

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.1371 OF 2009

ORDER:

Heard learned Senior counsel for the petitioners and the learned counsel for the first respondent.

The first respondent was absorbed as Mazdoor vide letter, dated 15.10.2001 of the Chief Engineer (O&M), A.P.Genco, KTPS, Paloncha. The Selection Committee selected the first respondent on 10.06.1998 based on a bonafide certificate (service) issued by the then Assistant Divisional Engineer, Boiler Maintenance, 'C' Station, KTPS, Paloncha. The said certificate was issued stating that the first respondent worked as contract labour with M/s.Brothers Engineers and Erectors, KTPS, Paloncha, during 1995-98. The Chairman and Managing Director received an anonymous letter stating that the first respondent never worked with the said contractor and he got appointment on false and fabricated document. The discreet enquiry was conducted by Special Protection Force Security Officer and based on his report, the case was decided to be entrusted to the Enquiry Officer and the Assistant Divisional Engineer was appointed as the Enquiry Officer. The Enquiry Officer issued charge sheet to the first respondent by framing a specific charge with regard to the production of false bonafide certificate for securing the job in the Corporation. Since the explanation submitted by the first respondent was not convincing, a detailed enquiry was conducted. After conducting detailed enquiry, a report was submitted by the Enquiry Officer and based on the same, the disciplinary authority issued a show cause notice proposing the punishment of dismissal from service. Since the first respondent failed to submit satisfactory explanation, he was dismissed from service from 16.08.2002. Challenging the said dismissal, the first respondent raised I.D.No.221 of 2003 before the second respondent. The

second respondent, by Award, dated 28.07.2008, set aside the Order of termination, dated 16.08.2002 and directed reinstatement of the first respondent with continuity of service but without back wages and other attendant benefits. Challenging the same, the present writ petition is filed by the Corporation.

The learned Senior counsel for the petitioners submits that the first respondent could not show any evidence in support of the bonafide certificate that he worked during the relevant period with M/s.Brothers Engineering and Erectors. He further submits that when there was evidence to show that the first respondent did not work with the said Contractor and the witnesses spoke against the first respondent, the Labour Court erred in setting aside the order of termination.

As stated above, the main allegation against the first respondent was that he never worked with M/s.Brothers Engineering and Erectors, KTPS, Paloncha and obtained a false bonafide certificate from the then Assistant Divisional Engineer. Though it was alleged that the Assistant Divisional Engineer was bribed for procuring a certificate, the report of the Enquiry Officer stated that it was not proved. The Labour Court considered that the charge was also framed against the then Assistant Divisional Engineer for issuing a false bonafide certificate and he submitted explanation on 02.07.2002 stating that the documents were verified as per the Xerox copies of the certificates furnished by the contractor, which are not attested by the contractor. He further stated that he verified the Xerox copies only as the contractor failed to produce the originals in spite of oral demands.

In the instant case, it was held that the domestic enquiry was vitiated on the ground of lack of opportunity of cross-examination to the first respondent and in that view of the matter, the petitioners were permitted to adduce evidence before the Labour Court. Accordingly, the

petitioners filed Exs.M.1 to M.37A, whereas the first respondent filed W.1 to W.10. Besides the said documentary evidence, the workman got himself examined at W.W.1 and the petitioners herein examined as M.W.1 to M.W.3.

The petitioner filed a circular Memo No.706/Spl.B3/99-3, dated 28.10.2009 stating that no action should be taken on anonymous and pseudonymous complaints.

The Labour Court noticed that 69 individuals were selected for absorption including the first respondent herein and the workers from SI.No.12 to 36 were shown as contract labour of M/s.Brothers Engineering and Erectors. This Court under Ex.M.22 held those individuals eligible for absorption have to fulfil the twin conditions prescribed for absorption. Basing on the said direction, the first respondent was called for interview with relevant documents and after verification of the same, he was absorbed under Ex.W.3. Accordingly, the Labour Court held that the petitioners cannot deny the employment of the first respondent with M/s.Brothers Engineering and Erectors. It was also noticed that the first respondent was continued in service till receipt of anonymous letter. When the enquiry was initiated against the first respondent based on the anonymous letter, enquiry should have been initiated against other people also, who submitted false bonafide certificates in the same manner, but leaving the other members, proceeding against the first respondent was commented upon by the Labour Court. Thereafter, the Labour Court examined oral evidence of M.W.1, who worked as Security Officer, and he deposed that the first respondent worked as Helper with M/s.Brothers Engineering and Erectors during 1995-97 in 'B' and 'C' Stations and was subsequently appointed as Mazdoor on 16.10.2001. The Site In-charge, who was examined as M.W.2, stated that K.N.Murthy never worked as Site In-charge and one Venkata Rao worked as Site In-charge. The Site

In-charge, who was examined as M.W.3, stated that the old records were not available and they were not having the records of contract labour in their office upto 2000. After appreciating the said oral and documentary evidence, the Labour Court held that the statements of M.Ws.2 and 3 are not credible as they were not supported by any record. Accordingly, the Labour Court came to the conclusion that the punishment of dismissal was disproportionate to the alleged misconduct and accordingly set aside, by order, dated 28.07.2008. In view of the said findings based on the oral and documentary evidence, this Court sees no ground to interfere with the order of the Labour Court.

The writ petition is accordingly dismissed. Miscellaneous petitions, if any pending, in this writ petition, shall stand closed.

14.06.2017
pln



A.RAMALINGESWARA RAO, J