

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 21961 OF 2007

ORDER:

Heard Sri A.K.Jayaprakash Rao, learned counsel for the petitioner, and Sri Kishore Rai, learned counsel appearing for the respondents.

2. This writ petition is filed questioning the orders passed in S.E.No.26 of 2002 by the Authority under Section 50 of the A.P. Shops & Establishments Act and Labour Officer-II, second respondent, dated 20.04.2005, and the subsequent order in appeal passed in S.A.No.8 of 2005 by the Authority appointed under Section 53 of the A.P.Shops and Establishments Act and Assistant Commissioner of Labour – II, first respondent, dated 20.05.2007, confirming the order of the second respondent.

3. The brief facts are that the third respondent, who worked as a Watchman of Anand Theatre, which was being run by a partnership firm wherein the petitioner and the fourth respondent were partners, filed an application before the second respondent claiming that he was illegally terminated on 30.08.2002 and thereby is entitled for wages for the month of August, 2002, one month notice pay, unavailed leave salary, service compensation for 11 years, and 1½ month bonus, totaling to a sum of Rs.25,461/-.

4. The second respondent, after conducting enquiry and after recording the evidence, passed an order dated 20.04.2005 holding that the termination of the third respondent was illegal and directed the petitioner to pay a sum of Rs.26,601/-, details of which are as follows:

- i. Refund of the amount towards illegal deduction from the wages – Rs.7,217/-.
- ii. Delayed payment due towards service compensation – Rs.12,177/-.
- iii. Towards compensation Rs.7,217/-.

It was also held that it is the petitioner, who terminated the third respondent-watchman, and not the fourth respondent on account of the fact that the fourth respondent came into possession of the theatre only on 30.08.2002. In coming to the said conclusion the first respondent also had taken into consideration of the deposition of the third respondent that he approached the fourth respondent seeking fresh appointment on 30.08.2002, however, he was not given a posting.

5. Aggrieved by the said order petitioner preferred appeal before the Appellate Authority, first respondent. By order dated 20.05.2007, the first respondent on re-appreciation of the entire material on record and after taking into consideration of the arguments advanced, dismissed the said appeal confirming the order of the first respondent and directed the petitioner to pay as follows:

- I. Wages for 60 days unavailed leave – Rs.4,428/-.
- II. Earned Wages for eight days – Rs.570/-.
- III. Service compensation for an amount of Rs.12,177/-.
- IV. Compensation for delayed payment of wages – Rs.12,177/-.

6. Sri A.K. Jayaprakash Rao, learned counsel for the petitioner, strenuously contended that the orders made both by the primary and

the appellate authorities are erroneous and liable to be set aside on the ground of diversity of finding of fact as both the authorities failed to appreciate the very pleading of the third respondent that he was terminated on 30.08.2002, by which date admittedly the fourth respondent was in possession and control of the theatre. Inasmuch as the order passed by respondent Nos.1 and 2 is by ignoring the crucial aspect of the matter of very termination, the order is liable to be set aside. Learned counsel would also submit that even assuming that the order is to be confirmed to the extent of the authorities granting service compensation for a sum of Rs.12,177/- and the compensation for delayed payment of wages of Rs.12,177/-, the same cannot be sustained in view of the Full Bench judgment of this court reported in ***Srinivasa Resorts Limited, Hyderabad, and another v. State of A.P.***¹, wherein this court held that the authorities under the Act are not empowered to grant Service Compensation as the very Section providing for Service Compensation has been held to be ultra vires and has been struck down holding to be unconstitutional and amounting to violative of Article 14 of the Constitution of India.

5. On the other hand, Sri Kishore Rai, learned counsel appearing for the fourth respondent, would submit that the finding of fact of the Primary Authority as confirmed by the Appellate Authority would clearly establish that the fourth respondent was never in the management of the Company as on 02.08.2002 and the said fact is

¹ 2002(1) ALD 598 (FB)

evident from the very deposition of the third respondent, wherein he had repeatedly stated that it was the petitioner, who had terminated his services. Learned counsel would also submit that the fourth respondent came into possession of the theatre on account of the execution proceedings pursuant to the civil court decree, which matter was confirmed by the Supreme Court. Hence, the finding of facts, as recorded by the authorities, does not warrant any interference in exercise of the Certiorari jurisdiction of this court.

6. Having gone through the entire material on record and having considered respective submissions, this Court does not find any infirmity insofar as the finding of facts as recorded by the authorities below to the extent that it was the petitioner, who was the employer and who had closed the theatre on 02.08.2002 putting an end to the employment of the third respondent and the fourth respondent came into possession of the property only on 30.08.2002. In other words, there was no employee and employer relationship between the third respondent and the fourth respondent as on 30.08.2002 and the third respondent was in employment of the petitioner as on the date of termination i.e., 02.08.2002.

7. However, there is an element of confusion with respect to the awarding of other amounts. The third respondent in his claim petition claimed a sum of Rs.2,214/- as wages for the month of August, 2002, Rs.2,214/- as one month notice pay, Rs.4,428/- as wages for 60 days

unavailed leave, Rs.12,177/- as bonus for 1½ month, apart from Rs.12,177/- Service Compensation for 11 years.

8. On account of the Full Bench Judgment of this court, the third respondent is not entitled for the Service Compensation of Rs.12,177/-. In the total amount of Rs.26,601/-, which has been awarded by the second respondent, the amount of Rs.12,177/- is required to be deleted, leaving a sum of Rs. Rs.14,424/- as payable. It may be noted that while allowing the application, the Primary Authority-second respondent awarded a sum of Rs.7,212/- as refund of the amount deducted as Wages and Rs.7,217/- by way of compensation, apart from the delayed payment of compensation of Rs.12,177/-. The Appellate Authority while confirming the orders of the Primary Authority had awarded a sum of Rs.4,428/- for unavailed leave, Rs.570/- for 8 days wages, Rs.12,177/- as service compensation, apart from Rs.12,177/- as Compensation for delayed payment wages. In total awarded a sum of Rs.17,165/- to the petitioner, apart from Service Compensation of Rs.12,177/-.

9. A bare reading of both the orders and the claim made disclose that there was no uniformity in awarding the amounts at least with respect to the heads under which the amounts have been awarded. However, in the end though put under the different heads the petitioner was held to be entitled for a sum of Rs.17,175/- by the Appellate Authority, which is contrary with the very claim made by the third respondent in his application. In view of the law declared by the

Full Bench, referred supra, third respondent is not entitled for the service compensation of Rs.12,177/-. Once we discard the amount of Rs.12,177/- towards Service Compensation, based on the claim the applicant-third respondent shall be entitled to Rs.14,424/-, only as against which an amount of Rs.17,175/-, came to be awarded by the Appellate Authority.

10. On 12.10.2007, while admitting the writ petition this court granted interim suspension on condition of petitioner depositing half of the amount awarded by the Appellate Authority, which would satisfy the claim made by the petitioner which he would have been entitled to as per the orders of the Primary Authority.

11. In the circumstances, the Writ Petition is allowed in part confirming the order passed by the Appellate Authority dated 20.05.2007 except to the extent of awarding Service Compensation to a sum of Rs.12,177/- for two years of service, in terms of the Full Bench Judgment of the Apex Court.

As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

JUSTICE CHALLA KODANDA RAM

November 17, 2016
LMV