

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION Nos.1148 & 1289 of 2010

COMMON ORDER:

These two writ petitions are being disposed of by this common order as in both the writ petitions the award in I.D.No.15 of 2007, dated 30.10.2009, was challenged.

The petitioner in W.P. No.1289 of 2010 states that he was employed by the respondent as a Senior Assistant by virtue of appointment letter dated 22.07.1989 on a pay of Rs.500/- and he continued to discharge his duties till 11.11.2004, by which time his pay was Rs.10,443/-. He was forced to apply for Earned Leave by the management without reasons and subsequently the management refused to allow him to duties. When he issued a notice in the year 2006 seeking permission to join the service and claiming back wages, the respondent issued a reply stating that there was no order of termination and the petitioner himself abstained from duties from 03.12.2004 and thereafter his whereabouts were not known to the management. It was further stated that though he was liable for disciplinary action, he was advised to submit a representation for reinstatement within one week. Though the petitioner submitted representations on 26.05.2006 and 07.07.2006 and when there was no response from the management, he submitted a representation to the Assistant Commissioner of Labour, who advised him to approach the Court. Consequently, he filed I.D. No.15 of 2007 before the Industrial Tribunal-cum-Labour Court, Visakhapatnam (for short, 'the Labour Court'). Before the Labour Court, two issues were framed as follows:

- 1) Whether the services of the petitioner are terminated? If so, whether such termination is not legal?

- 2) In case the termination is not legal to what relief the petitioner is entitled?

Before the Labour Court, the petitioner was examined as WW1 and one witness was examined on behalf of the respondent as MW1. The petitioner filed exhibits W1 to W8 and the respondent filed exhibits M1 and M2.

On the basis of evidence, the Labour Court held that the retrenchment of petitioner was void. With regard to issue No.2, it was answered partly in favour of the petitioner. Ultimately, the petition filed by the petitioner was allowed directing the respondent to reinstate the petitioner within 30 days from the date of publication of the award, however, it was held that he was not entitled to back wages, but was entitled for continuity of service, benefits of revision of pay besides allowing paper increments, by award dated 30.10.2009. Challenging the same, the respondent before the Labour Court preferred W.P. No.1148 of 2010 whereas the petitioner filed W.P. No.1289 of 2010 seeking back wages.

In W.P. No.1148 of 2010 this Court while admitting the writ petition on 28.01.2010 suspended the award, subject to compliance with Section 17-B of the Industrial Disputes Act, 1947. In the meanwhile, the petitioner crossed the age of superannuation; as a result of which, he is not entitled for any reinstatement.

With regard to the back wages claimed by the petitioner in W.P. No.1289 of 2010, the same was denied by the Labour Court with the following observations:

“The conduct of the employee is very clear from his silence for two years. When he was asked not to attend the duties by the management from 3.12.2004 onwards, nothing would have prevented him from immediately raising a dispute either before the court or before the conciliation authorities. For the first time after 3.12.2004 evidently he made the

representation to the labour officer in November 2006, however, he issued notice through his advocate in March, 2006. At any rate, there was unexplained silence on the part of the petitioner for two years after the alleged termination. That conduct of the workman manifestly makes clear that he would have got the livelihood during that period and so he did not raise the dispute. That is the possible conclusion that can be derived from his silence without raising dispute.

At the same time the contention of the learned counsel for petitioner that because the petitioner is guilty of laches, his claim should be refused by awarding compensation, cannot be accepted. There is no limitation prescribed for raising the industrial dispute. If the termination is otherwise invalid, the court can refuse back wages for that period but it cannot refuse to grant reinstatement (vide the law laid down by the Supreme Court in ***Superintending Engineer, Irrigation Circle Department, Hyderabad and others Vs. B.Sattaiah and another, 2008 (2) LLJ 719 AP***). Thus, the point No.2 is answered partly in favour of the petitioner.”

The petitioner would not show that he was not gainfully employed during the relevant period to claim back wages. Even otherwise also, the Labour Court exercised its power of discretion, on the basis of evidence adduced before it, and held that the petitioner was not entitled to back wages. The said discretion on the facts of the case cannot be held to be perverse.

In view of the petitioner crossing the age of superannuation and in view of the compliance with Section 17-B of the Industrial Disputes Act during the pendency of writ petition, no further orders need be passed on reinstatement. It is clear from the evidence adduced before the Labour Court that the petitioner was an employee, but he was not allowed to continue in service without issuing any order of termination. Taking the said fact into consideration the Labour Court passed the award holding that the retrenchment was invalid. The said finding recorded by the Labour Court cannot be called as erroneous. In the circumstances, W.P. No.1148 of 2010 filed by the respondent management is also liable

to be dismissed and is accordingly dismissed.

In the result, both the Writ Petitions are dismissed confirming the award of Labour Court dated 30.10.2009. No order as to costs.

Miscellaneous Petitions, if any, pending in these Writ Petitions shall stand closed.

A.RAMALINGESWARA RAO, J

20.04.2016

MVA