

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

W.P.No.1069 of 2006

ORDER:

The present writ petition filed under Article 226 of the Constitution of India calls in question the award dated 14.7.2005 passed by the Presiding Officer, Labour Court-I, A.P., Hyderabad in I.D.No.36 of 2002, as published vide G.O.Rt.No.1767 Labour, Employment, Training and Factories (Lab.I) Department dated 30.8.2005.

2. Heard Ms.G.Sudha, learned counsel for the petitioner and Ms.K.Udaya Sree, learned counsel for 2nd respondent-workman, apart from perusing the material available before the Court.

3. The 2nd respondent herein raised the Industrial Dispute in I.D.No.36 of 2002 under Section 2-A(2) of the I.D. Act, 1947 for a direction to the petitioner herein to reinstate him into service from 1.1.2002 with full back wages and all other attendant benefits with continuity of service and also interest at 12% per annum on the back wages and costs.

4. Petitioner-management contested the said industrial dispute by way of filing counter statement, denying the averments and allegations made in the claim application filed by the 2nd respondent-workman. On the basis of the material available on record, the learned Presiding Officer framed the following point for consideration:

“Whether the order of removal passed by the respondent against the petitioner is justified? If not, to what relief the petitioner is entitled?

5. During the course of enquiry, the 2nd respondent workman examined himself as W.W.1 and marked Exs.W1 to W16 and on the other

hand, on behalf of management/petitioner herein, M.Ws.1 and 2 were examined and Exs.M1 to M8 were marked. The learned Presiding Officer eventually passed an award on 14.7.2005 in I.D.No.36 of 2002, directing the petitioner-management to reinstate the workman into service with full back wages from 1.1.2002 with continuity of service and all other attendant benefits. Challenging the validity and legal sustainability of the said award passed by the Presiding Officer, the present writ petition came to be filed.

6. This Court, while ordering rule nisi on 24.1.2006, passed the following interim order in W.P.M.P.No.1273 of 2006:

“Ordinarily, this Court imposes a condition as to compliance with Section 17-B of the Industrial Disputes Act before any interim order is granted against the award of the Labour Court. In the instant case, the second respondent approached the Labour Court under Section 2-A(2) of the Industrial Disputes Act against the alleged order of removal. The record discloses that he was paid retrenchment compensation and other benefits to the tune of Rs.14,400/-. The Labour Court directed reinstatement of the petitioner only on the ground that the domestic enquiry was not conducted. In the case of retrenchment under Section 25F of the Act, the question of conducting any domestic enquiry does not arise.

Hence, there shall be interim stay as prayed for”.

7. The 2nd respondent workman filed a vacate application vide W.V.M.P. No.649 of 2006, accompanied by a counter affidavit. On 9.8.2007, while dismissing the said vacate application, this Court made the interim order absolute.

8. It is contended by the learned counsel for the petitioner that the award under challenge is highly erroneous and contrary to law and

opposed to the very spirit and object of the Industrial Disputes Act, 1947. It is further submitted that the Tribunal did not take into consideration the oral and documentary evidence adduced on behalf of the management and had the same been considered by the Tribunal, the impugned award would not have been emanated. It is further argued by the learned counsel that the finding of the Tribunal as regards status of the 2nd respondent workman is contrary to the material available on record and the finding to the said effect is full of presumptions and surmises. It is further submitted by the learned counsel that the petitioner management paid a sum of Rs.14,400/- towards full and final settlement of his claim and the 2nd respondent, by any stretch of imagination, cannot be regarded as permanent employee and his status does not change. It is further stated that there is absolutely no basis for the Tribunal to grant back wages also to the 2nd respondent. In support of her submissions and contentions, the learned counsel for the petitioner placed reliance on the following judgments:

1. Himanshu Kumar Vidyarthi and others v. State of Bihar and others¹.
2. General Manager, Haryana Roadways v. Rudhan Singh²

9. On the contrary, it is strenuously contended by the learned counsel appearing for 2nd respondent-workman that there is absolutely no illegality nor there exists any infirmity in the impugned award, nor the impugned award suffers from any perversity and in the absence of the same, the impugned award is not amenable to any judicial review under Article 226 of the Constitution of India. It is further contended by the learned

¹ (1997) 4 SCC 391

² (2005) 5 SCC 591

counsel that the Labour Court, by duly taking into consideration the entire material available on record, arrived at the conclusions while assigning cogent and convincing reasons for doing so. It is further contended that the Tribunal also took into consideration the evidence adduced on behalf of the management, as such, the award under challenge does not warrant any interference of this Court.

10. In the above backdrop, now the issue that emerges for consideration of this Court is – “whether the impugned award dated 14.7.2005 passed by the Labour Court-I, Hyderabad in I.D.No.36 of 2002 is sustainable and tenable and whether the same warrants any interference of this Court under Article 226 of the Constitution of India?”

11. The case of the 2nd respondent-workman is that he was appointed by the petitioner management on 27.5.1991 and the petitioner management did not issue any written orders of appointment and he used to drive the vehicles owned by the management and his last drawn wage was Rs.3,850/-. It is the further case of the 2nd respondent-workman that he was issued ESI Card also, showing his date of appointment as 1.9.1995. It is the further case of the workman that when he insisted for over-time wages, management orally terminated his services from 1.1.2002 without following any procedure and that the said termination is illegal, inoperative and contrary to Section 25-F of the I.D. Act.

12. The management filed a counter statement before the Labour Court interalia, stating that the workman was deployed on casual basis to meet the exigencies of work in the Hotel for driving Maruti Van bearing No.AP 9F 4534, and that the same was actually owned by Taj Trade and Transport Company Limited and that the 2nd respondent-workman was

driving the said Maruti Van as and when required and that the same was subsequently returned to its original owner, Taj Trade and Transport Company Limited, in the year 2000. The petitioner management further stated in the counter statement that from November, 1998 onwards, workman was deployed to drive the Maruti Car bearing No.MH 01 S 3228, which was also owned by Taj Trade and Transport Company Limited. It is further stated that in the year 2002, the management having found that maintaining the said Car on its own for the Hotel was not feasible and financially viable, decided to return the said Maruti Car to its original owner and in view of the business decision taken by the management, the casual services of the workman were discontinued from January 2002 and he was also paid a sum of Rs.11,148/- after making statutory and other deductions from the gross amount of Rs.14,400/-, which consists of service compensation payable to him under Section 47(1) of A.P. Shops and Establishments Act, 1988 and the wages for the extra work done by him during April – December 2001 received by him without any demur whatsoever and that in the said direction, management has made full and final settlement of the account of the workman, in accordance with law.

13. During the course of cross-examination, the 2nd respondent workman as W.W.1 categorically deposed that he received a sum of Rs.11,148/- from the petitioner management and utilized the same and he also expressed his ignorance as to the ownership of the vehicle. Management Witness No.1 deposed in his chief that the workman was initially deployed in the year 1995 on casual basis depending on the requirement intermittently and was paid daily wages and he denied the relationship of employer and employee between the 2nd respondent and petitioner. He also deposed about the ownership of the subject vehicles.

The second witness examined on behalf of petitioner management also deposed to the said effect. On behalf of management, as many as (8) documents Exs.M1 to M8 were marked. A perusal of the impugned award clearly discloses that the learned Presiding Officer did neither consider the oral evidence nor the documentary evidence adduced on behalf of petitioner management. On the other hand, the Tribunal held that the petitioner management failed to produce any evidence to show that they did not own a car or other vehicle.

14. In order to demonstrate that the present case does not attract the provisions of Section 25-F of the Industrial Disputes Act, 1947, the learned counsel for the petitioner places reliance on the judgment in *Himanshu Kumar Vidyarthi v. State of Bihar* (1 supra) and in order to substantiate the contention as regards payment of back wages, the learned counsel placed reliance on the judgment in *General Manager, Haryana Roadways v. Rudhan Singh* (2 supra). It is the submission of the learned counsel for the 2nd respondent workman that this Court under Article 226 of the Constitution of India cannot sit in appeal over the award of the Labour Court in the absence of any jurisdictional error and element of perversity. There is absolutely no dispute with regard to the said proposition of law. A reading of the award under challenge vividly shows that the learned Presiding Officer did not consider the evidence adduced by the petitioner management and it is undoubtedly and unhesitatingly a case of non-consideration of the evidence on record. Therefore, in the definite opinion of this Court, the matter requires re-consideration by the Tribunal.

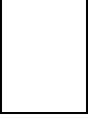
15. For the aforesaid reasons, the writ petition is allowed, setting aside the award dated 14.7.05 passed by the Presiding Officer, Labour Court-I,

A.P., Hyderabad in I.D.No.36 of 2002, as published vide G.O.Rt.No.1767 Labour, Employment, Training and Factories (Lab.I) Department dated 30.8.2005 and the matter is remanded to the Labour Court for fresh consideration, in accordance with law, after giving notice and opportunity to all the stakeholders. 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: 22.6.2017
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THE HON'BLE SRI JUSTICE A.V.SESHA SAI



W.P.No.1069 of 2006

22.6.2017

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