

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
HON'BLE SRI JUSTICE G.SHYAM PRASAD

Writ Appeal Nos.856, 857, 859, 860 & 865 of 2016

Date:17.9.2016

Writ Appeal No.856 of 2016

Between:

Transmission Corporation of A.P.,
reptd by its Managing Director,
Vidyut Soudha, Hyderabad and
another.

..... Appellants

And:

The Industrial Tribunal-cum-Labour
Court, Anantapur, reptd by its Chairman-cum-
Presiding Officer and two others.

....Respondents

Counsel for the appellants: Mr. G.Vidya Sagar
Senior counsel
For Mrs. K.Udaya Sri

Counsel for respondent No.1: GP for Labour

Counsel for respondent No.2: Mr. Vedula Srinivas

The Court made the following:

COMMON JUDGMENT: *(per Hon'ble Sri Justice C.V.Nagarjuna Reddy)*

This batch of Writ Appeals arises out of common order, dated 19.11.2015, in Writ Petition No.18653 of 2010 and batch.

The brief facts giving rise to the filing of these Writ Appeals are that the workmen who are arrayed as respondent No.2, in each of these Writ Appeals, approached the Industrial Tribunal-cum-Labour Court, Anantapur (for short 'the Labour Court') by raising Industrial Disputes, registered as I.D.Nos.253 to 258 of 1992 for declaring the termination orders passed against them as illegal and invalid. They also sought for a direction to the appellants to reinstate them into service with full back wages and attendant benefits and for a further direction to regularise their services. The appellants have seriously contested the said I.Ds. By a common award passed on 30.12.1996, the Labour Court rendered a categorical finding that the workmen have been the employees of the appellants and as such, they are entitled for reinstatement. The claim of the workmen for back wages and attendant benefits was, however, turned down by the Labour Court. In the result, the Labour Court has given the following directions:

“In the result, awards are passed in I.D.Nos.253 of 1992 to 258 of 1992 directing the respondents to reinstate the petitioners into service with continuity

of service, but the relief of back wages and attendant benefits are rejected.”

It is not in dispute that this award was unsuccessfully challenged by the appellants before this Court as well as before the Supreme Court and it has attained finality.

Complaining that the appellants have not implemented the said award, the workmen have filed E.P.No.51 of 2005 and batch. They sought for an order to attach the schedule mentioned movables of appellant No.2 for non-payment of the salaries for the post-award period and also for their failure to reinstate them. By a common order, dated 10.12.2009, the Labour Court has allowed the said EPs with the following directions:

“By this order, this Court directs the respondents/judgment debtors to issue fresh orders of appointment under respondent Nos.1 and 2 to appoint them as per the award and pay the amount as claimed by them forthwith. Lest attachment follows.”

Feeling aggrieved by the afore-mentioned order of the Labour Court, the appellants have filed a batch of Writ Petitions, *i.e.*, Writ Petition No.18659 of 2010 and batch.

It was pleaded by the appellants in the Writ Petitions that the orders passed by the Labour Court were beyond the scope of the award and that, since the workmen were earlier under the

Contractor, they may be entitled for the same status and therefore, the question of their appointment on regular basis does not arise. The learned single Judge framed the following issues:

1. Whether the questioned orders are beyond the scope of the awards passed by the Tribunal?
2. Whether the workmen are required to be continued on contract basis under a contractor?
3. Whether the petitioners have made out a case, warranting any interference under Article-226 of the Constitution of India to issue Writ of Certiorari?"

Under issue Nos.1 and 2, the learned single Judge held that the order passed by the Labour Court in the Execution Petitions is not beyond the scope of the awards and that the workmen cannot be continued on contract basis under a Contractor. In the light of the said findings, the learned single Judge dismissed the batch of Writ Petitions terming them as absolutely without merit.

Mr. G.Vidya Sagar, learned senior counsel appearing for the appellants, submitted that it is an undeniable fact that the workmen were engaged by the Contractors as contract labour and that therefore, they are not entitled for being treated as regular employees of the appellants. He has further submitted that both the Labour Court and the learned single Judge have

erroneously relied upon the clarificatory order in E.A.No.8 of 2004 which pertains to the awards passed in favour of other workmen and that, since there were vacant posts, in pursuance of the understanding reached between the appellants and the workmen therein in whose favour awards were passed by the Labour Court, their services were regularised and that therefore, the workmen in these cases are not entitled to a similar benefit.

Learned senior counsel also pointed out that both the Labour Court as well as the learned single Judge have not taken into consideration the fact that a sum of Rs.24,02,311-50 paise, representing the salaries from 01.01.1997 to 18.12.2007, was paid to the workmen and that the same was brought to the notice of the Labour Court by way of filing counter-affidavit by the Divisional Engineer (Technical).

Mr. Vedula Srinivas, learned counsel for respondent No.2, fairly conceded that as far as salaries for the period between 01.01.1997 to 18.12.2007 are concerned, his clients have received the same. He has, however, submitted that if there is any dispute over the quantum of the salaries payable for that period and that, if for the period subsequent to 18.12.2007, his clients have not received the salaries, they may be left free to approach the Labour Court by initiating appropriate proceedings.

As regards the relief of reinstatement, the learned senior counsel appearing for the appellants submitted that appointment orders were issued on 18.12.2007 to all the workmen engaging them directly on contract basis, and not under a Contractor. However, no material in support of this submission is filed. Learned counsel for respondent No.2 submitted that he has no instructions on this account.

We have carefully considered the submissions of the learned counsel for the parties.

In the common award, the Labour Court directed the respondents to reinstate the workmen into service with continuity of service, without any back wages and attendant benefits. This direction was given after rendering a finding that the workmen are employees of the appellants. The question as to whether the workmen are entitled to regularisation or not was neither raised nor dealt with by the Labour Court.

In our opinion, the purport of the award of the Labour Court is that the workmen are declared as the contract employees of the appellants and not that of the Contractors, and the further question about their status as permanent or temporary employees was not decided by the Labour Court. Indeed, even in the order passed in the Execution Petitions, as evident from the concluding para of the order reproduced

above, the Labour Court has merely directed the appellants to issue fresh orders of appointment as per the award. Therefore, whatever was the status of the workmen at the time of their termination must be restored. Since the claim of the appellants that appointment orders were issued to the workmen on 18.12.2007 is not substantiated by producing any material, the appellants shall issue fresh appointment orders treating the workmen as their employees and not as employees under a Contractor in terms of the awards within four weeks from the date of receipt of a copy of this order. If the workmen are dissatisfied with the nature of the appointment orders, they shall be free to approach the Labour Court by filing fresh Execution Petitions.

As regards the salaries directed to be paid, in view of the admission of the workmen that a sum of Rs.24,02,311-50 paise was already paid to them by the appellants, the same shall be given credit to while implementing the order passed by the Labour Court in the Execution Petitions. If the workmen dispute the quantum of salaries for the said period, they shall be free to file applications under Section-33-C(2) of the Act. Similarly, if the salaries for the period subsequent to 18.12.2007 are not paid by the appellants, the workmen are entitled to file fresh E.Ps.

In view of the above, the EPs pending before the Labour Court shall stand closed.

Subject to the above observations and directions given above, the Writ Appeals stand disposed of

As a sequel to disposal of the Writ Appeals, all the pending WAMPs filed by the appellants for interim relief are disposed of as infructuous.

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE G.SHYAM PRASAD

17th September 2016

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