

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SMT JUSTICE T.RAJANI

Writ Appeal No.1023 of 2009 & Writ Petition No.13153 of 2007

COMMON JUDGMENT: (Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred against the interlocutory order passed by the Learned Single Judge in W.P.M.P.No.16434 of 2007 in W.P.No.13153 of 2007 dated 25.06.2007 whereby a challenge was made by the appellant-writ petitioners (corporation) to the award of the Industrial Tribunal in I.D.No.92 of 2004 dated 11.08.2005. The Learned Single Judge had suspended the award except absorption of the 1st respondent-workman into the services of the corporation.

The 1st respondent-workman invoked the jurisdiction of the Industrial Tribunal by way of an application under Section 2(A)(2) of the Industrial Disputes Act, 1947 (for short "the Act") to set aside the orders dated 10.02.1999 and 22.05.2000 passed by the corporation rejecting his case for absorption, and to direct them to absorb him into regular service with all consequential benefits from 23.09.1996.

By the award, impugned before the Learned Single Judge, the Industrial Tribunal allowed the workman's application, set aside the orders of rejection dated 10.02.2009 and 22.05.2000, and directed the corporation to absorb and appoint the 1st respondent-workman as a Helper, however with prospective effect. The Tribunal made it clear that the 1st respondent was not entitled to any backwages.

Section 2A of the Act enables a workman, with regards any individual dispute between himself and the employer, in connection with his discharge, dismissal, retrenchment or termination, to raise an industrial dispute notwithstanding that no other workman or union is a party to the dispute. Sub-section (2) was inserted to Section 2A of the Act, by the A.P. Amendment Act 32 of 1987 with effect from 27.07.1987,

conferring power on a workman to make an application directly to the Industrial Tribunal for adjudication of the dispute referred to therein, and confers power on the Industrial Tribunal to adjudicate upon such dispute, as if it were a dispute referred to it by the appropriate Government. Sub-section (2) relates to a “workman” specified in Sub-section (1) and, as the dispute which can be raised under Sub-section (1) of Section 2A of the Act is only in connection with the discharge, dismissal, retrenchment and termination of an employee, the jurisdiction conferred on the Tribunal to entertain such a dispute is only in such contingencies, and not otherwise.

The application filed before the Industrial Tribunal by the 1st respondent-workman was for his absorption into the services of the appellant-corporation. The Industrial Tribunal lacks jurisdiction to entertain an application for absorption, except on a reference by the Government in an industrial dispute raised by the Union.

In the present case the dispute was not referred to the Industrial Tribunal by the Government. It was entertained by the Industrial Tribunal under Section 2A(2) of the Act. As the Industrial Tribunal lacks jurisdiction to entertain an application seeking absorption, directly under Section 2-A(2) of the Industrial Tribunals Act, the award of the Industrial Tribunal must be and is, accordingly, set aside.

The Writ Appeal is, accordingly, disposed of. Consequently, since the cause in the writ petition itself does not survive, W.P.No.13153 of 2007 is also disposed of. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(T.RAJANI, J)

13th July, 2017
JSU

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Date: 13.07.2017

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