

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.7328 of 2017

Date :15 -3-2017

Between :

Md Parvez S/o Md Yousuf
R/o Makthal, Mahabubnagar district

Petitioner

And

TS Transco
Rep by its CMD, Vidyut Soudha,
Somajiguda, Hyderabad and others

Respondents

The Court made the following:



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ORAL ORDER:

This writ petition is filed seeking the following relief:

“.....to call for the records from the Respondents and issue an appropriate Writ, Order or Directions, particularly one in the nature of Writ of Mandamus, declaring that the oral order of the 2nd respondent in preventing the petitioner from discharge his duties w.e.f, 05-11-2016 and not paying the salaries regularly to the petitioner as illegal, unjust, contrary to law, arbitrary, discriminatory amounts victimization and unfair labour practice, and in violation of Article 14, 16 and 21 of the constitution of India and grant all consequential benefits.....”

2. The averments made in the affidavit filed in support of the writ petition discloses that petitioner was working as shift incharge from June, 2005 continuously, employed by contractor. According to the petitioner, though there has been change of contractors to undertake the assignment, he is continuously engaged through the contractors. While so, this writ petition is filed alleging that by oral orders of the Assistant Engineer (Maintenance)-second respondent, petitioner is prevented from discharging his duties w.e.f. 5.11.2016 and is not paid salary.

3. Material papers filed along with the writ petition discloses that petitioner is employed by the contractor/third respondent and having come to the knowledge of the second respondent that without authorization petitioner issued line clearance of the station transformer for connecting oil filtration equipment in the name of AE/Maintenance and due to his absence at the work place a skilled worker mal-operated the isolator connected to the station transformer without removing the earth rod on one of the jumper which ultimately resulted in significant damage to the station transformer and other auxiliary equipment.

4. The second respondent vide letter dated 13.6.2016 informed the contractor that above action caused significant damage to the station transformer and other auxiliary equipments and interruption to the generation and industrial feeders. He also informed the contractor that earlier also petitioner indulged in such illegal activities and therefore petitioner is unfit to work and directed to take necessary action. It appears this is the basis for the contractor not to continue the petitioner in service.

5. Learned counsel for petitioner contended that the second respondent has prevented the petitioner to work illegally and without following due procedure and seeks the relief as extracted above.

6. His contention has no merit, having regard to the documents enclosed to the writ petition. As noted above, the second respondent informed the employer of the petitioner about the illegalities committed by him. It is for the employer to take appropriate action against his employee. The information furnished by the second respondent can be the basis for the employer to take further course of action. If it is the case of the petitioner that his employer has not followed the due procedure and without the order of termination of service he could not have prevented him from discharging his duties, and that his termination on account of letter of the second respondent would amount to termination by way of penalty, petitioner has to avail appropriate remedy as available in law against the employer.

7. Learned counsel placed heavy reliance on the letter of second respondent dated 28.12.2016 addressed to the petitioner to contend that it is second respondent who is preventing the petitioner to work. A close scrutiny of the letter dated 28.12.2016 would disclose that petitioner seems to have represented to the second respondent to recommend to the contractor to take him to duty, where as, the second respondent

expressed his inability to recommend since he complained against the indiscipline conduct of the petitioner. This letter also clearly discloses that even according to the petitioner, he was prevented from discharging duties by the third respondent. The legal notice issued on behalf of the petitioner also alleges that second respondent has no authority to prevent the petitioner from working and deny payment of salary payable to him. The contention of the learned counsel for petitioner that second respondent resorted to oral order of termination and preventing the petitioner from discharging the duties, does not appear to be correct.

8. It appears from the averments made in the affidavit and material enclosed to the writ petition that petitioner is not working and is not allowed to work by the third respondent on account of the alleged illegality committed by the petitioner as reported by the second respondent. Apparently, petitioner is employed by third respondent and is placed at the disposal of the second respondent to work on his behalf in order to fulfill his contractual obligations. If the head of office/unit where such employee was working commits misconduct/failed in discharging his duties properly, he can report to employer and also in the interest of his organization and in the public interest can request employer not to place such person to work in his office. On that ground, no blame can be thrown on second respondent.

9. If the petitioner has any grievance against the alleged illegal termination on the ground of misconduct; termination is stigmatic having regard to background facts, petitioner has to avail appropriate remedy as available in law against his employer, third respondent. Petitioner cannot claim lien to post against which he was working merely because successive contractors continued to engage him and cannot claim to have acquired a status of permanency vis a vis respondent company. Be that as it may, in exercise of power of judicial review under

Article 226 of the Constitution of India, this Court cannot mandate a private employer to employ/ continue to employ the petitioner.

10. This writ petition deserves to be dismissed in limini and accordingly dismissed, leaving it open to the petitioner to avail appropriate remedies as available in law against the alleged illegal termination by the employer. No costs. Having regard to the same, miscellaneous petitions, if any pending, are closed.

DATE:15-03-2017
TVK

P NAVEEN RAO,J



HONOURABLE SRI JUSTICE P. NAVEEN RAO



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