

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO
Contempt Case No.1744 of 2015

ORDER:

The petitioner, who is the respondent No.3 in Crl.P.No.2393 of 2015 seeks to punish the respondents herein for committing wilful contempt in not implementing the orders of this Court dt:06.04.2015 in Crl.P.No.2393 of 2015.

2) In Crl.P.No.2393 of 2015, this Court passed the following order:

- a) *The Deputy Commissioner of Labour, Visakhapatnam is directed to dispose of delay condoning petition—APSE MP SA 1 of 2012 on merits within two months from the date of receipt of a copy of this order.*
- b) *The operation of order dated 04.03.2015 in MP No.6424 of 2011 of II Additional Chief Metropolitan Magistrate, Visakhapatnam is stayed till the order in delay condoning petition is passed by Deputy Commissioner of Labour, Visakhapatnam as directed supra.*
- c) *Depending upon the outcome of the order in delay condoning petition passed by Deputy Commissioner of Labour, Visakhapatnam, further proceedings in the second appeal shall follow as per Section 48 of APSE Act.*

3) Now the submission of petitioner is that pursuant to the first direction in the aforesaid order, the 4th respondent disposed of the condone delay petition on 18.06.2015 by condoning the delay of 97 days and numbered the Second

Appeal without following the mandate under Sec.48 of the Andhra Pradesh Shops and Establishments Act, 1988 (for short "APSE Act") and the respondent Nos.1 and 2 have deliberately violated the direction of this Court and respondent No.3 has not deposited the amount of Rs.6,75,230/- as per the decree of Assistant commissioner of Labour-II and 4th respondent also not insisted for the deposit of the said amount and therefore, their acts amount to Contempt of Court.

4) Pursuant to the notice, respondents 2 and 4 appeared and filed their counter denying the petition averments. Respondent No.3 appeared through its Counsel Sri V.S.R. Anjaneyulu.

5) Heard both sides.

6) Learned counsel for petitioner would submit that as per clause(c) of the order in Crl.P.No.2393 of 2015, this Court directed that depending upon the outcome of the order in delay condoning petition passed by Deputy Commissioner of Labour, Visakhapatnam (for short "DCL"), the further proceedings in the Second Appeal shall follow as per Section 48 of APSE Act and after allowing the delay condoning petition, the DCL while registering the Second Appeal ought to have insisted the 3rd respondent herein to deposit Rs.6,75,230/- as ascertained by the 2nd respondent which is a condition precedent under Sec.48 of APSE Act

for proceeding with the Second Appeal. However, all the respondents deliberately flouted the said provision and also the direction of this Court and therefore, they are liable for contempt.

7) Vehemently opposing the petition learned counsel for R.3 Sri V.S.R. Anjaneyulu submitted that the 3rd respondent has scrupulously followed the Sec.48 of APSE Act and deposited an amount of Rs.4,64,694/- towards back wages.

He further submitted that when the petitioner proposed to withdraw the said amount, the 3rd respondent filed I.A.No.2 of 2015 in APSE SA 1/2015 praying the DCL that the petitioner herein may not be permitted to withdraw the said amount by granting stay of the release of the deposited amount and said petition was allowed and in that view of the matter, it is preposterous for the petitioner to contend that all the respondents have committed flagrant violation of the order in Crl.P.No.2393 of 2015. He thus prayed to dismiss the Contempt Petition.

8) In the light of above divergent arguments, the point for determination is:

“Whether the respondents have committed contempt of the order in Crl.P.No.2393 of 2015?”

9) **POINT**: As can be seen, the main contention of the petitioner is that as per the proviso of Section 48(3) of APSE Act, a Second Appeal shall not be entertained unless the

employers deposits the said amount of back wages as ordered by the Appellate Authority and in the instant case, the amount determined by the 2nd respondent is Rs.6,75,230/- but the 3rd respondent deposited only Rs.4,64,694/- on admission of Second Appeal by the 3rd respondent after allowing the delay condoning petition and as such, the respondents have committed violation of the order in Crl.P.No.2393 of 2015. In this context, a perusal of order in I.A.No.2 of 2015 in APSE SA 1/2015 on the file of DCL, Visakhapatnam, a copy of which is filed by the 3rd respondent, shows that admittedly 3rd respondent deposited Rs.4,64,694/- towards the back wages of the petitioner from 05.08.2010 to 26.09.2011 @ Rs.34,050/- per month and 3rd respondent filed I.A.No.2 of 2015 to grant stay of the release of the deposited amount to the petitioner. The petitioner contested the said petition alleging that the amount deposited was only a partial one and not as arrived at by the Assistant Commissioner of Labour. In that context, the DCL embarked upon determining the two issues:

- 1) *Whether the back wages of the opposite party deposited by the applicant is valid enough at this point of time?*
- 2) *Whether the deposited amount of Rs.4,64,694/- towards back wages of the Opposite Party may be disbursed to the Opposite Party or stayed till the disposal of the appeal pending before this Authority?*

Ultimately the DCL held that the back wages deposited by 3rd respondent herein @ Rs.34,050/- p.m was valid and enough at that point of time as there was no reliable/dependable evidence relating to the monthly wages of the Opposite Party (petitioner herein). The DCL further held that it was just and proper to retain the back wages deposited by 3rd respondent till disposal of the appeal. So the said order shows that the 3rd respondent deposited the back wages in tune with Sec.48 of APSE Act. Hence, I find no merits in the contention of the petitioner that the respondents have violated Sec.48 of APSE Act and the order in Crl.P.No.2393 of 2015.

10) In the result, this Contempt Case is dismissed.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 17.06.2016

SCS