

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 5420 OF 2000

ORDER :

This writ petition is filed challenging the order dated 25.09.1996 passed by the Industrial Tribunal-cum Labour Court, Visakhapatnam, in I.D.No.53 of 1991.

The brief facts of the case are that the first respondent herein (hereinafter referred to as 'the workman') filed the above I.D alleging that he worked as Man Mazdoor under the petitioner herein from 1972 to 1977 and that he was terminated illegally without following due procedure under Section 25 F, H and G of the Industrial Disputes Act, 1947 (for short 'the Act'), by retaining his juniors. The learned Presiding Officer, on appreciation of the evidence both on behalf of the workman, who was examined as WW1, and the management - MW1, and after taking into consideration the material placed before him, recorded a finding that the workman had worked continuously from 1972 to 1977, thus, for more than one year, and as no material was placed before the Labour Court with respect to retrenchment compensation, he found failure of the procedure under Section 25F of the Act.

It may be noted that though the petitioner claimed that the workman had worked only for a short period during 1973-74 and 1975, he failed to prove the same by producing evidence before the Labour Court.

Taking into consideration the oral evidence and by drawing adverse inference for not producing the material in their possession, the Labour Court gave a finding that the workman has worked for more than 244 days in a year and that he was retrenched without following due process, and accordingly,

directed that the workman be reinstated without back wages and without continuity of service.

This Court, on 30.04.2000, while issuing notice before admission, suspended the award subject to the operation of the provisions of Section 17(b) of the Act.

The workman filed W.V.M.P.No.3391 of 2000 seeking vacation of the said order. He filed a counter affidavit categorically stating that 17(b) wages were paid for certain period and thereafter, the interim order has not been complied with.

The vacate petition was filed as far back as on 12.12.2000. But no reply affidavit is filed denying the averments in the counter. In those circumstances, the averments in the counter affidavit would have to be considered as true.

Learned counsel for the petitioner submitted that in similar circumstances as against the awards passed by the Labour Court in I.D.Nos.98 of 1988 and 61 of 1991, W.P.Nos.7970 and 8400 of 1997 were filed before this Court and the same were dismissed confirming the awards made thereunder.

Apart from filing an affidavit that the workman had not worked more than 240 days, there is no material brought before this Court to contradict the finding given by the Labour Court.

On the other hand, the material that has been placed before this Court for the first time itself would indicate that the workman was engaged during the period 1974 to 1976. Even assuming for workman's sake that there is some material having been placed before the Labour Court, the same cannot be taken into consideration by this Court at this stage.

I see no merit in this writ petition and the same is accordingly dismissed with costs of Rs.1,000/- (Rupees one thousand only) payable by the petitioner to the first respondent.

Consequently, miscellaneous petitions pending, if any, shall also stand dismissed.

CHALLA KODANDA RAM,J

Date: 03.07.2017
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