

THE HONB'E JUSTICE CHALLA KODANDARAM

WRIT PETITION No.9622 OF 2006

ORDER:

The writ petition is filed questioning the award dated 28.07.2005 passed by the Labour Court, Ananthapur in I.D.No.310 of 2001.

The facts in brief are that the 2nd respondent was engaged as a Technical Miastry Apprentice for a period of one year i.e., from 18.07.1994 to 17.07.1995 in the office of the Deputy Executive Engineer at Kadapa and thereafter, the petitioner was allowed to work and continued as Technical Miastry in the office of Deputy Executive Engineer at Kadapa and terminated him orally on 31.12.1998 without following the provisions of Section-F of the Industrial Disputes Act, 1947. The 2nd respondent moved the Industrial Tribunal-cum-Labour Court challenging the alleged oral termination by the petitioner with effect from 31.12.1998. The Labour Court made the award holding that the oral termination to be bad with a further direction to reinstate into the 2nd respondent as Technical Miastry or any suitable post equivalent to the same category. The Labour Court also refused to grant any back wages and attendant benefits except granting of continuity of service. The award is challenged on the ground that the Labour Court failed to appreciate the crucial aspect of the case that the 2nd respondent was never employed by the petitioner organization and as a matter of fact on completion of the apprentice, he was discharged as the period of apprenticeship is only for one year. The working of the 2nd respondent with a Contractor does not give any right against the petitioner organization. The Labour Court deliberately failed to take into consideration of the admission made in evidence by the 2nd respondent himself that he had worked under the Contractor and it was the

contractor who had discharged him from the service with effect from 31.12.1998.

Learned counsel appearing for the petitioners had placed on record the deposition of the 2nd respondent and for the purpose of appreciation of contentions raised before this Court, the evidence given by the 2nd respondent before the Labour Court may be noticed. In the cross-examination, the 2nd respondent deposed as under:

“My leg was amputated in the year 1998. I have not filed any record to show that my leg was amputated in the year 1998. No notification was issued calling for the applications for the post of Technical Maistry. After completing the apprenticeship the respondent asked me to continue me in the post of Technical Miastry without any written order. It is not true to say that I was not appointed orally in the post of technical Maistry. The respondent used to make bills in the name of the contractor and used to pay my salary. The respondent used to prepare bills as if I worked under any of the Contractor. I did not challenge the procedure of paying me through contractor. The A.E was directly paying my salary so I have no idea in which contractor's bill my salary was claimed. I used to observe the work done by the contractor and report the same to the A.E. I observed the work done by Subbarayudu, Contractor while he was doing slab work in the work shop in T.R Section. I used to make oral reports to our A.E. The respondent has not obtained my signature in the attendance register. Except making oral representations I did not submit any written application to re-engage me into service after my termination. It is not true to any that I was not engaged orally by the Executive Engineer.”

In the light of the categorical admission on the part of the 2nd respondent himself before the Labour Court, it is clear that the 2nd respondent was not employed by the petitioners but he was in employment with the Contractor. In those circumstances, the allegation that the 2nd respondent was terminated by the Corporation itself is not being correct and there being no termination by the petitioners' organization, the very initiation of the I.D itself does not arise. Though the learned counsel for the 2nd respondent submits that similarly situated persons were accommodated by proceedings dated 21.01.2009, the petitioners-Corporation had clarified that the proceedings dated 21.01.2009 itself indicate that the persons who have been appointed

were appointed pursuant to the notification issued on 18.12.2008 and after following due process. In the circumstances, notwithstanding the fact that the 2nd respondent is a physically handicapped though may require sympathy, as a matter of law, the 2nd respondent cannot claim as the matter of right, the writ petition is required to be allowed.

Accordingly, the writ petition is allowed setting aside the award dated 28.07.2005, passed by the Labour Court, Ananthapur in I.D.No.310 of 2001. No order as to costs.

Miscellaneous petitions, if any pending in this writ petition shall stand closed.

Date:14.11.2016,
Gk.

CHALLA KODANDA RAM,J



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