

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No. 12663 of 2010

ORDER:

Respondent Nos. 1 to 3 in I.D.No.186 of 2005 on the file of Industrial Tribunal-cum-Labour Court, Anantapur (for short' the Labour Court') are the petitioners herein. Respondent No.2 herein filed the said I.D challenging the retrenchment of his services by the 3rd respondent with effect from 1.05.2003 as illegal, invalid and inoperative.

The case of the petitioner in the Labour Court was that he was employed as worker in the year 1995 by the 3rd respondent, but the wages were paid for some time through Respondent Nos. 4 and 5 and the petitioner continuously worked up to 31.08.1998. The services of the petitioner were not regularized. The services of the petitioner were terminated orally on 01.09.1998 and on the request made to the authorities, the petitioner was taken into service on 24.02.2001 and was allowed to work up to 30.04.2003. With effect from 01.05.2003 he was not permitted to continue in the work by the 3rd respondent. In those circumstances, he filed the said I.D stating that he is entitled for protection under Section 25 (F) (g) and Rules 78 and 79 of the Industrial Disputes Act (for short 'the Act') and that the retrenchment comes within the meaning of Section 2 (00) of the said Act.

Respondent Nos.1,3,4 and 5 remained *ex parte* before the Labour Court.

Respondent No.2 filed a counter stating that the petitioner was under the employment of 4th respondent and he was never appointed by the respondent Nos. 1 to 3. He was not on the rolls as on 18.05.1997 and there was no master and servant relationship between them. He does not possess the requisite qualification and they had not violated any rules. There is no order of appointment issued by respondent Nos. 1 to 3.

The petitioner was examined as WW.1 and marked Exs. W.1 to W.8. Respondents examined MW.1, but did not mark any documents.

On the basis of the pleadings, the following points were framed for consideration:

- 1) Whether the petitioner is entitled to the relief of setting aside the order of termination in question ?
- 2) Whether the petitioner is entitled for the relief of reinstatement into service with continuity, with full back-wages and all other attendant benefits ?
- 3) To what relief the petitioner is entitled ?

Ex.W.1-Service Certificate dt.30.10.1997 shows that the petitioner worked from 1995 to 1996. EX.W.2 is another Certificate issued by the Contractor which was countersigned by the Assistant Divisional Engineer and it shows that the petitioner worked from 21.04.1997 to 31.08.1998. Ex.W.3 is another Service Certificate issued by Assistant Engineer (Cooperation), Singnamala, showing that the petitioner worked as the Contract Labour from 24.04.2001 to 30.04.2003. In view of Exs. W.1 to W.3, the Labour Court noticed that the petitioner worked for different periods under the respondents. Ex.W.6 is the letter of rejection consequent to the Orders passed by this Court in W.P.No.28642 of 1997.

Ex.W.4 is the Certificate issued under the Community Polytechnic Scheme sponsored by Ministry of Human Resource Development, Government of India. MW.1, who was examined on behalf of respondents, denied his signature on Ex.W.3. He also stated that he does not know the contractor and he was not the immediate Supervisor to the petitioner.

The Labour Court also observed that in view of Exs. W.1 to W.3 and the ground mentioned in Ex.W.6, the petitioner was not on the rolls as on 18.05.1997 does not hold good and it was also observed that in view of the other documentary evidence, it cannot be held that he does not possess the requisite qualification. Accordingly, the Labour Court

allowed the ID by directing the respondent No.3 to reinstate the petitioner within 15 days from the date of publication of the Award, but without back wages.

The said Award of the Labour Court dt. 25.01.2010 is challenged by the respondent Nos. 1 to 3 before the Labour Court, in the present Writ Petition.

Learned counsel for petitioner submits that the issue before the Labour Court was not with regard to regularization of the services of the petitioner, but with regard to the termination of the services of petitioner with effect from 01.05.2003. He further submits that the Labour Court passed the said Award without giving a finding with regard to relationship of the petitioner and the respondent Nos. 1 to 3 therein.

Learned counsel for second respondent herein submits that the issue before the Labour Court is with regard to continuation of the services of the petitioner from 01.05.2003 and not for regularization of the services.

In view of the nature of dispute in the Labour Court, the Labour Court ought not to have observed with regard to the effect of Ex.W.6 in a dispute between the parties. This Court directed the respondents in W.P.No.28642 of 1997 to consider the case of the petitioner and the petitioner's case was rejected under Ex.W.6. The remedy of the petitioner against the Order in Ex.W.6 is separate. The present grievance of the petitioner is with regard to non continuance in the service with effect from 01.05.2003. In the circumstances, the Labour Court should have framed appropriate issues as to whether there is any master and servant relationship between the petitioner and the respondent Nos. 1 to 3 and whether the petitioner is entitled to continue under the services of 4th respondent as on the alleged date of termination dt. 01.05.2003. No issue was framed and no finding was recorded regard there to.

In the absence of such a finding, the Labour Court ought not to

have passed the impugned order against Respondent No.3 when there is a serious dispute with regard to employment of the petitioner.

In the circumstances, this Court is constrained to set aside the Order dt. 25.01.2010 and remand the matter to the Industrial Tribunal-Cum-Labour Court, Ananthapur, for consideration of the case afresh and for passing a fresh Award, in accordance with law, within a period of six months from the date of receipt of a copy of this Order, by giving an opportunity to both parties. Both parties are entitled to file additional evidence, if any, before the Labour Court.

With the above observation, this Writ Petition is allowed. No order as to costs.

As a sequel, miscellaneous petitions, if any, pending in this case, shall stand closed.

A.RAMALINGESWARA RAO, J

Date: 17.02.2016

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THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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