

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.5068 of 2006

ORDER:

This Writ Petition, filed under Article 226 of the Constitution of India, challenges the award, dated 29.10.2005, passed by the Industrial Tribunal-cum-Labour Court, Anantapur in I.D.No.63 of 2002, published in G.O.Rt.No.2500, Labour Employment Training & Factories (Lab.I) Department, dated 17.12.2005.

Heard Sri T.Balaji, learned counsel for the petitioner, and Sri S.D.Goud, learned counsel for the respondent Nos.4 to 7, apart from perusing the material available before this Court.

According to the averments in the affidavit, filed in support of the Writ Petition, the third respondent herein joined as a Seasonal Clerk in the petitioner-Society on 28.12.1978 and his services were regularised with effect from 05.10.1985. While the third respondent was working in the petitioner-Society, he was served with a charge memo, dated 10.08.1993, wherein the petitioner-Society framed the following charges:

- 1) That he did not remit the ryots sugar sales quota amount of Rs.29,737.50 ps to the factory, it is a misconduct under Sec.XVI, Clause (e) of the certified standing orders of the Society.
- 2) That he was authorised to take 10 bags of sugar at a time every day and the amount collected should be remitted to the cashier every day as per proceedings dated 30.01.1992. The Chief Accounts Officer shall counter check the sales with permits and amount tallied every day. But he has contravened the orders superiors and did not remitted the amount regularly to the

factory. It is a misconduct under Section XVI, Clause (S) of the Standing Orders of the Society.

- 3) That he has misappropriated the Society amount and spoiled the reputation of the factory among the growers as well as in public.
- 4) That he has violated the rules and regulations of the Society.

In response to the said charge memo, the third respondent herein submitted his explanation on 25.08.1993. Thereafter, a regular Enquiry Officer was appointed who conducted enquiry and submitted a report on 08.11.1993. Subsequently, petitioner herein terminated the services of the third respondent herein on 20.12.1993.

Petitioner herein instituted O.S.No.815 of 1995 for recovery of amount from the third respondent herein and the same was decreed on 14.04.1997 by the Court of the Principal District Munsif, Tirupathi and the said decree became final. The third respondent herein raised an Industrial Dispute, being I.A.No.63 of 2002 on the file of the Industrial Tribunal-cum-Labour Court, Anantapur under Section 2-A (2) of the Industrial Disputes Act, 1947 (for brevity, 'the Act') against the order of termination, dated 20.12.1993. The said I.D. was contested by the petitioner-Management. No oral evidence was adduced before the Tribunal. On behalf of the workmen Exs.W1 to W4 were marked and on behalf of the Management, Exs.M1 to M42 were marked.

Petitioner herein also filed a rejoinder resisting the claim of the third respondent. The learned Presiding Officer of the Tribunal framed the following point for consideration:

Whether the petitioners herein are entitled for setting aside the order of termination of the deceased-

1st petitioner issued by the respondent on 20.12.1993 and to direct the respondent to give job to anyone of the petitioners 2 to 5 and any other benefits as claimed in the petition?

It is to be noted that pending I.D.No.63 of 2002, the third respondent passed away and respondents 4 to 7 came on record as legal representatives of the deceased-third respondent. The learned Presiding Officer, by way of the impugned award, had set aside the termination order and directed payment of back wages to respondent Nos.4 to 7 herein. The Tribunal, while keeping it open for the Management to deduct the balance amount as per the decree in O.S.No.815 of 1995, declared that one of them would be entitled to suitable job on compassionate grounds.

It is contended by the learned counsel for the petitioner that the questioned award passed by the Industrial Tribunal-cum-Labour Court, Anantapur is highly erroneous, contrary to law and it is opposed to the provisions of the Act. It is further contended that the learned Presiding Officer grossly erred in not taking into consideration the aspect of delay pointed out by the petitioner-Management in its rejoinder and also the impact of Exs.M.40 and M.42.

On the contrary, it is vehemently contended by the learned counsel for the respondent Nos.4 to 7 that there is absolutely no illegality nor there is any error in the impugned award, as such, the impugned award is not amenable for any judicial review under Article 226 of the Constitution of India. It is the further submission of the learned counsel that only after elaborately and meticulously considering the entire material available before the Tribunal the

learned Presiding Officer passed the impugned award, as such, no interference of this Court, under Article 226 of the Constitution of India, is warranted.

In the above background, now the issue that boils down for consideration is: “Whether the impugned award passed by the Industrial Tribunal-cum-Labour Court, Anantapur is in accordance with law or whether the same warrants any interference by this Court under Article 226 of the Constitution of India?.

The information available before this Court manifestly discloses that, after holding regular enquiry, the services of the third respondent were dispensed with by way of Ex.M.39-proceedings, dated 20.12.1993. It is significant to note that, in the rejoinder, filed by the petitioner-Management before the Tribunal, the petitioner-Management specifically pointed out that there was unexplained delay of nine years in filing the I.D. before the Tribunal. In the said rejoinder, petitioner also stated about the previous conduct of the workman, warranting the issuance of charge memo by the Management. It is also required to be noted that for realisation of the amount covered by the charge, the petitioner-Management instituted O.S.No.815 of 1995 and the said suit was decreed by the learned Principal District Munsif, Tirupathi on 14.04.1997 and the said decree attained finality also. It is not the case of the respondents that the same was appealed against. Another important aspect, which has bearing on the issue, is that the petitioner herein filed Ex.M.42-letter, dated 23.06.2005, issued by Srivani Sugars and Industries Limited, Punganur. While referring to Ex.M.42, it is submission of the learned counsel for the

petitioner that the said letter, in unequivocal and vivid terms, demonstrates that the third respondent worked in the said organisation during the period from 20.06.1994 to 18.02.1997.

A perusal of the impugned award shows that the above important and significant aspects, which have direct bearing on the adjudication of the Industrial Dispute, missed the attention of the Tribunal. While passing the impugned award, the Tribunal did not consider the impact of the said aspects on the adjudication. Therefore, this Court is of the considered opinion that the matter requires reconsideration by the Tribunal after taking into consideration the above aspects also.

For the aforesaid reasons, the Writ Petition is allowed, setting aside the award, dated 29.10.2005, passed by the Industrial Tribunal-cum-Labour Court, Anantapur in I.D.No.63 of 2002 as notified vide G.O.Rt.No.2500, Labour Employment Training & Factories (Lab.I) Department, dated 17.12.2005, and the same is remanded for fresh consideration strictly in accordance with law and in the light of the observations made supra, after giving notice to all the stakeholders.

As a sequel thereto, miscellaneous Petitions pending, if any, in this Writ Petition, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI,J

15th November, 2017
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