

***IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

***THE HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN**

and

***THE HON'BLE SRI JUSTICE M. GANGA RAO**

+Writ Appeal Nos.2033 of 2013 and 286 of 2014

W.A.No.2033 of 2013

Between:

#The Andhra Pradesh Child Nutrition Council,
Represented by its Member-Secretary, Hyderabad
and another

... Appellants

Vs.

#G. Narsimhulu, S/o Agamaiah, Ex-attender,
R/o H.No.7-103, Near Manik Prabhu Mandir,
Patancheru, Hyderabad and another

.. Respondents

W.A.No.286 of 2014

Between:

#G. Narasimhulu, S/o Agamaiah, aged about 61 years,
Occ: Ex-attender, R/o H.No.7-103, near Manikprabhu
Mandir, Patancheru, Hyderabad.

... Appellant

Vs.

#The Industrial Tribunal-II, represented by its
Presiding Officer Chandra Vihar Buildings, M.J. Road,
Nampally, Hyderabad and 2 others

.. Respondents

! Counsel for the Petitioner : Mr. G. Ramachandra Rao

^ Counsel for the respondents : Mr. P. Sridhar Rao

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE M. GANGA RAO

Writ Appeal Nos.2033 of 2013 and 286 of 2014

JUDGMENT: (V. Ramasubramanian, J)

While the first writ appeal is by the Management, the second writ appeal is by the workman, both challenging an order passed by the learned single Judge, allowing the writ petition filed by the workman challenging the award of the Industrial Tribunal, but granting him only the benefit of monetary compensation in a sum of Rs.2,00,000/-.

2. We have heard Mr. G. Ramachandra Rao, learned counsel for the appellant-Management and Mr. P. Sridhar Rao, learned counsel appearing for the respondent-workman.

3. The workman was appointed as a temporary attender on 19-03-1977 in the Scale of Pay of Rs.150-225. The Scale of Pay was later revised to Rs.300-425.

4. According to the Management, the workman was a habitual absentee and that he was on loss of pay from 25-06-1982 to 05-09-1982 and that despite service of a memo dated 10-10-1982 calling upon him to show cause as to why the period of absence should not be treated as break in service, the workman did not mend his ways. The case of the management is that the workman unauthorisedly absented himself from 23-10-1982 to 18-11-1982 and that therefore, his services were terminated on 18-11-1982 in accordance with the

Standing Orders. But the termination order dated 18-11-1982, according to the Management, was not challenged by the workman and it allowed to attain finality.

5. However, even according to the management, a representation made by the workman was considered sympathetically and he was appointed as a fresh candidate on a consolidated pay with effect from 26-12-1982. The case of the management is that while the workman was working on consolidated pay, he was caught red handed on 22-05-1983 while committing theft of 30 new carbon papers. Therefore, the management did not allow him to come for duty after 22-05-1983.

6. After 16 years of the termination, the workman raised an Industrial Dispute under Section 2-A (2) of the Industrial Disputes Act, 1947. The same was transferred to the Industrial Tribunal and numbered as I.D.No.257 of 2000. The Industrial Tribunal passed an award dated 09-04-2002 declining to grant any relief to the workman, on the ground that after his fresh appointment on 26-12-1982, he had not completed 240 days of service to be eligible to invoke the jurisdiction under the Industrial Disputes Act.

7. Aggrieved by the said award, the workman filed a writ petition. The learned Judge found that the first termination dated 18-11-1982 and the next termination dated 22-05-1983 were illegal and that therefore, they were liable to be set aside. However, since the workman was guilty of approaching the Industrial Tribunal after a long delay of 16 years, the learned Judge directed payment of

compensation of Rs.2,00,000/-, instead of reinstatement with any benefits.

8. Contending that the order of the learned single Judge setting aside the first termination, which was never questioned by the workman, was contrary to law and also contending that the services of the workman were not engaged after 22-05-1983 because of being caught red handed while committing theft and that therefore, he was not entitled to any relief, the management has come up with the above first writ appeal. However, contending that the award of compensation was not sufficient and that the learned Judge should have granted the relief of reinstatement with all consequential benefits, the workman has come up with the above second writ appeal.

9. In so far as the writ appeal filed by the workman is concerned, we do not think that he can ask for anything more than what the learned Judge has awarded. As rightly pointed out by the learned Judge, the workman raised a dispute only in the year 2000, almost after 17 years of the termination from service. By the time the writ petition was decided, a period of 30 years had passed from the date of the second order of termination and the workman had either reached or almost near the age of superannuation. Therefore, the learned Judge took into account the decision of the Supreme Court in **R. John v. CGIT-cum-Lab Court** (1993 SCC (L & S) 723) to come to a conclusion that the only relief that could be granted was compensation and not reinstatement. In such circumstances, we see no reason to grant any relief to the workman more than what was

granted by the learned Judge. Hence, the writ appeal filed by the workman in W.A.No.286 of 2014 is dismissed.

10. Coming to the writ appeal filed by the Management, the contentions of the learned counsel for the management are:

- (1) that when the first order of termination dated 18-11-1982 was not even questioned, the learned Judge was not right in holding the same to be bad in law; and
- (2) that in so far as the termination dated 22-05-1983 is concerned, the same was on account of the workman being caught red handed while committing theft and that the long silence for more than 16 years on the part of the workman, disentitled him to question the same.

11. We have carefully considered the above submissions.

12. It is seen from the award of the Industrial Tribunal that the workman pleaded before the Tribunal that he was not served with a copy of the order of termination dated 18-11-1982. The witness for the management namely MW.1 admitted during cross-examination that the order of reengagement of the workman as a fresh employee, was not served on the workman. However, the fact remains that the workman was taken back to duty from 26-12-1982 and continued up to 22-05-1983. The Industrial Tribunal presumed that in view of the receipt of a lesser salary after 26-12-1982, the workman should have had knowledge his previous termination. We do not think that such a view is correct. There can be no such presumption in law, when a workman is before the Industrial Tribunal

challenging his order of termination. Therefore, the learned Judge was right in discarding the perverse finding of the Industrial Tribunal in this regard.

13. Coming to the second order of termination dated 22-05-1983, the positive case of the management was that the workman was caught red handed while committing theft. In other words the workman was disengaged, on account of misconduct. It certainly casts a stigma upon the workman. The very foundation for disengaging the services of the workman from 22-05-1983 was the theft. Therefore, such an order could not have been passed without an enquiry.

14. Unfortunately, the Industrial Tribunal raised a wrong question with regard to the completion of 240 days of service in a period of 12 Calendar months, forgetting for a moment that there was a break only for a brief period of one month and eight days, between 18-11-1982 and 26-12-1982. The question was whether he had completed 240 days of service, in a period of 12 Calendar months. The starting point for computing the period could not have been 26-12-1982. Therefore, even in this regard, the finding of the Tribunal that he had not completed 240 days of service so as to invoke the jurisdiction under the Industrial Disputes Act, was perverse. Therefore, the learned Judge did what was the only alternative left, namely that of awarding compensation. The compensation awarded by the learned Judge was also not very huge considering the facts and circumstances of the case.

Therefore, the writ appeal filed by the management also deserves to be dismissed.

Accordingly, the W.A.No.2033 of 2013 is also dismissed.

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

V. RAMASUBRAMANIAN, J

M. GANGA RAO, J

After the judgment was pronounced, it was represented by the learned counsel on both sides that a sum of Rs.1,00,000/- has already been deposited into the Court. The workman is permitted to withdraw the said amount. The balance amount may be deposited by the management within a period of eight weeks.

V. RAMASUBRAMANIAN, J

M. GANGA RAO, J

Date: 05-12-2017

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