

THE HON'BLE SRI JUSTICE M.S.K. JAI SWAL

WRIT PETITION No.13757 of 2006

ORDER:

This writ petition is filed challenging the award, dated 20.10.2005, passed in I.D.No.189 of 1999 by the Chairman-cum-Presiding Officer, Industrial Tribunal-cum-Labour Court, Anantapur.

The facts, in brief, are that the 1st respondent worked as casual Khalasi from December, 1985 to December, 1991 in the petitioner Corporation at Cuddapah. Subsequently, he is alleged to have been orally terminated by the petitioner. Challenging the same, the 1st respondent filed I.D.No.189 of 1999 on the file of the Industrial Tribunal-cum-Labour Court, Anantapur, against the petitioner herein. By award, dated 20.10.2005, the Tribunal set aside the order of oral termination and directed the petitioner Corporation to reinstate the 1st respondent into service as Khalasi on par with other regular employees within one month from the date of publication of the award, but without back wages, attendant benefits and continuity of service.

The controversy in the industrial dispute was that the 1st respondent is not the employee of the Corporation and there was no relationship of master and servant. Based on the oral and documentary evidence, the Tribunal held that there was a relationship of master and servant and accordingly, directed reinstatement of the 1st respondent into service. It is stated that in pursuance of the direction of the Tribunal, Selection Committee was constituted on 06.04.2006 and the 1st respondent appeared before the Selection Committee and subsequently, he was reinstated into service on 05.06.2006 and ever since, he is continuously working in the petitioner Corporation.

The contention of the petitioner Corporation is that the Tribunal erred in relying upon Exs.W1 and W2 for holding that the 1st respondent was a contract employee of the Corporation. The learned counsel further submits that except for these two documents, the authenticity of which was seriously disputed, nothing is produced by the 1st respondent to substantiate his contention about he being engaged by the Corporation. He further submits that the respondent, having been terminated from service in the year 1991, approached the Tribunal in 1999, i.e., after a period of 8 years.

On the other hand, the learned counsel for the 1st respondent submits that the 1st respondent was an illiterate and rustic person and he is a Khalasi, and he could have produced Exs.W1 and W2 to show that he has been engaged on contract basis as casual employee by the Corporation and he was being paid wages thereof. The learned counsel further submits that if the authorities are denying the genuineness of Exs.W1 and W2, nothing prevented them to produce original attendance register, said to have been maintained by the Corporation regularly. He further submits that since the 1st respondent was an illiterate person, he did not approach the Tribunal immediately and was awaiting for orders from the Corporation for his engagement as such.

I have perused the material available on record and the award of the Tribunal.

According to the 1st respondent, he was engaged as casual labour on contract basis and was being paid wages by the Corporation. Abruptly and arbitrarily his services were terminated orally, forcing him to approach the Tribunal.

Even if Ex.W1, which is the identity card, is not taken into consideration, the attendance register (Ex.W2), which is maintained by

the Corporation every month, clearly shows that the 1st respondent was engaged as contract labour along with several others and his attendance was being marked on day-to-day basis. If really the 1st respondent was not engaged by the Corporation and was not its contract labour, it would not be obligatory on the part of the corporation to maintain attendance register. If a person engaged by a private contractor and wages are being paid by private contractor, he has to take care of attendance and absenteeism of such workers, but not the Corporation. The fact is that the Corporation was maintaining the attendance register, showing the 1st respondent as contract employee, which abundantly establishes that the 1st respondent was the person engaged by the Corporation as contract labour, but not a person engaged by a private contractor. The Tribunal has given cogent and valid reasons for allowing the OA and directing the petitioner Corporation to reinstate the 1st respondent. Pursuant to the orders of the Tribunal and pursuant to the orders of this Court, the 1st respondent has been continuing in the petitioner Corporation as casual labour.

I see no reason to take a different view than that taken by the Tribunal. There are no merits in the writ petition and the same is accordingly dismissed. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.S.K.JAI SWAL, J

Date: 30.08.2017
Dsr