

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WVMP.No.199 of 2014 in WPMP.No.45671 of 2013

in / and

WP.No.36724 of 2013

and

WP.No.16759 of 2014

COMMON ORDER :

Both these Writ Petitions are filed against the Award dt.27.08.2013 in Industrial Dispute No.56 of 2011 of the Labour Court – I, Andhra Pradesh, Hyderabad (the 1st respondent herein) published in G.O.Rt.No.1066 dt.22.11.2013.

2. The petitioner in WP.No.36724 of 2013, who is the 1st respondent in WP.No.16759 of 2014 [hereinafter referred to as the ‘Employer’] employed the 2nd respondent in WP.No.36724 of 2013 who is the petitioner in WP.No.16759 of 2014 [hereinafter referred to as the ‘Employee’] as Accounts Supervisor.

3. A show-cause notice dt.23.04.2011 was issued by employer to employee alleging that he was unauthorisedly on leave from 18.04.2011 and has also not completed certain important assignments given to him, and this amounts to an act of indiscipline. It is also stated therein that the employee went on leave unauthorizedly alleging non-consideration of his request for promotion / increase of salary. The employee was given one week time to reply.

4. On 25.04.2011, the employee submitted his reply justifying his absence, and denied that he has been unauthorizedly absent. He also stated that when he came to know that promotion and increase of salary would not be considered by the employer, he did not apply for promotion and had only applied that he be relieved from the regular pay scale as on 31.03.2011 and the same pay be extended in the cost-to-company concept as per the decision of the employer.

5. By order dt.28.04.2011, the employer terminated the services of petitioner as Accounts Supervisor. The said proceedings stated that petitioner in his explanation and earlier correspondence mentioned that he was unauthorizedly absent due to mental tension and psychological tension, and that he would honour and respect with wholeheartedness whatever the decision the management takes in view of his unauthorized absence.

6. Challenging this order, the employee filed before 1st respondent an application under Section 2-A(2) of the Industrial Disputes Act, 1947 seeking reinstatement into service with full back-wages, continuity of service and all other attendant benefits and costs. This was numbered as I.D.No.56 of 2011.

7. He contended that though he was designated as Accounts Supervisor he did not have any supervisory powers or control of any employees or power to take disciplinary action or to sanction leave and he was only maintaining the account books and performing other

related clerical jobs. He also stated that there were resignations of five to six employees and all that work was entrusted to him. He became overburdened and had to work for more than 12 to 14 hours including holidays, and when he requested for earned leave from 16.04.2011 to 15.05.2011 this was declined on 20.04.2011 through a letter dt.19.04.2011. He claimed that he also sought medical leave from 18.04.2011 to 26.04.2011 on account of his ill-health, but this was also not accepted on 21.04.2011 and he was directed to report to duty. He contended that the termination of his service without assigning any valid reason is illegal and the Executive Director (Non-Board Level), who issued the impugned order, had no authority or power to terminate his services.

8. Counter-affidavit was filed by employer contending that the employee at the time of his termination from service was drawing a salary of Rs.70,469/- and therefore he cannot be termed as a 'workman'. It was stated that he was entrusted with duties including administration and responsibilities in legal department, and this also indicates that he is not a 'workman' covered under the provisions of the Industrial Disputes Act, 1947. It was stated that the employee was in the habit of threatening to go on leave even though important jobs were entrusted to him and he was the only person to handle the said job. It was denied that the employee was not having any supervisory powers, and it was stated that he was assisted by one Ms. Sunitha,

Accounts Assistant. It was denied that employee was overburdened with work.

9. On behalf of employee, WW.1 was examined, and Exhibits W.1 to W.10 were marked. On behalf of employer, MW.1 was examined, and Exhibits M.1 to M.6 were marked.

10. In spite of a specific plea taken by the employer that the employee was not a workman covered by provisions of the Industrial Disputes Act, 1947 no issue was framed by the 1st respondent as to whether the employee was a 'workman' or not as per Section 2(s) of the said Act. There is no consideration in the entire Award of the contention of employer that the employee was not a 'workman'. However, without dealing with this critical jurisdictional fact and proceeding as if the employee who was a workman under Section 2(s) of the Act, who was entitled to invoke Section 2-A of the Act, the Labour Court set aside the order of termination and directed the employer to reinstate the employee into service with continuity of service, but without any notional increments and without any back-wages.

11. Assailing the same, the employer filed WP.No.36724 of 2013, while the employee filed WP.No.16759 of 2014, seeking increments and back-wages, apart from attendant benefits.

12. Sri V.R.N. Prashanth, counsel for employer, strenuously contended that non-consideration of the question whether the

employee was a 'workman' or not by the 1st respondent vitiates the Award passed by it, and that this being a jurisdictional fact on which the jurisdiction of the 1st respondent depends, it was bound to decide it, and without deciding the said issue it could not have proceeded to decide the I.D.No.56 of 2011 in favour of the employee.

13. Sri N. Vinesh Raj, counsel for employee, sought to support the Award passed by the 1st respondent, but could not point out from the Award passed by it where the 1st respondent considered the question whether the employee is a 'workman' within the meaning of the said term under Section 2(s) of the Industrial Disputes Act.

14. On a close scrutiny of the Award passed by the Labour Court it is clear that the Labour Court not only did not frame any issue as to whether the employee in question is a workman under Section 2(s) of the Act or not, it also did not deal with the said contention of the employer anywhere, and assumed that he was a workman and proceeded to pass the Award.

15. The jurisdiction of 1st respondent in matters of this nature depends upon the decision on the jurisdictional fact as to whether the employee in question is a 'workman' or not. When such a question was specifically raised in the pleadings of employer it was incumbent on the part of 1st respondent to go into the said issue and decide it. Without deciding the said issue it was not open to the 1st respondent to presume that the employee is a workman and grant relief to him.

16. This is a clear error apparent on the face of record warranting interference by this Court with the impugned Award dt.27.08.2013 in Industrial Dispute No.56 of 2011. Therefore, the said Award is set aside, and the matter is remanded back to the 1st respondent. It shall frame an issue as to whether the employee is a 'workman' within the definition of the said term in Section 2(s) of the Act; consider the evidence on record and give a finding as to whether he is a 'workman' or not, and if the Labour Court finds that the employee is a 'workman', it shall then proceed to decide the question whether the termination of employee by employer is valid or not.

17. This exercise shall be completed within a period of four (04) months from the date of receipt of a copy of the order.

18. It is made clear that both parties would have an opportunity to lead any fresh evidence, if they so chose.

19. Accordingly, WP.No.36724 of 2013 is allowed and WP.No.16759 of 2014 is disposed of. Consequently, WVMP.No.199 of 2014 in WPMP.No.45671 of 2013 in WP.No.36724 of 2013 is dismissed. No order as to costs.

20. As a sequel, miscellaneous petitions pending if any in these Writ Petitions, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 04-01-2017

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