

THE HON'BLE SRI JUSTICE A.V. SESA SAI
WRIT PETITION Nos.16826 and 24018 of 2014
and 1750 of 2016

COMMON ORDER:

Since the causes that prompted for filing of these three writ petitions are interrelated, this Court deems it appropriate to dispose of the writ petitions by way of this common order.

According to the petitioner, in W.P.Nos.16826 of 2014 and 1750 of 2016, he joined in the Guntur District Scheduled Caste Co-operative Society Limited as a Section Writer on 01-08-1986 and worked continuously as such upto 31-01-1990 and his services were dispensed with on 01-02-1990 and assailing the same he raised I.D.No.550 of 1991 before the Labour Court, Guntur and on 11-10-1995 the Labour Court passed award, directing the respondents therein to absorb the workman on regular basis in the post in which he was working or in any equivalent post. Questioning the said award, dated 11-10-1995, the authorities filed W.P.No.8812 of 1996 and this Court dismissed the said writ petition on 01-03-2002. Challenging the said order passed by the learned Single Judge, Writ Appeal No.135 of 2006 was filed and by way of an order, dated 15-10-2009, the Division Bench of this Court allowed the said appeal, setting aside the award of the Labour Court, dated 11-10-1995 and remanded the matter for a decision to the Labour Court on the aspect of compliance of Section 25-F of the Industrial Disputes Act, 1947 (for short, 'the Act').

Subsequently, the Labour Court passed an Award, dated 16-

05-2013, directing reinstatement of the Workman into service with continuity of service as per the conditions and norms of N.M.R. worker along with wages from the date of retrenchment i.e., from 01-02-1990 till the date of the Award, while setting aside the oral retrenchment, dated 01-02-1990. The Tribunal also directed payment of difference of wages from 12-07-2005 i.e., the date of reinstatement till the date of Award.

In the above background, W.P.No.16826 of 2014 has been filed by the workman against the said Award to the extent of not granting interest on back wages and costs and W.P.No.24018 of 2014 has been filed by the respondents in I.D.No.550 of 1991, questioning the entire Award. W.P.No.1750 of 2016, assails the action of the respondents in not regularizing the services of the workman.

Heard Sri M.Pichaiah, learned counsel for the petitioner in W.P.No.16826 of 2014 and respondent No.3 in W.P.No.24018 of 2014 and Sri B. Prakasam, learned counsel for the respondents in W.P.No.16826 of 2014 and W.P.No.1750 of 2016 and the petitioners in W.P.No.24018 of 2014.

Submissions/contentions of Sri M. Pichaiah:

1. To the extent of granting relief in favour of the workman, the Award is perfectly valid and to the extent of not granting interest the same is erroneous;
2. The Labour Court, having recorded a finding that the workman is entitled for continuity of service, reinstatement, back wages and all other attendant benefits, erred in not granting interest.

3. A party committed a legal wrong must face all the consequences in the law.
4. The case of management that it does not fall under the definition of 'industry' under Section 2-J of the Act is incorrect and cannot be sustained in view of the law laid down in the case of **Bangalore Water Supply and Sewerage Board v. A. Rajappa**^[1].
5. There are no merits in W.P.No.24018 of 2014.

Submissions/contentions of Sri B. Prakasam, learned Standing Counsel:

1. The impugned award is erroneous, contrary to law and opposed to the very spirit and object of the provisions of the Industrial Disputes Act, 1947.
2. The petitioner was appointed on N.M.R. basis and was never appointed in any sanctioned regular post, as such, he is not entitled for regularization of his services.
3. The society is not an industry within the meaning of Section 2 (j) of the Act and is only a non-profit service oriented society which is meant to provide finance and other services to Scheduled Caste people, as such, the very Industrial Dispute raised by the workman is not maintainable.

In the above backdrop, now the issues that emerge for consideration of this Court are:

1. Whether the award impugned, as requested by the respondents in the Industrial Dispute, requires any correction by this Court?
2. Whether the workman is entitled for any interest on the amounts awarded by the Labour Court?
3. Whether the petitioner is entitled for regularization of his

services?

The information available before this Court vividly discloses that pursuant to the remand, ordered by the Division Bench of this Court in W.A.No.135 of 2006, the Labour Court, basing on the pleadings framed the following points for consideration:

1. Whether the respondents followed the conditions laid down under Section 25-F of the I.D. Act, while terminating the petitioner from service?
2. If not to what relief, the petitioner is entitled?

A perusal of the impugned Award shows that the Industrial Tribunal – cum – Labour Court recorded categorical finding that the respondents violated the mandatory provisions of Section 25-F of the Act.

The Tribunal took into account Ex.W2 – Service Certificate issued by the Executive Director of the society and found that the same did not state anything as to how many days of breaks were there in the service of the workman in every month and consequently discarded the version of the respondents that the workman did not work continuously for 240 days in a calendar year of 12 months. The Tribunal also recorded a finding that the respondents failed to prove the issuance of notice and payment of retrenchment compensation by adducing any documentary evidence.

It is also significant to note that the management witness No.1, during the course of evidence, clearly admitted that no

notice was issued nor any payment of retrenchment compensation was made while retrenching the workman.

It is also required to be noted that the aspect of jurisdiction of Industrial Tribunal was never raised by the authorities before the Labour Court. In fact, the said contention also cannot be sustained on in view of the authoritative pronouncement of the Hon'ble Apex Court in case 1st cited above. Therefore, this Court does not find any justification to disturb the finding of the Tribunal with regard to the reliefs already granted.

Coming to the aspect of interest on the amounts ordered to be paid by the Labour Court – the learned counsel for the Workman has placed on record the judgment of Madras High Court in case of ***The Management of Tabesh Process Sivakasi v. Presiding Officer, Labour Court and others***^[2]. In the said judgment the Madras High Court at paragraph No.10 while referring to the judgment of the Hon'ble Apex Court in case of ***Gammon India Limited v. Noranjan Dass***^[3] held that the awarding of interest on the amount determined by way of compensation is available to the Presiding Officer of the Labour Court as well as with the Chairman of the Industrial Tribunal.

In the instant case, the Industrial Tribunal found the termination invalid and directed reinstatement of the workman with continuity of service along with wages. Therefore, this Court does not find any justification on the part of the Tribunal in not granting interest on the said amounts and this Court in the facts and circumstances of the case is inclined to grant interest @ 6% P.A.

on the amount awarded by the Industrial Tribunal.

Coming to W.P.No.1750 of 2016 – it is the categorical case of the petitioner herein that at paragraph No.5 of the affidavit filed in support of the writ petition that the juniors of the petitioners namely G.Y.Y. Prasad, T.A. Venkateswarlu, K. Rajendra Kumar, Rama Rao K., J. Sudhakar, V. Papa Rao and others were continued in service and their services were regularized as per the directions of this Court in W.P.No.5198 of 1992 on 06-02-1993. It is also stated in the writ affidavit that the services of one Mangamma, who joined as NMR Section Writer on 19-05-1987, was also regularized on 08-06-1988 and the said Mangamma is junior to the petitioner herein. The said averments are not disputed in the counter-affidavit except saying that their services were regularized pursuant to the orders of this Court.

There is absolutely no controversy in the reality that the workman in the instant case entered into service in the year 1986 and he was terminated in the year 1990 and it is equally a fact that the Industrial Tribunal, by virtue of an award in I.D.No.551 of 1991, while setting aside the termination order, directed reinstatement of the workman with continuity of service.

As prayed by the authorities in W.P.No.24018 of 2014 this Court is not inclined to meddle with the award passed in I.D.No.550 of 1991. Therefore, for all the practical purposes, the workman is deemed to have been continued in service. It is also significant to note that it is the categorical case of the workman that the services of the juniors, as stated supra were continued and

regularized and the said aspect is not denied by the authorities by way of filing counters except saying that their services were regularized in terms of the orders of this Court. In absence of any such denial of regularization of the juniors to the petitioner, this Court absolutely does not find any justification to deny the relief of regularization to the petitioner herein.

For the aforesaid reasons, these writ petitions are ordered in the following manner:

1. Writ petition No.16826 of 2014 is allowed in part granting interest @ 6% P.A. on the amounts granted by the Industrial Tribunal in I.D.No.550 of 1991.
2. Writ petition No.24018 of 2014 is dismissed.
3. Writ petition No.1750 of 2016 is allowed, directing the respondents herein to regularize the services of the petitioner herein and appropriate orders shall be passed in the said direction within a period of three (3) months from the date of receipt of a copy of this order.

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

April 06, 2016

Pn

A.V. SETHA SAI, J

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THE HON'BLE SRI JUSTICE A.V. SETHA SAI

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[3] (1984) 1 Lab LJ 233