

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

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W.P.Nos.24928, 24961, 25007 & 25009 of 2010

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COMMON ORDER:

Though these writ petitions appear under the caption "Interlocutory", with the consent expressed by the learned Advocates appearing for both sides, this Court deems it appropriate to dispose of these writ petitions finally.

2. Since all the writ petitions share common grievance, this Court deems it apposite to dispose of the writ petitions by way of this common order.

3. These writ petitions challenge the common order dated 23.9.2009, passed by the Industrial Tribunal-cum-Labour Court, Ananthapur in M.P.Nos.18 to 22 of 2012.

4. The facts and circumstances in nut-shell, leading to the filing of the present writ petitions are as under:

5. Questioning the termination from service, the workmen raised Industrial Disputes (IDs) vide I.D.Nos.120 to 124 of 1991 on the file of the Industrial Tribunal-cum-Labour Court, Ananthapur. In the said I.Ds., workmen also filed M.P.Nos.9 to 13 of 1991, seeking difference of wages also. The Tribunal passed a common award/order dated 25.4.1996. Questioning the said award/order, the petitioners herein filed W.P.No.24052 of 1996 and batch and the said writ petitions were dismissed by this Court on 10.3.1998 and as against the said orders, the petitioners herein preferred Writ Appeal No.1645 of 1998 and batch and the same also ended in dismissal vide common judgment dated 18.7.2000. Thereafter, the petitioners herein lost before the Hon'ble Apex Court in the Special Leave Petitions filed by them. Subsequently, the workmen filed E.P.No.13 of 2002 and batch before the Tribunal for enforcement of the award. Pending the said E.Ps., the petitioners herein

filed E.A.No.8 of 2004 before the Tribunal and the Tribunal passed an order on 21.9.2004. In E.P.Nos.13 of 2002 and batch, the Tribunal passed an order on 26.9.2003, directing the petitioners herein to implement the award. As against the said orders passed by the Tribunal in the said E.Ps., the petitioners herein filed writ petitions and the same ended in dismissal and as against which, the petitioners herein filed W.A.No.2178 of 2003 and batch. Subsequently, the workmen filed the present M.P.Nos.18 to 22 of 2012 under Section 33(C)(2) of the Industrial Disputes Act, 1947, seeking arrears of salary from February 2002 to December 2004. By way of common order dated 23.9.2009, the Tribunal allowed the said applications. Calling in question, the validity and legal sustainability of the said common order, these writ petitions came to be filed.

6 . Heard Sri K.R.Koteswara Rao, learned counsel for the petitioners and Sri Nuthalapati Krishnamurthy, learned counsel for respondents-workmen, apart from perusing the material available on record.

7. Broadly, there are two contentions raised by the learned counsel for the petitioner; they are (1) the claim of the workmen is barred by limitation; and (2) the impugned common order is totally one without jurisdiction and untenable and not maintainable under Section 33(C)(2) of the I.D. Act.

8. On the contrary, it is submitted by the learned counsel for the respondents-workmen that there is no illegality nor there is any procedural infirmity in the impugned order and the questioned order is strictly in conformity with the provisions of Section 33(C)(2) of the I.D Act and the award passed by the Tribunal in the main I.D. was confirmed in the Writ Petitions, Writ Appeals and in the SLPs before the Hon'ble Supreme Court. It is further stated that there is no justification to deny the workmen the subject wages. In support of his contentions and submissions, the learned counsel relied on the following judgments in **Kumari Sarita Thakur v. Union of India (UOI) and another** and **Union of India v. P.Gunasekaran**.

9. With regard to the first contention of the learned counsel for the petitioner touching the limitation aspect, it needs to be noted that the Hon'ble Apex Court

dismissed the SLPs on 13.4.2004 and the workmen filed the instant applications under Sections 33(C)(2) of the I.D. Act on 18.1.2005. It is also to be noted that the petitioners herein never raised this issue of limitation or delay in filing the present applications in their counters filed before the Tribunal nor there is any semblance of material to show that the said aspect was argued before the Tribunal. In view of this reason, this Court is not inclined to accept the contention of the learned counsel for the petitioner on the delay aspect.

10. Coming to the second contention, touching the jurisdiction of the Tribunal in order to deal with the said aspect, it would be highly essential to refer to Section 33(C)(2) of the I.D. Act, 1947, which reads as under:

“33C. Recovery of money due from an employer

(1).....

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government [within a period not exceeding three months].

[Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit]”

11. The information available before this Court manifestly discloses that the Industrial Tribunal in the award dated 25.4.1996 dealt with the aspect of nature of employment of the workmen and their reinstatement into service, back wages and the difference of wages on the principle of “equal pay for equal work”. The Tribunal in the said award categorically held that the workmen are the employees of the petitioners herein and as such they are entitled for reinstatement. The Tribunal denied the relief pertaining to back wages, but allowed the Miscellaneous Petitions filed, seeking difference of wages on the principle of “equal pay for equal work”. The above narration clearly discloses that the said orders attained finality as this Court and the Hon'ble Apex Court confirmed the orders passed by the Industrial Tribunal. Thereafter, the workmen filed E.Ps and in the said E.Ps., the Tribunal passed order dated 26.9.2003, categorically directing the petitioners herein to implement the orders passed by the Labour Court in the I.Ds. In the clarification application vide

E.A.No.8 of 2004 filed by the petitioners herein, the Tribunal passed orders dated 21.9.2004 and the last two paragraphs of the said order read as under:

“It has to be seen that the petitioners (Chairman and Managing Director, APCPDC Ltd., Hyderabad and Superintending Engineer (O) APCPDC Ltd., Ananthapur) herein approached this Court seeking clarification when they felt difficulty in implementing the Award of this Court. The Award of this Court is to reinstate the petitioners. It is the petitioner/respondents who calculated the amount under section 17-B and paid the amount. Since the posts of Billing Clerks are not available at their instance alternate proposals are being accepted in the interest of justice, this does not mean that the amount paid by them under section 17(B) should be calculated for the posts which are now proposed by the petitioners. The petitioners have any grievance they can seek their legal remedy if they are advised so.

In the light of the proposals of the petitioners, petitioners are directed to implement the award by engaging respondents in the posts proposed by the petitioners. If the posts of record assistants are not available the petitioners (respondents) should appoint the respondents as Attenders, Watchmen. However, but as and when the posts of Record Assistants or LDCs are available the petitioners (respondents) should immediately convert, the respondent (petitioners) into those posts. As far as case of P.Hussain is concerned the petitioners (respondent) may verify his educational qualifications and appoint him in the post to which he is entitled till such time he may be appointed as Watchman. The petitioners (respondents) should report compliance within a period of one month i.e. from the date of receipt of this order. It is made clear that the respondent/petitioners are entitled for all the benefits as per the award”.

12. The writ petitions filed against the orders in E.Ps. were dismissed by this Court and the Writ Appeals also faced the same fate. It is the specific case of the workmen that despite the award, directing reinstatement was passed as long back as on 25.4.1996, the authorities did not reinstate the workmen till January 2005 nor they paid 17-B wages.

13. A perusal of the application filed by the workmen under the provisions of Section 33(C)(2) of the I.D. Act, in clear terms, discloses that the authorities paid the salaries of the workmen till January 2002 and failed to pay from February 2002 to December 2004.

14. In the counter filed by the management before the Tribunal, it is stated that the workmen are entitled to only wages@ 750 per month, but not the amount as claimed by them. As per the provisions of Section 33(C)(2) of the ID Act, any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and it is obligatory on the part of the Labour Court to decide the same.

15. In the instant case, the workmen filed the present applications, complaining that the petitioners herein did not pay the amounts for the period from February 2002 to December 2004 and absolutely there is no dispute with regard to the same. The Tribunal vide impugned common order, by taking into consideration the common award passed earlier as confirmed by this Court in Writ Appeal, directed the petitioners herein to pay the amounts. The contention of the learned counsel for the petitioners that the workmen are claiming back wages can neither be countenanced nor approved since the claim is with regard to the amounts due subsequent to the award. In this connection, it may be appropriate to refer to the judgments cited by the learned counsel for the respondents-workmen.

16. In *Kumari Sarita Thakur v. Union of India* (1 supra), the Hon'ble Apex Court at paragraphs 3 and 4 held as under:

“3. Heard counsel on both sides. While the tribunal has not allowed back wages by its order dated July 24, 1991 but directed reinstatement of the appellant in service, it appears that the Union of India took its own time to reinstate her even though the Union's petition for special leave was dismissed. The learned Counsel for the appellant contends that the Tribunal ought to have awarded back wages but we do not propose to entertain that contention. However, his contention that it was obligatory on the Union to reinstate the appellant within a reasonable time after the Tribunal's order of July 24, 1991 is well-founded. We see no reason why the Union of India failed to carryout the terms of the Tribunal's order even after the special leave petition was rejected. We can understand that the Union of India would take some reasonable time for reinstating the petitioner in pursuance of the tribunal's order but we are not able to understand why it failed to do so till almost the end of 1992. We are, therefore, of the opinion that the appellant is entitled to back wages from August, 1991 till actual reinstatement.

4. In the result we allow this appeal to the aforesaid limited extent and direct that the appellant will be paid back wages from August 1, 1991 till actual reinstatement within three months from today. The appeal will stand disposed of

accordingly with no order as to costs.”

17. In *Union of India v. P.Gunasekaran* (2 supra), the Hon'ble Apex Court at paragraphs 12 and 13 held as under:

“12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge No. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers Under Article [226/227](#) of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:

- a) the enquiry is held by a competent authority;
- b) the enquiry is held according to the procedure prescribed in that behalf;
- c) there is violation of the principles of natural justice in conducting the proceedings;
- d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;
- h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
- i) the finding of fact is based on no evidence.

13. Under Article [226/227](#) of the Constitution of India, the High Court shall not:

- (i). re-appreciate the evidence;
- (ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
- (iii). go into the adequacy of the evidence;
- (iv). go into the reliability of the evidence;
- (v). interfere, if there be some legal evidence on which findings can be based.
- (vi). correct the error of fact however grave it may appear to be;
- (vii). go into the proportionality of punishment unless it shocks its conscience.”

18. In view of the above reasons and having regard to the principles laid down in the above referred judgments, this Court finds no reason to meddle with the orders passed by the Tribunal.

19. For the aforesaid reasons, the Writ Petitions are dismissed. As a sequel, the

miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 28.1.2016

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

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