

THE HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.24715 OF 2007

ORDER:

1) The present writ petition came to be filed seeking issuance of writ of certiorari calling for the records in Second Appeal No.12 of 2005 dated 01.10.2007 on the file of the Deputy Commissioner of Labour, Hyderabad (T.CS), Hyderabad, and to quash the same.

2) The averments in the affidavit filed in support of the writ petition are as under:

The petitioner herein is a company engaged in construction work. The second respondent herein was working as Assistant Accountant in the petitioner company since 1992. On 14.02.2003, the 2nd respondent submitted her resignation which was accepted and subsequently she was removed from service. On 07.07.2003, the second respondent issued a legal notice alleging that the unit incharge of the petitioner company has threatened her, leaving her with no other alternative except to tender resignation and hence seeks reinstatement and salary from February, 2003 to July, 2003. The same was replied, denying the averments made therein. A police report came to be filed by the 2nd respondent on 07.08.2003. The averments in the affidavit also show that the second respondent's husband, who was working in petitioner company, misappropriated funds of the company to a tune of Rs.5.00 lakhs and when the management questioned the same, he tendered his resignation on 14.02.2003. A complaint came to be lodged vide C.C.No.1984 of 2003, for an offence punishable under Section 420 IPC against the husband of the second respondent. However, the matter

was compromised on 07.02.2004 and a compromise memo was filed in the Court. As per the compromise memo both parties have agreed to withdraw respective notices without any prejudice and also undertook not to file any cases against each other or claim anything against each other. The said compromise was signed by the 2nd respondent and her husband. Thereafter, the second respondent filed an application under Section 48 of the A.P. Shops and Establishment Act, 1988 (for short "the Act") alleging that the resignation made by her was under threat and that she has to be reinstated into service with all benefits. After considering the oral and documentary evidence, the said authority while negating her request ordered payment of Rs.23,077/- on humanitarian grounds. Challenging the same, she preferred a second appeal under Section 48 (3) of the Act. By an order dated 01.10.2007, the appellate authority set aside the said order and directed reinstatement of the second respondent into service with full back wages and continuity of service within 30 days from the date of receipt of the same. Aggrieved by the same, the present writ petition came to be filed.

3) By an order dated 20.11.2007, this Court ordered interim suspension as prayed for.

4) The main ground urged by the learned counsel for the petitioner is that the question of reinstatement of the second respondent would not arise in view of the compromise arrived at between the parties, which was also signed by the second respondent. It is his case that the resignation of the second respondent was voluntary in nature and her husband also received the gratuity amount. Five months later, a notice

came to be issued and thereafter a compromise was also affected between the parties. It is urged that after entering into a compromise, the second respondent initiated proceedings under Section 48 of the Act, with a malafide intention.

5) The same is opposed by the learned counsel appearing for the second respondent stating that the allegations made in the affidavit filed in support of the writ petition are all false. In the counter filed, it is stated that the Managing Director of the petitioner company, called the second respondent into his chamber and took her signature on the resignation letter under fear of threat. It is submitted that the incident taking forcible signature, took place in the presence of cashier by name G.Koteswara Rao. She also claims to have lodged a report before the Bheemili Police Station on 15.02.2003, but no action has been taken. She denies the allegations made in the complaint lodged against her husband. She also states that the signatures on the compromise were taken under threat and a report given on 07.08.2003 came to be registered as Crime No.283 of 2003 of Bheemili Police Station. She also refers to alleged act of kidnap by the Managing Director of the company and his friends on 11.08.2003, which lead to registering of a case in Crime No.441 of 2003 of Machavaram Police Station. Since the promises made at the time of compromise are not fulfilled, she submits that the present proceedings came to be initiated.

6) As seen from the record, the second respondent was appointed as Assistant Accountant on 16.10.1992. On 14.02.2003, the petitioner is said to have demanded her resignation and when refused, she was

forced to resign under threat of fear and coercion. The resignation which was alleged to have been taken under threat was in the presence of one G.Koteswara Rao. The husband of second respondent, who was involved in a case of misappropriation of funds in petitioner company, resigned on 14.02.2003. A criminal case also came to be registered against him. Legal notice was issued to the petitioner by the second respondent on 07.07.2003. Subsequent thereto, two criminal cases came to be registered against the petitioner company and its Managing Director ie. Crime No.283 of 2003 dated 07.08.2003 and Crime No.441 of 2003 dated 11.08.2003. The first case was registered in Bheemili Police Station whereas the second case was registered at Machavaram Police Station for an offence punishable under Section 506 and 365 IPC. At that point of time, the parties entered into a compromise. There is no dispute with regard to the compromise arrived at between the parties, but however, the dispute is with regard to interpretation of clause (3) of the compromise.

7) In order to appreciate the same it would be useful to refer to the entire text of the compromise, which is as under:

“LIST OF COMPROMISE FILED BY AND ON BEHALF OF BOTH PARTIES:

M/s. SEW Constructions, rep. by its Managing Director/ Authorised Person, P.J.Narasimha Rao, Hyderabad, temporarily came down to Vijayawada (1ST PARTY)

AND

Sri Y.Venkateswara Rao, S/o. Sanath Kumar and Smt. Y.Kanaka Durga, W/o. Y.Koteswara Rao, Machavaram Down, Vijayawada –4 (2ND PARTY)

As per the advices of the elders and well-wishers, both the parties have come to an understanding and compromise in the matter amicably under the following terms and conditions.

1. The First party is agreed to withdraw all the proceedings against the 2nd party ie. C.C.No.1984 of 2003 on the file of the Hon'ble XI Metropolitan Magistrate Court, Secunderabad.

2. The second party is also agreed to withdraw all the proceedings filed against the 1st party ie. Crime No.441/ 2003, on the file of the III Metropolitan Magistrate Court at Vijayawada.

3. Both the parties have to withdraw their respective notices exchanged each other without any prejudice and also undertake that they will not file any proceedings and thereby claim anything against each of them in future.

4. Both the parties are willing to do and lookafter their respective business without interfering with each of their future transactions and will do their affairs peacefully and happily.

5. Both the parties have agreed for the above terms and conditions with their own free will and consent without bent upon pressures or force or any other illegal activities by one and the other. The compromise must be a mutual consent of both the parties.”

8) The second appellate Court proceeded on a premise that as the second respondent was working in the company since long time, she could not have tendered resignation voluntarily. It is held that the appellant would not have tendered her resignation in such a simple way with one line sentence, when she worked for more than ten years. Hence an inference was drawn that the same would have been done under threat or coercion, in view of subsequent acts, which took place six months later. Insofar as the compromise memo is concerned, it was

held that the said compromise memo which was signed by both the parties, only relates to criminal cases filed against each other and also withdrawal of notices exchanged between them. Since the notice relates to criminal cases it was held that the said memo has nothing to do with the termination of services and that it cannot be concluded that the second respondent has undertaken to withdraw all notices even in connection with the termination of services.

9) A reading of the entire material placed before the Court show that the resignation was made by the 2nd respondent on 14.02.2003 and also claims to have lodged a report immediately before the police, but for reasons best known, no crime has been registered. The report which was refused to be received by the police was not marked as an exhibit before the primary authority. Further, Sri G.Koteswara Rao, who was alleged to have been present at the time of threat and forcible resignation, was never examined. At the same time it is to be noted that by the date of her resignation, her husband was already involved in a criminal case registered for misappropriation of an amount of Rs.5.00 lakhs from the petitioner company.

10) The evidence-in-chief of the 2nd respondent shows that while she was in Visakhapatnam, the Managing Director asked her to resign without giving any reasons. When refused, he is said to have forced and threatened her to resign. In her cross-examination she admits that on that day she was working under one S.Raj Kumar in Tagarapuvalasa and claims to have resigned on 14.02.2003 at about 5.00 p.m. At the same time, she admits that her working time is from 9.30 to 2.00 p.m. and from 2.30 p.m. to 6.30 p.m. The Unit incharge is alleged to have

asked her to come to his chambers and asked her to resign. Strangely a report is lodged against the Managing Director of the company on 15.02.2003 stating that it was he, who is said to have threatened her, coerced her, assaulted her and forced her to sign on the resignation letter. Things would have been different if the said G.Koteswara Rao, who was said to have been present there, was examined. But no effort was made to get him examined. In view of the discrepancies referred to above, a doubt arises as to whether the said resignation was under threat and coercion. In fact no cases were pending as on that day. The admissions elicited in the cross-examination of the 2nd respondent, reveals that the Managing Director was no where near the place so as to force her or threaten her to resign. Therefore, the argument of the learned counsel for the petitioner that the findings of the 2nd appellate authority with regard to the manner in which the resignation took place, finds force with this Court.

11) Insofar as the contents of the compromise memo are concerned, it is to be noted that the Court below referred only to a portion of clause (3) of the terms of compromise. No doubt, the first portion of clause (3) refers to withdrawal of notices exchanged between the parties but at the same time the 2nd portion of clause (3) states that both the parties undertook not to file any proceedings and claim anything against each other in future. This portion of the clause (3) was lost sight of by the second appellate authority. Reading clause (3) as a whole would reveal that the parties have agreed not only to withdraw the criminal cases filed against each other but also undertook not to initiate any proceedings in future. Admittedly, the proceedings

in the instant case came to be initiated three and half months after the date of execution of the compromise memo.

12) From the above, it is clear that even after entering into a compromise deed and agreeing not to initiate any proceedings in future, the respondent filed a complaint under Section 48 of the Act, questioning the resignation made by her. Hence, the writ petition is allowed setting aside the order under challenge, and confirming the order in S.E.7/2004, dated 12.04.2005 on the file of the Assistant Commissioner of Labour, Hyderabad-II.

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

JUSTICE C. PRAVEEN KUMAR

12.04.2017
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