

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WP.No.16751 of 2017

ORDER :

Heard the counsel for petitioners, and the learned Government Pleader for Labour (Telangana) for respondents.

2. This Writ Petition has been filed by the petitioners assailing the order dt.12.04.2017 in S.E.No.9 of 2016 (Old S.E.No.4 of 2015).

3. The 2nd respondent was employed by the petitioners. Alleging that his services were illegally terminated by the petitioners on 30.04.2012, the 2nd respondent filed an Appeal under Section 48 (1) of the Andhra Pradesh Shops and Establishments Act, 1988 (**for short, ‘the Act’**) before the 1st respondent who was a designated authority under the Act. He contended that without assigning any reason his services were terminated without paying any retrenchment compensation in lieu of notice, and that his termination is illegal, unjust, contrary to law and against principles of natural justice. He therefore sought reinstatement with full back-wages, continuity of service and other attendant benefits by setting aside the termination effected on 30.04.2012.

4. Counter-affidavit was filed by petitioners stating that the application was not maintainable before the 1st respondent, because the 1st respondent was a Manager as per the appointment order / contract of employment dt.04.09.2009 and he cannot be termed as an “employee” within the meaning of the Act.

5. The 1st respondent held, on appreciation of evidence, that though the contract of employment (Ex.A.1) mentioned that the petitioner was appointed as a Manager, that such designation would not conclusively establish that he was actually engaged in a managerial capacity. It considered Exs.M.1 to M.11 marked by the petitioners and gave a finding that the 2nd respondent was not engaged in a managerial capacity, and that even Ex.A.1 did not disclose anything to show that the 2nd respondent is obligated to be in the actual management of the establishment. It held that the petitioners failed to prove that the 2nd respondent was discharging managerial duties and would come within the ambit of Section 73(1)(a) of the Act.

6. It also held that the e-mail dt.23.04.2012 issued by the petitioners is, in fact, an order of termination and that the petitioners are not correct in contending that the 2nd respondent voluntarily relieved himself on 30.04.2012. It also held that the procedure of termination of service in all disciplinary cases was enumerated under Section 47 of the Act read with Rule 20 of the Rules framed under the Act; and that it was the obligation of the petitioners, in case of any lapse or misconduct on the part of petitioners, to conduct domestic enquiry, establish misconduct and follow the procedure laid down under the Act and Rules before affecting termination.

7. It, therefore, held that the termination of services of the 2nd respondent was not valid and directed the 2nd respondent to be reinstated into service with all consequential back-wages and

continuity of service, and also held that since the 2nd respondent had attained age of 57 years by the date of filing of the application, he is entitled to wages till he attains the age of 58 years. It therefore directed the petitioners to pay Rs.31,000/- p.m. for a period of twelve (12) months equivalent to Rs.3,72,000/- to the 2nd respondent.

8. Assailing the same, the present Writ Petition has been filed by the petitioners.

9. The counsel for petitioners reiterated that the 2nd respondent was employed in a managerial capacity and therefore he is exempted under Section 73 (1) (a) of the Act. He also relied on the decision of the Supreme Court in **S.K. Maini v. M/s. Carona Sahu Company Limited and others**¹ and contended that conditions of service of the employee in the case before the Supreme Court and in the present case were one and the same, and therefore, the 1st respondent had no jurisdiction to entertain the Appeal filed by the 2nd respondent. He further contended that the petitioners need not avail the remedy of Second Appeal provided under Section 48 (3) of the Act, since it is the contention of the petitioners that the order passed by the 1st respondent was without jurisdiction.

10. Normally this Court does not entertain a Writ Petition when there is effective alternative remedy provided under the statute. Of course, there is an exception to the said principle where an order is passed by a statutory authority without jurisdiction.

¹ AIR 1994 SC 1824

11. Therefore, the point to be considered is whether the 1st respondent passed order without jurisdiction.

12. According to petitioners, the order passed by the 1st respondent is without jurisdiction, because the 2nd respondent had been designated as a Manager by the petitioners as per Ex.A.1 (Appointment Letter / contract of employment) issued on 04.09.2009. Therefore, the question whether the 2nd respondent was discharging managerial functions or not is undoubtedly a jurisdictional fact.

13. The 1st respondent had taken the view that the nomenclature mentioned in Ex.A.1 is not conclusive since the evidence produced by the petitioners, i.e., Exs.M.1 to M.11 itself did not indicate that any managerial responsibility was being handled by the 2nd respondent. The 1st respondent also held that even the responsibilities enumerated in Ex.A.1 did not disclose anything to show that the 2nd respondent was discharging managerial functions. This finding is arrived at by the 1st respondent on appreciating the evidence on record and cannot be said to be perverse or based on no evidence. Therefore, this finding cannot be interfered with in exercise of jurisdiction conferred on this Court under Article 226 of the Constitution of India.

14. As regards the decision in **S.K. Maini** (1 supra), cited by the counsel for petitioners, the said case arose under the Industrial Disputes Act, 1947. In that case, the services of a shop manager of a company were terminated after domestic enquiry, and the matter was referred to the Labour Court for adjudication. A preliminary objection was raised by the employer stating that the employee in

question was not a 'workman' within the definition of said term in Section 2(s) of the Industrial Disputes Act, 1947 because he was a shop manager and was discharging mainly managerial and administrative functions. The Labour Court disagreed with the said contention and held that the employee was covered by the definition of the term '*workman*' under Section 2(s) of the Act. It also held that the domestic enquiry was not properly conducted and reasonable opportunity was not given to the employee to defend himself. It also held that the enquiry officer was the Standing Counsel of the company, and would have a bias in favour of the employer. The employer challenged the same in the Punjab and Haryana High Court. A single Judge of the High Court held that the duties of the employee were administrative or managerial and to some extent supervisory in nature, though some of the duties were clerical in nature, and therefore, the employee was not a workman under Section 2 (s) of the Act. This was confirmed in Letters Patent Appeal (L.P.A.) before the said Court. The employee approached the Supreme Court. The Supreme Court upheld the decision of the Punjab and Haryana High Court. It took into account the nature of duties of the employee concerned and agreed with the findings of the High Court that the principal function of the employee was administrative and managerial in nature though he was also required to do some works which are of clerical in nature.

15. In my considered opinion, the view expressed by the Supreme Court was correct in the light of evidence on record in the case before the Supreme Court. The same view cannot be taken in the present

case, particularly, when the 1st respondent had considered the recitals in Exs.M.1 to M.11 as well as the terms of the agreement letter Ex.A.1 and came to the conclusion that the 2nd respondent was not discharging managerial functions.

16. As already pointed out, this finding of fact of the 1st respondent has not been shown to be neither perverse nor based on evidence as held above.

17. Therefore, I see no reason to interfere with the impugned order dt.12.04.2017 in S.E.No.9 of 2016 (Old S.E.No.4 of 2015) passed by the 1st respondent in exercise of jurisdiction conferred on this Court under Article 226 of the Constitution of India.

18. Accordingly, the Writ Petition is dismissed at the stage of admission. No order as to costs.

19. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 01-06-2017

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