

THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

WRIT PETITION No.2718 of 2005

ORDER :

The case of the petitioner is that he was appointed as a Clerk on daily wage basis in the 2nd respondent – A.P. State Cooperative Rice Mills Federation Limited (Federation) on 10.07.1991 and subsequently his services were terminated along with others on 30.07.1992 on the ground of liquidation of the 2nd respondent – Federation. However, the 1st respondent – Government issued G.O.Ms.No.329, Agricultural and Cooperation (Coop.I) Department, dated 22.05.1993, and subsequent G.Os. appointing all the colleagues of the petitioner, numbering to 40, and his juniors, by name one G. Satyanarayana in various Government Departments, ignoring the case of the petitioner. When the petitioner filed W.P.No.10208 of 1993 challenging his termination order dated 30.07.1992 and sought for his absorption, this Court by order dated 01.04.1997 directed the 1st respondent – Government to consider his case for absorption in any Government or Public Sector Undertaking. Since the said direction was not complied, the petitioner filed C.C.No.1357 of 1997 and this Court, while disposing of the said contempt case, by order dated 05.12.1997, directed the 1st respondent –

Government to reconsider the petitioner's case for absorption. Since the said direction was also not complied, the petitioner filed another contempt case being C.C.No.855 of 1998 against the respondent – Government and this Court by order dated 10.08.1998 directed the respondent – Government by way of positive direction to absorb the petitioner in any suitable post within three months. Since the said direction was also not complied, the petitioner filed another C.C.No.1838 of 1998 and during the pendency of the said contempt case, the 1st respondent – Government moved the Hon'ble Supreme Court by way of Civil Appeal No.5425 of 1999 arising out of SLP.No.284 of 1999 challenging the order dated 10.08.1998 in C.C.No.855 of 1998 and the Hon'ble Supreme Court allowed the said SLP.No.284 of 1999 by order dated 15.09.1999, setting aside the order dated 10.08.1998 in C.C.No.855 of 1998, observing that this Court ought not to have directed the respondent – Government to absorb the petitioner by way of a direction in a contempt case and the petitioner could have challenged the said rejection order of the Government in a separate proceedings, instead of filing a contempt case and accordingly gave liberty to the petitioner to challenge the rejection order dated 15.04.1998 passed by the Government. Pursuant to the said directions, when the petitioner filed I.D.No.562 of 2000 before the Labour Court-I,

the Labour Court-I was pleased to dispose of the same by Award dated 07.12.2000 directing the 1st respondent – Government to reinstate the petitioner in any Government Department or any Public Sector Undertaking with all back wages and attendant benefits. Since the 1st respondent – Government did not implement the said orders, the petitioner filed E.P.No.5 of 2001 and the Labour Court-I attached the office of the Secretary, representing the 1st respondent – Government on 11.07.2001. Thereafter the 1st respondent – Government filed W.P.No.15066 of 2001 and got suspended the Award dated 07.12.2000 in I.D.No.562 of 2000. Subsequently after contest, W.P.No.15066 of 2001 was disposed of setting aside the Award dated 07.12.2000, while directing the Labour Court to hear the Government and permitting the petitioner to raise additional grounds and pleadings. Aggrieved by the same, the petitioner preferred W.A.No.1241 of 2002, which was disposed of by order dated 13.08.2002, directing the Labour Court to dispose of I.D.No.562 of 2000 by hearing the Government and aggrieved by the same, when the petitioner moved the Hon'ble Supreme Court in SLP.No.20922 of 2002, the Hon'ble Supreme Court, though initially by order dated 18.11.2002 directed the Labour Court to dispose of the said I.D., subsequently, by order dated 08.08.2003 disposed of the said SLP directing the

respondent Government to pay Rs.5,000/- to the petitioner. However, the Labour Court without considering the facts and circumstances in proper perspective, dismissed I.D.No.562 of 2000 through the impugned Award dated 24.08.2004, holding that it has no jurisdiction to entertain the same. Aggrieved by the same, the present writ petition is filed.

2. Counter affidavit is filed by the 1st respondent – Government. While denying the averments in the writ petition, it is stated that the 2nd respondent – Federation was registered on 12.12.1985 and it was ordered for liquidation on 06.08.1993 on the suggestion of the Committee to review the functioning of the institution. That the petitioner, who passed matriculation, was appointed as a Clerk on daily wage basis in the 2nd respondent – Federation on 19.07.1991 at Rs.25/- per day for a period of 89 days temporarily on emergency basis to work in the Accounts Cell and he is liable to be terminated at any time without assigning any reason. The date of appointment was revised as 10.07.1991. That as the petitioner passed only Matriculation, he applied for relaxation of rules for regularization of his services, which was rejected by the Federation in terms of G.O.Ms.No.193, GAD (Ser.A) Department, dated 14.03.1990 and his services were terminated with effect from 31.07.1992. Aggrieved by the

same, the petitioner approached Hon'ble Courts by filing various writ petitions and contempt cases, pursuant to which the Government informed the petitioner that it was not possible to absorb him in any Government Organisation. Other facts as stated in writ affidavit are reiterated. When the petitioner moved Hon'ble Supreme Court by way of SLP.No.20922 of 2002, the Supreme Court, initially by order dated 18.11.2002 directed the Labour Court to dispose of the I.D., subsequently by order dated 08.08.2003 disposed of the said SLP directing the Government to pay Rs.5,000/- to the petitioner and the said amount was paid to him by Pay Order No.118643, dated 23.05.2005 on S.B.H. and the petitioner was also paid Rs.1,00,360/- towards back wages through Labour Court in the year 2001.

3. Sri G. Satyanarayana, who was a Post Graduate, was appointed as Junior Assistant on 11.12.1991 and was reinstated into duty vide G.O.Ms.No.237, Agriculture and Cooperation, dated 30.08.1996 as per the order dated 18.04.1996 in O.A.No.5315 of 1995 passed by the A.P. Administrative Tribunal, Hyderabad, and the reinstatement of the petitioner was deferred in G.O.Ms.No.67, dated 15.04.1998 as he did not possess the required educational qualifications and as such, it is stated that the case of the

petitioner was examined and suitable orders were passed by the Government and hence he does not deserve consideration. It is further stated that the issue of jurisdiction of the Labour Court raised by the petitioner has to be decided by this Court.

4. Learned counsel for the petitioner submits that the Hon'ble Apex Court in SLP.No.284 of 1999 as well as this Court by order dated 04.07.2002 in W.P.No.15066 of 2001, and by order dated 13.08.2002 in W.A.No.1241 of 2002, directed the Labour Court to dispose of I.D.No.562 of 2000 after hearing the parties and nowhere the aspect of the jurisdiction of the Labour Court was challenged and, therefore, it is not open for the Labour Court to dismiss the said I.D. on the ground of lack of jurisdiction and hence the impugned Award dated 24.08.2004 in I.D.No.562 of 2000 passed by the Labour Court is liable to be set aside.

5. The learned counsel would further contend that by virtue of G.O.Ms.No.329, dated 22.05.1993, and subsequent G.Os. 40 persons, who are juniors to the petitioner, were appointed in various Government Departments, while rejecting the case of the petitioner and hence the petitioner cannot be discriminated as against the other employees. The learned counsel also relied upon a judgment of the Apex

Court in COMPTROLLER AND AUDITOR-GEN. OF INDIA v. K.S. JAGANNATHAN¹ and submits that this Court can decide the matter basing on the material and by considering the totality of the facts and circumstances.

6. On the other hand, the learned Government Pleader for Cooperation submits that basing on the orders passed in earlier writ petitions, the case of the petitioner was considered and rejected vide G.O.Ms.No.313, Agricultural and Cooperation (Coop.I) Department, dated 07.08.1997, and vide G.O.Ms.No.67, Agriculture and Cooperation (Coop-I) Department, dated 15.04.1998, once again his case was considered and rejected. However, instead of challenging the said rejection orders by filing a separate writ petition, the petitioner has filed the present I.D.No.562 of 2000 and the Labour Court has rightly dismissed the said I.D. as it has got no jurisdiction or power to go into the validity or otherwise of the said G.Os. It is further submitted that in view Ordinance No.4 of 1997 i.e., A.P. Prohibition of Absorption of Employees of State Government Public Sector Undertakings into Public Service Ordinance, 1997, the persons, whose services were regularized in terms of G.O.Ms.No.329, dated 22.05.1993, stands cancelled for such persons who have not been

¹ (1986) 2 SCC 679

absorbed on or before 26.11.1996. It is also submitted that though the Apex Court, by order dated 15.09.1999, while disposing of Civil Appeal No.5425 of 1999 arising out of SLP.No.284 of 1999, set aside the order dated 10.08.1998 in C.C.No.855 of 1998, found that the order passed by this Court in the contempt case is wholly without jurisdiction and the same could not have been made in a proceeding under the Contempt of Courts Act or under Article 215 of the Constitution. The Apex Court further observed that the petitioner, instead of challenging the rejection order by filing a separate writ petition, took recourse to contempt proceedings which did not lie as the order had already been complied with by the State Government by considering the representation of the petitioner and rejecting it on merits.

7. In SLP.No.284 of 1999 filed by respondents against order 10.08.1998 in C.C.No.855 of 1998, the Apex Court held writ petitioners herein and respondents therein could have filed fresh writ petition challenging the rejection order dated 15.04.1998, instead of contempt case, but the petitioner, instead of filing fresh writ petition, has filed I.D.No.562 of 2000 and the same was allowed on 07.12.2000 ex parte and W.P.No.15066 of 2001 filed against the same was allowed, by order dated 04.07.2002 and Labour Court was directed to

dispose of the same and W.A.No.1241 of 2002 filed by petitioner was also disposed of and S.L.P. filed against the same was also disposed of with a same direction and in pursuance to the same, the Labour Court dismissed the same on 24.08.2004 holding it has no jurisdiction by relying on order dated 15.09.1999 in Civil Appeal No.5425 of 1999. Aggrieved by the same, the present writ petition is filed, which was allowed by order dated 26.04.2012 by holding that the Labour Court has jurisdiction by remanding the matter to Labour Court and W.A.No.1163 of 2012 filed by respondent No.2 was allowed by holding as follows:

“We do not wish to examine correctness of the award of the Labour Court, holding that it has no jurisdiction to entertain the dispute. It appears to us that the learned Single Judge remanded the matter in view of the order of the Supreme Court, dated 18.11.2002, without examining correctness/legality of the impugned order. In other words, finding as to maintainability of the industrial dispute is not independently recorded. Learned counsel for the parties fairly state that issue of maintainability/jurisdiction was not even argued before the learned Single Judge.

Keeping that in view, learned counsel for the parties without prejudice to their rights and contentions have agreed for the following order:

“The order, dated 26.04.2012, passed in W.P.No.2718 of 2005 is set aside. The writ petition is restored to file. The learned single Judge is requested to consider the challenge raised in the writ petition afresh and dispose it of expeditiously. All contentions of the parties are kept open on merits of the case.”

As such, the contention of learned counsel for petitioner that issue of jurisdiction of Labour Court cannot be decided

cannot be accepted. The writ petition was specifically remanded to consider the challenge raised in the writ petition i.e., jurisdiction of Labour Court to entertain the dispute. Labour Court by taking factual aspects into consideration.

8. The present writ petition is filed solely for deciding the aspect of jurisdiction of the Labour Court and for remitting the matter to the Labour Court. Though the learned counsel for the petitioner strenuously argued that the petitioner's case should be considered on merits, the fact remains that the petitioner has not challenged the rejection order in G.O.Ms.No.313, Agricultural and Cooperation (Coop.I) Department, dated 07.08.1997, and G.O.Ms.No.67, Agriculture and Cooperation (Coop-I) Department, dated 15.04.1998, in a separate proceedings. Even in I.D.No.562 of 2000, the challenge was not to the rejection order, but to absorb him in any Government Department. Further, the prayer in the present writ petition is for directing reinstatement of the petitioner into service by absorbing him in any Government Department or Public Sector Undertaking with full back wages with seniority and for all attendant benefits. The rejection order issued in G.O.Ms.No.67, dated 15.04.1998, was never challenged before the Labour Court also. More-so, the Hon'ble Supreme Court also observed that

the petitioner could have challenged the said rejection order in a separate writ petition and while observing so, gave liberty to the petitioner to do so, which was relied on by Labour Court.

9. Further, the case of the petitioner is that he worked as a Clerk in the 2nd respondent – Federation and his services were terminated along with others on the ground of liquidation of the 2nd respondent – Federation. Subsequently, though the cases of his juniors and other colleagues were considered by the 1st respondent – Government by appointing them in various Government Departments by way of issuing G.O.Ms.No.329, dated 22.05.1993, and subsequent G.Os., without considering his case, the petitioner filed writ petitions and contempt cases seeking to consider his case for absorption in any Government Department or Public Sector Undertaking, and the matter went upto the Hon'ble Supreme Court, but there was no challenge about the order passed by the 1st respondent – Government rejecting his case for absorption in any Government Department. However, without challenging the said rejection orders by way of filing separate writ petition, the petitioner filed I.D.No.562 of 2000 before the Labour Court with the same prayer for absorption of his services in any Government Departments, which, according to

my view, the Labour Court has rightly held that it has no jurisdiction to go into that aspect. Without challenging the rejection order issued vide G.O.Ms.No.67, dated 15.04.1998 and also G.O.Ms.No.313, dated 07.03.1997, no relief can be granted to the petitioner, more-so, when it was specifically stated that in view of Ordinance No.4 of 1997 i.e., A.P. Prohibition of Absorption of Employees of State Government Public Sector Undertakings into Public Service Ordinance, 1997, the case of the petitioner cannot be considered. Further, the writ petition is filed against the 2nd respondent – Federation also, stating it is represented by Secretary to Government, Food and Agriculture Department, and in the counter affidavit filed by the 1st respondent – Government, it is stated that the Government examined the representation/proposals of the employees of Ricefed and directed to CC&RCS to take necessary action for absorption of (40) employees of Ricefed vide G.O.Ms.No.329, Agricultural and Cooperation (Coop.I) Department, dated 22.05.1993. The orders issued in the above said G.O. stand cancelled for such persons who have not been absorbed on or before 26.11.1996 in view of the ordinance No.4 of 1997.

10. In view of the above, consideration of the case of the petitioner on merits *dehorse* the Award dated 24.08.2004 in

I.D.No.562 of 2000 passed by the Labour Court does not arise and the judgment of the Apex Court in K.S. JAGANNATHAN's case (1 supra) relied upon by the learned counsel for the petitioner has no application to the facts of the present case. Without proper factual foundation in the writ petition, challenging the validity of the rejection order in G.O.Ms.No.313, Agricultural and Cooperation (Coop.I) Department, dated 07.08.1997, and G.O.Ms.No.67, Agriculture and Cooperation (Coop-I) Department, dated 15.04.1998, the validity of the same cannot be gone into in this writ petition.

11. For the aforesaid reasons, I do not see any merits in the present writ petition and the same is accordingly dismissed. No order as to costs.

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

A. RAJASHEKER REDDY, J

24.07.2017.
Msr

THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

WRIT PETITION No.2718 of 2005



24.07.2017

Msr

Again the petitioner filed I.D.No.562 of 2000 and the Labour Court, Hyderabad, by order dated 07.12.2000 allowed the same by setting aside the termination order dated 30.07.1992 with a direction to reinstate the petitioner in any Government Department with continuity of service and back wages. In E.P.No.5 of 2001 filed by the petitioner for execution of the Award dated 07.12.2000, the Labour Court passed attachment orders on 11.07.2001. Against the said attachment order, the Government filed W.P.No.15066 of 2001 and got suspended the Award dated 07.12.2000 in I.D.No.562 of 2000. Subsequently, this Court disposed of the said writ petition, by order dated 04.07.2002, setting aside the Award of the Labour Court and directing the Labour Court to hear the Government and permitted the petitioner to raise additional grounds and pleadings. Against the said order, the petitioner filed W.A.No.1241 of 2002 and the same was disposed of by judgment dated 13.08.2002, directing the Labour Court to dispose of the I.D. by hearing the Government.

7. The case of the petitioner is that pursuant to his termination along with others by 2nd respondent – Federation and subsequent absorption of other employees in various Government Departments, while rejecting his case for reinstatement in any Government Department, the petitioner filed writ petitions, contempt cases and writ appeal and in SLP filed by the petitioner, there was a direction given to the Labour Court to dispose of I.D.No.562 of 2000 on merits, but the fact remains that in W.A.No.1163 of 2012 filed by the 2nd respondent – Federation against the order dated 26.04.2012 in W.P.No.2718 of 2005, a Division Bench of this Court observed that the learned single Judge remanded the matter in view of the order of the Supreme Court dated 18.11.2002 without examining correctness/legality of the impugned order. It is also observed that the finding as to maintainability of I.D. is not independently recorded and also observed that the learned counsel for the parties fairly state that the issue of maintainability/jurisdiction was not even argued before the learned single Judge. The Division Bench, while setting aside the order dated 26.04.2012 passed in the present writ petition, restored the writ petition to file and directed the

learned single Judge to consider the challenge raised in the present writ petition afresh and dispose of the same expeditiously.

