

THE HONB'E SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.18654 OF 2000

ORDER:

The writ petition is filed questioning the Award dated 21.02.2000, passed by the Industrial Tribunal-cum-Labour Court, Visakhapatnam (for short, "the Tribunal") in I.D.No.52 of 1997.

The facts in brief are that the petitioner-workman was appointed as a night watchman on daily wage basis on 19.12.1983 and the petitioner's services were utilized till 31.08.1985 on which date he was orally terminated without giving any notice and without paying any compensation. Thereafter the petitioner-workman filed the I.D.No.52 of 1997 before the Tribunal seeking to set aside the termination of his services and to pay the consequential retrenchment compensation on the ground of violation of the provisions of Section 25(f) of the Industrial Disputes Act, 1947 (for short, "the Act"). After its enquiry, the Tribunal gave a finding that the petitioner-workman worked for more than 240 days and however his appointment was on temporary basis and his case would fall under Section 2(oo)(bb) of the Act and he is not entitled for any retrenchment benefits. The contention of the petitioner-workman that his juniors were regularized was negatived based on the material on record by recording a finding that the persons appointed were the persons who had appeared for the interviews conducted pursuant to the notification dated 24.5.1985.

Learned counsel for the petitioner Sri V. Sudhakara Reddy in his usual persuasive manner by copiously drawing the attention of this Court to the material on record contended that the Tribunal

failed to appreciate both the facts and law and would submit that petitioners 2 to 6 who are the legal heirs of the deceased workman are at least entitled for retrenchment compensation on account of the finding of the fact that the workman was terminated and the provisions of Section 25(f) of the Act were not followed. Petitioners placed on record the following judgments:

- i) **Surendra Kumar Verma etc vs. The Central Government Industrial Tribunal-cum-Labour Court, New Delhi and another¹,**
- ii) **Devinder Singh and Municipal Council, Sanaur²,**
- iii) Unreported judgment dated 20.10.2014 passed by the Division Bench of this Court in WA No.2283 of 2005 (**Karri Pandurangarao vs. The Chief Staff Officer and others**), **R.M. Yellatti vs. Assistant Executive Engineer³,**
- iv) **Harjinder Singh vs. Punjab State Warehousing Corporation⁴**
- v) **General Manager, Haryana Roadways vs. Rudhan Singh⁵**

Learned counsel for the petitioner-workman submits that in view of the fact that the writ petitioner-workman had passed away, the Court may consider awarding of any compensation to the legal heirs of the workman who have been impleaded as the petitioners 2 to 6.

At the outset it may be noted that as per the pleadings and also the material available on record, the termination of the petitioner-workman was made in the year 1985. It may also be noted that there is no challenge to the finding of the fact recorded by the Tribunal. The termination of the petitioner-workman was on

¹ AIR 1981 Supreme court 422

² 2011-III-LLJ-1(SC)

³ (2006) 1 Supreme Court Cases 106

⁴ (2010) 3 SCC 192

⁵ (2005) 5 SCC 591

31.8.1985. Though initially petitioner-workman was orally engaged with effect from 19.12.1983, the appointment was made with effect from 31.1.1984 through the letter of the Principal. There is no denial of the fact that the petitioner-workman was appointed with a condition that his appointment would be there till the recruitment of regular employees through proper channel. The Tribunal recorded a finding that the Principal is not the appointing authority and the appointments are governed by the rules and regulations of the respondent society. Though the termination was in the year 1985, petitioner-workman approached the Industrial Tribunal in the year 1997 that is after long lapse of 12 years. The Tribunal found that Section 2(oo) (bb) of the Act is attracted to the case of the petitioner-workman and as such he is seizing to work with effect from 31.08.1985 and his case would not fall within in the definition of Section 2(oo) of the Act. There is also no challenge to this finding of the Tribunal before this Court. It may also be noted that during the pendency of the writ petition the workman died and the legal representatives came to be added as the petitioners 2 to 6. In the circumstances, the only question that is required to be considered as to whether the Award of the Tribunal is liable to be interfered and some monetary compensation be awarded in favour of the legal heirs of the workman.

In view of the fact that a large number of case law is submitted by the petitioners' counsel, this Court is obliged to consider the same. The judgment reported in **Surendra Kumar Verma (1 supra)**, has no application to the facts of the case as the finding of the Tribunal is that non engagement of the workman does not amount to retrenchment as defined in Section 2(oo) of the

Act on account of the case of the petitioner-workman falls within the scope of Section 2(oo) (bb) and Section 2 (oo) (bb) being exception to Section 2 (oo) of the Act. In other words the finding of the Tribunal is that the discontinuation of the petitioner does not amount to retrenchment. In that view of the matter the question of paying any retrenchment compensation to the petitioner-workman under Section 25(f) of the Act does not arise. Another judgment reported in **Mohan Lal vs. The Management of M/s. Bharat Electronics Limited** ⁶ has also not applicable to the case on hand. Likewise the Unreported judgment dated 20.10.2014 passed by the Division Bench of this Court in WA No.2283 of 2005 (**Karri Pandurangarao vs. The Chief Staff Officer and others**), is also not helpful to the petitioners' case as in the present case there was no such plea that the workman was not engaged and it is an admitted fact that he was engaged and he had worked for 360 days in all. Like wise the judgment reported in **Harjinder Singh** (4 supra) wherein the reference has been made with reference to the principle of first come last go has no application, inasmuch it is not even the case of the petitioner-workman by adducing evidence that any of his juniors were continued in service while his services being discontinued. On the other hand a finding of the Tribunal is that the persons who are appointed pursuant to the selection notification on 24.5.1985 to which 43 candidates have responded and the interviews were conducted on 21.7.1985, 10.8.1985 and on other dates. As a matter of fact, petitioner was also one of the applicants and however was not successful in the interview. When the appointment of others was independently done on account of

⁶ AIR 1981 SC 1253(1)

the notification issued and such appointees' engagement cannot be said to be engagement of the juniors to the petitioner-workman. In such factual scenario the judgments cited by the petitioners' counsel are not relevant. Likewise the judgment reported in **General Manager, Haryana Roadways** (5 supra) has also not applicable to the facts of the present case as the ratio of the judgment there in is that the plea relating to Section 2(oo) (bb) had to be taken at the earliest and the same cannot be taken for the first time before the Supreme Court. In the circumstances of the case based on the pleadings and arguments advanced before the Tribunal, Tribunal gave a categorical finding that the petitioners' case would squarely fall within the scope of Section 2(oo) (bb) of the Act and the finding of the fact of the Tribunal is not being perverse, it does not call for interference. The order dated 20.10.2014 passed by the Division Bench of this Court in WA No.2283 of 2005 has also not applicable to the facts of the present case, as the same was rendered in the facts of the said case. Notwithstanding the fervent plea of the learned counsel for the petitioner that the legal heirs of the workman may be awarded with some compensation, this Court is unable to show any indulgence in the facts of the present case merely based on sympathy.

In the circumstances, the writ petition is dismissed. Miscellaneous Petitions, if any, pending in this writ petition shall stand closed. No order as to costs.

CHALLA KODANDA RAM,J

Date:05.07.2017,
Gk.

THE HONB'E SRI JUSTICE CHALLA KONDANDA RAM



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