

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

WRIT PETITION No.1920 of 2003

ORDER:

This writ petition, filed under Article 226 of the Constitution of India, challenges the order, dated 20.12.2002, passed by respondent No.1-Deputy Commissioner of Labour & Second Appellate Authority, Eluru under the Andhra Pradesh Shops and Establishments Act, 1988 (hereinafter called as 'the Act') in A.P.S.A. Case No.10 of 2002.

Heard learned counsel for petitioner, learned Government Pleader for Labour for respondent Nos.1 and 2 and Sri K.S.Murthy, learned counsel for respondent No.3.

Respondent No.3 herein initially filed A.P.S.E. Case No.2 of 1999 before the Assistant Commissioner of Labour, Vijayawada, respondent No.2 herein, under Section 48 of the Act questioning the order of termination. The Assistant Commissioner of Labour by virtue of an order in A.P.S.E. Case No.2 of 1999 allowed the said case directing reinstatement of respondent No.3 into service with continuity of service, but without back wages for the period respondent No.3 did not work. Aggrieved by the said order passed by the Assistant Commissioner of Labour, the petitioner herein filed a further appeal *vide* A.P.S.A. Case No.10 of 2002 before respondent No.1-Deputy Commissioner of

Labour & Second Appellate Authority. Respondent No.1 by way of an order, dated 20.12.2002, modified the order passed by the First Appellate Authority by ordering reinstatement of respondent No.3 into service with continuity of service, with all other attendant benefits and full back wages. Assailing the validity and legal sustainability of the said order passed by respondent No.1-Second Appellate Authority, the present writ petition came to be filed.

This Court while ordering Rule nisi, in W.P.M.P.No.2498 of 2003, granted interim suspension of the order of Second Appellate Authority to the extent of payment of back wages subject to the petitioner complying with Section 48 (4) of the Act.

It is contended by the learned counsel for the petitioner that the order passed by respondent No.1-Second Appellate Authority is highly arbitrary, illegal, erroneous, without jurisdiction and opposed to the very spirit and object of the provisions of the Act. It is further contended by the learned counsel for the petitioner that in the absence of any appeal filed by the workman, there is no justification on the part of respondent No.1-Second Appellate Authority in granting relief in favour of the workman, respondent No.3 herein. It is further argued by the learned counsel that the Act does not authorize respondent No.1-Second Appellate

Authority to grant relief in favour of respondent No.3 in the appeal filed by the petitioner.

On the contrary, it is contended by the learned counsel for respondent No.3-workman that there is absolutely no illegality nor there exists any procedural infirmity in the impugned action and respondent No.1 is perfectly justified in awarding continuity of service with all other attendant benefits and full back wages to respondent No.3.

During the course of hearing, learned counsel for respondent No.3 placed on record, a copy of Second Appeal said to have been filed by respondent No.3 before respondent No.1- Deputy Commissioner of Labour and submitted that in view of the said appeal filed by the workman, the contention of the learned counsel for the petitioner that in the absence of any appeal, respondent No.1 erred in granting relief cannot be sustained.

This Court called for the records from the official respondents and the record pertaining to A.P.S.A. Case No.10 of 2002 has been placed before this Court. On perusal of the said record, it is very much evident that respondent No.3-workman also preferred a Second Appeal before respondent No.1- Deputy Commissioner of Labour under Section 48 of the Act on 18.04.2002. A perusal of the order under challenge passed by respondent No.1 in A.P.S.A. Case No.10 of 2002, does not

indicate as to whether respondent No.3 filed any appeal against the order passed by respondent No.2-Assistant Commissioner of Labour on 05.05.2002. Obviously, the petitioner had no knowledge about the filing of the said appeal as the Memorandum of appeal filed by respondent No.3 which is available in the record, does not contain any number. However, respondent No.1 granted the relief in the appeal filed by the petitioner i.e. A.P.S.A. Case No.10 of 2002.

Evidently, the petitioner herein had no occasion to contest the said appeal filed by respondent No.3 against the orders of respondent No.2-Assistant Commissioner of Labour. Therefore, this Court is of the considered opinion that ends of justice would be served if the order under challenge is set aside and the appeal filed by the petitioner is remanded to respondent No.1-Second Appellate Authority for fresh consideration along with the appeal filed by respondent No.3 after giving notice and opportunity to all the stakeholders.

For the aforesaid reasons, the writ petition is allowed, setting aside the order, dated 20.12.2002, passed by respondent No.1 in A.P.S.A. Case No.10 of 2002 and the said appeal is remanded to respondent No.1 for fresh consideration along with appeal filed by respondent No.3 against the orders of the Assistant Commissioner of Labour. The appeals filed by the

petitioner as well as respondent No.3 shall be heard together and appropriate orders shall be passed within a period of three months from the date of receipt of this order, after hearing all the stakeholders.

Consequently, Miscellaneous Petitions, if any pending in this writ petition shall stand disposed of. No order as to costs.

A.V.SESHA SAI,J

Dt: 23.11.2016.

Note: Registry to send original
record to the Second Appellate Authority.
kdl

