on 26.11.1998 in the second respondent corporation. It is the case of the second respondent that the petitioner was unauthorisedly absent from duty with effect from 29.12.1997 to 24.02.1998. A charge sheet was issued on the same day to the petitioner calling explanation for his unauthorized absence. On 09.03.1998, the Enquiry Officer issued a notice directing the petitioner to appear before him. On 16.03.1998 the Enquiry Officer conducted the enquiry and submitted his report on 24.03.1998 stating that the charges levelled against the petitioner was proved. In pursuance of the enquiry report, the petitioner was removed from service on 25.04.1998. The appeal preferred by the petitioner was rejected. Having no other alternative, the petitioner filed an application under Section 2(A)2 of the Industrial Disputes Act, 1947 and the same was numbered as I.D.330 of 2002 on the file of the Chairman-cum-

Presiding Officer, Industrial Tribunal-cum-Labour Court, Anantapur. After affording reasonable opportunity to both parties, the Labour Court dismissed I.D.No.330 of 2002. Hence, the present writ petition.

The contention of the learned counsel for the petitioner is that the Labour Court has not considered the judgment dated 24.11.2000 in S.C.No.450 of 1998 on the file of the court of Assistant Sessions Judge, Nandyal. He further submitted that the Labour Court failed to appreciate that the petitioner was in judicial custody during the period of the alleged enquiry. He further submitted that the alleged enquiry conducted by the second respondent is in violation of principles of natural justice.

Per contra, Sri Aravala Rama Rao, learned standing counsel for the second respondent submitted that the petitioner filed the appeal three years after the removal order. He further submitted that the petitioner has not taken the plea that he was in judicial custody during the relevant period.

Now, the point for consideration is whether the order passed by the Labour Court is legally sustainable or not?

It is not in dispute that the petitioner was removed from service on 25.04.1998. The Tribunal dismissed the I.D.No.330 of 2002 on the sole ground that the petitioner did not appear before the Enquiry Officer despite receiving the notice dated 09.03.1998. It is an admitted fact that the police registered a criminal case against petitioner on 06.02.1998 basing on the complaint lodged by his wife under Sections 498-A and 307 IPC. A perusal of the record further reveals that the petitioner was arrested on 23.02.1998 and released on bail in the month of August 1998. The

Labour Court has referred the judgment dated 24.11.2000 in S.C.No.450 of 1998 on the file of the Court of Assistant Sessions Judge, Nandyal in its order.

Learned counsel for the petitioner submitted that the petitioner herein filed the copy of the judgment in S.C.No.450 of 1998 but for one reason or the other, the same was not marked by the Labour Court. A perusal of the judgment dated 24.11.2000 in S.C.No.450 of 1998 clearly reveals that the petitioner was arrested on 23.02.1998 and released on bail in the month of August 1998. The fact remains that the petitioner was in judicial custody at the time of alleged enquiry and no where it is mentioned that the second respondent served the notice on the petitioner through the jail authorities. A perusal of the record *prima facie* reveals that the enquiry was conducted in the absence of the petitioner. Any enquiry conducted in violation of principles of natural justice is not sustainable.

Having regard to the facts and circumstances of the case, I am of the considered view that it is a fit case to remand the matter to the Industrial Tribunal-cum-Labour Court, Anantapur for disposal in accordance with law after affording a reasonable opportunity to both parties.

Accordingly, the writ petition is allowed and the matter is remanded to Industrial Tribunal-cum-Labour Court, Anantapur for fresh disposal in accordance with law after affording a reasonable opportunity to both parties. The Labour Court is further directed to dispose of I.D.No.330 of 2002 as expeditiously as possible, preferably within a period of three months from the date of receipt of copy of the order. As a sequel, the miscellaneous petitions if any pending in this writ petition shall stand closed. Registry is

directed to send the copy of the judgment in S.C.No.450 of 1998
along with other material papers to the Labour Court.

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T.SUNIL CHOWDARY, J

April 20, 2016.

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