

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.245 of 2012

ORDER:

This Writ Petition is filed by petitioners/A.P.State Road Transport Corporation challenging the award dt.03-01-2011 in I.D.No.265 of 2007 of the Industrial Tribunal-cum-Labour Court, Anantapur (2nd respondent).

2. The 1st respondent filed an application under Section 2-A(2) of the Act before the 2nd respondent, which was numbered as I.D.No.265 of 2007.

3. The 1st respondent claimed therein that he was appointed as Vulcanizer/Traffic Cleaner in the Corporation at Tirupati on 19-11-1987, that he worked for more than 240 days in a calendar year without any break and that the petitioners terminated his services without any notice and without assigning any reason in violation of Section 25-F of the Industrial Disputes Act, 1947 (for short “the Act”); that he filed W.P.No.8172 of 1989 before this Court, which was disposed of on 21-11-1996 directing the petitioners to consider the case of 1st respondent for appointment to the post of Vulcanizer or any other suitable post, if the 1st respondent possessed the necessary qualifications and experience within two months from the date of said order; and that the petitioners did not implement this order.

4. Petitioners filed a counter in the I.D. stating that they did not appoint the 1st respondent or issue any termination proceedings but

they did engaged him for a specific period. They contend that there is a recruitment procedure for recruitment of employees and the 1st respondent was not selected by any Selection Board. They stated that only mazdoors/coolies, who were engaged seasonal/temporary workers would be engaged orally and payment will be made on hand receipt from the P.S. charges of the capital work available at that time and that the 1st respondent is not entitled to seek reinstatement.

5. Though oral evidence was not adduced, the 1st respondent marked Exs.W-1 and W-2 and the petitioners exhibited Exs.M-1 to M-3.

6. After considering the evidence on record and the contentions of the parties, the 2nd respondent held that 1st respondent worked with the petitioners and the petitioners failed to regularize his services and orally terminated him from service; and that even though the 1st respondent obtained order from this Court on 21-11-1996 in W.P.No.8172 of 1989, the petitioners did not comply with the said orders. It therefore directed reinstatement of 1st respondent into service with continuity of service and attendant benefits as Traffic Cleaner or Cleaner within one month from the date of award and denied him back wages.

7. Challenging the same, this Writ Petition is filed.

8. Sri A.Rama Rao, learned Standing Counsel for appearing for petitioners contended that no finding was given by the

2nd respondent that the 1st respondent was engaged by the petitioners for more than 240 days specifically in the impugned order and therefore the order is vitiated.

9. It is the stand of the petitioners in the counter-affidavit in the I.D. that they did not give any appointment order to the 1st respondent or any termination order, but they did admit that they engaged him for a specific period. For what period petitioners engaged the 1st respondent is thus within the exclusive knowledge of the petitioners and they will have custody of the records in that regard. They failed to produce the same before the 2nd respondent. Therefore, I am of the opinion that an adverse inference is deemed to have been drawn by 2nd respondent against the petitioners for not producing evidence in their possession regarding the duration of engagement of the 1st respondent with petitioners, that if such evidence were to be produced, it would not support their case. Therefore the contention of petitioners that there is no evidence that 1st respondent was engaged by petitioners for more than 240 days, is rejected.

10. Coming to the other contention of learned counsel for petitioners about the delay on the part of 1st respondent in approaching the 2nd respondent, admittedly, the 1st respondent had approached this Court by filing W.P.No.8172 of 1989, which was disposed only on 21-11-1996. In spite of an order in favour of 1st respondent passed therein, it is not the case of petitioners that they provided any job to the 1st respondent after considering his case as directed therein.

11. That apart, mere delay is not a ground to non-suit an employee who approached an industrial adjudicator as held by the Supreme Court in **Ajaib Singh Vs. The Sirhind Co-Operative Marketing-Cum-Processing Service Society Limited and Another**¹. Therefore I am of the opinion that the 2nd respondent did not commit any error in so far as it directed reinstatement of 1st respondent into service with continuity of service. However, the 1st respondent ought not to have directed payment of attendant benefits as Traffic Cleaner or Cleaner in view of the delay on the part of 1st respondent in approaching the 2nd respondent and also because the 1st respondent was not in service between the alleged date of disengagement and the date of award passed by 2nd respondent.

12. Therefore, the Writ Petition is partly allowed and the impugned award, in so far as it directed payment of attendant benefits as Traffic cleaner or cleaner to the 1st respondent, is set aside and the rest of the award is confirmed. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 22-06-2017
Vsv

¹ (1999) 6 SCC 82