

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

-
W.P. No.41810 of 2015

and

W.P. Nos.3458 & 9836 of 2016

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COMMON ORDER:

Since the parties in all these writ petitions are common, these writ petitions are being disposed of by a common order.

W.P. No.41810 of 2015 was filed by respondent No.4 in W.P. No.3458/2016 and respondent No.5 in W.P.No.9836/2016 challenging the order passed by the Authority under the A.P. Shops & Establishment Act, 1988 (for short, 'the A.P.S.E. Act') in I.A.No.2/2015 in A.P.S.E. S.A. No.1 of 2015 dated 26.11.2015.

W.P. No.3458 of 2016 was filed by respondent No.2 in W.P. No.41810/2015 challenging the order passed in I.A.No.1/2015 in A.P.S.E. S.A. No.1/2015 dated 26.11.2015, whereas the same petitioner filed W.P. No.9836/2016 challenging the proceedings issued by the Chief Inspector under the A.P.S.E. Act dated 09.03.2016.

The dispute between the parties arose out of the order of termination dated 05.08.2010 passed against the petitioner in W.P. No.41810/2015. He filed First Appeal before the Assistant Commissioner of Labour, Visakhapatnam and the same was numbered as A.P.S.E. No.3/2010. The order of termination was set aside by order dated 07.08.2011 and the petitioner was also directed to be reinstated with full back wages. In pursuance of the said order, the petitioner was reinstated into service on 26.09.2011. However, the said order was revoked on the ground that the Authority had set aside the order passed by the Assistant Commissioner of Labour, Visakhapatnam by order dated

21.03.2012. Challenging the same, the petitioner filed W.P. No.8423/2012 and the order passed by the Authority under the A.P.S.E. Act dated 21.03.2012 was suspended initially, but the writ petition was ultimately allowed by order dated 12.10.2012 and the matter was remanded to the Authority under the A.P.S.E. Act. It appears that against the order in W.P.No.8423/2012, W.A. No.1452/2012 was filed but the same was dismissed on 17.11.2014. Thereafter, the petitioner filed M.P. No.6424/2011 before II Additional Chief Metropolitan Magistrate, Visakhapatnam and an order was passed in the said application directing the respondent No.3 therein to pay an amount of Rs.6,75,230/- and the respondent No.3 therein deposited an amount of Rs.4,64,694/-. The petitioner filed W.P. No.26567/2015 seeking a direction to release the said amount deposited by the petitioner in W.P. No.3458/2016 and this Court passed an order on 13.10.2015 directing the Authority to consider the representations dated 14.07.2015 and 18.07.2015 seeking withdrawal of the amount along with I.A. No.2/2015 and pass appropriate orders in accordance with law. The petitioner filed an application in A.P.S.E. S.A. No.1/2015 seeking release of the amount and when the said application was dismissed, the above writ petition was filed.

Respondent No.2 in W.P. No.41810 of 2015, who is the management, filed W.P. No.3458/2016 challenging the order dated 26.11.2015 passed by the Deputy Commissioner of Labour. The Deputy Commissioner of Labour passed an order on 26.11.2015 directing the employee to file an affidavit that he was not employed anywhere from 06.01.2015 till the date of filing his affidavit and the management was directed to deposit the monthly wages @ Rs.34,050/- per month till the disposal of A.P.S.E. S.A. No.1/2015 before the Authority.

The management filed yet another writ petition in W.P.No.9836/2016 challenging the proceedings issued by the Chief Inspector dated 09.03.2016 transferring the case in A.P.S.E. S.A.No.1/2015, which was pending before the Deputy Commissioner of Labour, Visakhapatnam, to some other competent authority at Nellore on administrative grounds. It appears that the petitioner in W.P.No.41810/2015 sought transfer in view of lack of confidence in the Deputy Commissioner of Labour, Visakhapatnam, who was holding the post at that point of time. Now, the said Officer is transferred and the employee agrees to continue the proceedings before the Deputy Commissioner of Labour, Visakhapatnam, though pursuant to the order dated 09.03.2016 passed by the Chief Inspector and the Commissioner of Labour, A.P., Hyderabad, the file was transferred to the Deputy Commissioner of Labour, Nellore.

In view of the above fact situation, after obtaining necessary instructions from the respective clients, learned counsel for both sides agreed for disposal of these writ petitions with the following order:

“The order passed by the Commissioner of Labour and Chief Inspector under the A.P.S.E. Act dated 09.03.2016 is set aside and A.P.S.E. S.A. No.1/2015 shall be restored to file of the Deputy Commissioner of Labour, Visakhapatnam. He shall proceed with the case from the stage where it was transferred from his file to the Deputy Commissioner of Labour, Nellore. He shall take into consideration the order passed by him on 26.11.2015, which was the subject matter of W.P.No.3458/2016 and pass appropriate orders in accordance with law, and it is

open to the parties to advance their respective contentions while deciding the matter. It is needless to observe that in view of pendency of the matter for a long time, the Deputy Commissioner of Labour, Visakhapatnam, shall dispose of the same as expeditiously as possible, but not later than three (3) months from the date of receipt of a copy of this order and the parties shall co-operate for disposal of the matter.”

Learned counsel for the petitioner in W.P.No.41810/2015 brought to the notice of this Court the mandatory requirement of Section 48(3) of the A.P.S.E. Act and submits that he is entitled to urge that point and the Authority shall consider the same.

With the above observations, W.P. No.9836/2016 is allowed, and W.P. Nos.3458/2016 & 41810/2015 are disposed of. No order as to costs.

Miscellaneous Petitions pending, if any, shall stand closed.

A.RAMALINGESWARA RAO, J

27.06.2016
MVA