

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SRI JUSTICE N. BALAYOGI

LETTERS PATENT APPEAL No. 5 of 2017

JUDGMENT: (*Per VRS,J*)

This letters patent appeal arises out of a common order passed by the learned single Judge in a contempt petition along with an application for review of the order passed in a writ petition.

2. Heard Mr. M. Pitchaiah, learned counsel for the petitioner.

3. The brief facts, out of which the present appeal arises, are as follows:

i) The petitioner filed a writ petition in W.P.No.9203 of 2012 on the file of this Court, challenging the order of termination, dated 07.03.2012, and also praying for his reinstatement with continuity of service and back wages with effect from 01.11.2009 with all other attendant benefits together with interest at 12% per annum. The said writ petition was allowed by the learned single Judge, by an order, dated 17.12.2012.

ii) Though the petitioner was reinstated into service on 03.09.2013, the respondents filed an application in Review W.P.M.P.No.30489 of 2013. The petitioner also filed a

contempt petition in C.C.No.311 of 2013, complaining of non-payment of back wages, etc.

iii) The application for review as well as the contempt petition were disposed of by the learned single Judge, by a common order, dated 01.09.2016. The relevant portion of the order of the learned single Judge, which has compelled the petitioner to come up with the present letters patent appeal, is as follows:

“In the circumstances, the petitioner is at liberty to submit his explanation to the said charge sheet dated 28.11.2015 to the Assistant Commissioner of Labour (Central), Vijayawada, who shall be the Enquiry Officer in respect of the charges levelled against the petitioner in the charge sheet dated 28.11.2015. The Assistant Commissioner of Labour (Central), Vijayawada, shall conduct an enquiry in accordance with law by giving due opportunity to the respondents 2 and 4 on the one hand and to the petitioner on the other hand and pass appropriate orders within a period of three (3) months from the date of receipt of a copy of this order. It is needless to observe that the petitioner shall cooperate for conclusion of the enquiry. The Enquiry Officer appointed as aforesaid shall submit his report to the second respondent, who shall pass appropriate orders on the basis of the enquiry report. In view of the reinstatement of the petitioner by virtue of the order dated 03.09.2013 the petitioner shall continue in service till an order is passed after submission of the enquiry report by the second respondent and his future position would be subject to further orders to be passed by the second respondent. It is needless to observe that in view of the order of reinstatement dated 03.09.2013 the petitioner is entitled for the usual pay and allowances as are admissible to him as on the date of order of termination dated 07.03.2012 till the order is passed by the second respondent.

With the above order, Review WPMP No.30489 of 2013 in WP No.9203 of 2012, WVMP No.453 of 2016 in WP No.40956 of 2015 and WP No.40956 of 2015 are disposed of. However, in view of the order of reinstatement and in view of the orders passed as above, the Contempt Case No.311 of 2013 is closed.”

iv) The grievance of the petitioner as against the aforesaid common order is that after having reiterated the benefits granted to him earlier in the writ petition, W.P.No.9203 of 2012, there was no occasion for the learned single Judge to simply close the contempt petition without any orders.

4. According to the learned counsel for the petitioner, even now, the pay and allowances admissible to the petitioner are not paid. Therefore, the learned counsel contends that the manner in which the contempt petition was disposed of, either without holding the respondents not guilty of contempt or after holding them guilty of contempt, was not a proper disposal in a manner known to law.

5. We have carefully considered the above submissions.

6. As seen from the prayer made by the petitioner in W.P.No.9203 of 2012, the petitioner sought to set aside the termination order, dated 07.03.2012. He also prayed for the relief of reinstatement with continuity of service and back wages with effect from 01.11.2009 with all attendant benefits and interest at 12% per annum. In the operative portion of the order, dated 17.12.2012, the learned single Judge stated that the writ petition was allowed. If that order has attained finality, it must be construed that all the ingredients of the prayer made by the petitioner stood allowed.

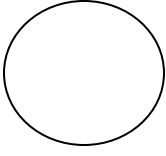
7. But, in the order impugned in the present appeal, the learned single Judge has indicated that the petitioner is entitled for the usual pay and allowances as are admissible to him as on the date of the order of termination, namely, 07.03.2012, till the order is passed by the 2nd respondent. This is, perhaps, the reason why the learned single Judge simply closed the contempt petition. In other words, the order passed in the writ petition on 17.12.2012 has now merged with the order, dated 01.09.2016, which is impugned in the present appeal. It is only out of the present order, dated 01.09.2016, that a contempt can validly arise, if the respondents do not comply with the said order. Therefore, with the above liberty, the Letters Patent Appeal is dismissed.

Consequently, miscellaneous petitions if any pending in the appeal shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

N. BALAYOGI, J

1st June, 2017
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