

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.28891 OF 2017

ORDER :

This writ petition is filed challenging the order dated 18.07.2017 passed by the 1st respondent in SEA No.3 of 2016, wherein the appeal filed by the petitioners under Section 48(2) of the A.P.Shops and Establishment Act, 1988 (*for short 'the Act'*), was dismissed, on the ground that that the petitioners preferred the appeal without depositing the back wages before the lower authority for maintaining the appeal.

Learned counsel for the petitioners submits that petitioners filed appeal under Section 48(2) of the Act before the 1st respondent along with stay application and exemption petition for depositing the back wages amount, but without considering the same and issuing notice, impugned order is passed. He also submits that A.P.Shops and Establishment Act, 1988 has no application to the facts of the case and that the 3rd respondent is acting in Manager capacity and he is having control over the affairs of the establishment and as such he is drawing salary more than prescribed limit.

On the other hand learned Assistant Government Pleader for Labour submits that pre depositing of back wages is a condition precedent for maintaining the appeal, as such, the authority rightly dismissed the appeal.

Learned counsel for the 3rd respondent submits that the petitioners have not taken any plea that the A.P.Shops and

Establishment Act, 1988 has no application. The only plea taken by the petitioners is as per the service agreement the parties have to approach arbitrator, but such agreement is null and void in terms of Section 66 of the Act and that pre depositing of back wages is a condition precedent for maintaining the appeal.

In this case, it is to be seen that when the application filed by the petitioners seeking exemption for depositing the back wages, is pending, the respondent authorities could have decided the same. Without deciding the same, straightaway dismissed the appeal.

In view of the same, without going into the merits of the case, the impugned order is set aside and the 1st respondent is directed to dispose of the application filed by the petitioner seeking exemption for depositing the back wages, in accordance with law, within a period of three weeks from the date of receipt of a copy of this order. However, it is open for the 3rd respondent to raise all his objections before the 1st respondent and it is for the 1st respondent to consider the rival contentions.

Accordingly, the writ petition is disposed of. No order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

A.RAJASHEKER REDDY, J

30.08.2017

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