

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

**W.V.M.P.No.247 of 2017in W.P.No.45543 of 2016 &
W.P.No.45543 of 2016**

ORDER:

Heard the learned Government Pleader for Social Welfare appearing for the petitioners and Sri M.Pichaiah, learned counsel for 1st respondent.

2. This Writ Petition has been filed by the District Social Welfare Officer, West Godavari District at Eluru and the District Collector, West Godavari District, Eluru seeking a Writ of Certiorari to call for the records relating to and connected with the orders dt.21-01-2016 in E.P.No.01 of 2002 in I.D.No.624 of 1991 of the Labour Court, Guntur and to set aside the same.

3. The 1st respondent was a workman and his services had been terminated by the petitioners. He questioned the same by filing I.D.No.624 of 1991 before the Labour Court, Guntur. It passed an award on 06-07-1996 setting aside the termination order and directing the petitioners to reinstate him into service with continuity of service, but without back-wages.

4. The petitioners then approached this court and filed W.P.No.7401 of 1997 challenging the said award of the Labour Court.

5. This Court by order dt.11.11.2004 dismissed the Writ petition.

6. In the meantime, the 1st respondent filed E.P.No.1 of 2002 before the 2nd respondent Labour court for recovery of sum of Rs.2,00,895/- being wages for the period from 1997 till 2002 by directing attachment of the E.P. schedule property of petitioners and by putting it to sale.

7. Petitioners filed counter affidavit opposing the E.P. They contended that after passing of the award, they issued proceedings No.B4/1254/91 dt.01-09-1997 of the Deputy Director (Social Welfare), Eluru, posting 1st respondent to the Social Welfare Boys Hostel, Srungavruksham on daily wage basis and that though 1st respondent received the same, he did not join duty. They further contended that 1st respondent took up employment as mail carrier – cum- delivery agent in the Postal department at Muparthipadu Branch Office since 16-07-1992 with a basic pay of Rs.359+DA per month and that the Senior Superintendent of Post Offices, Bhimavaram gave a letter dt.03-09-1998 to this effect. They therefore prayed that E.P. be dismissed.

8. Before the Labour Court, Guntur, the 1st respondent examined himself as P.W.1, while petitioners examined R.W.1 and marked Ex.R-1 which is a letter dt.18-09-2015 received from the Senior Superintendent of Post Officer, Bimavaram Division, Bimavaram, certifying that 1st respondent had been working in their department since 16-07-1992, and stating that his TRCA is Rs.8626/-.

9. However, the Labour Court by order dt.21-01-2016, held that Ex.R-1 dt.18-09-2015 did not contain details of proceedings number and it was a letter sent in response to the request sent by the Deputy Director (SW), Eluru. It held that 1st respondent would be entitled to the benefits under the Award, if it is not implemented during the pendency of the proceedings in the High court and the contention of the petitioners that in spite of notice to 1st respondent, he did not join, was not proved by the petitioners.

10. Assailing the same, this W.P is filed.

11. The learned Government Pleader for Social Welfare appearing for the petitioners contended that 1st respondent was a regular employee of the postal department since 16-07-1992, he cannot claim wages from petitioners for the period after that date, that he played fraud on the Labour Court as well as this Court by not disclosing this fact, and so the E.P should have been dismissed by the 2nd respondent. He contended that in spite of service of posting orders dt.01-09-1997 on 1st respondent, he did not join duty at Social Welfare Boys Hostel, Srungavruksham, because of his employment in the Postal department and so the Labour Court ought not to have directed payment of the amount claimed in the E.P.No.1 of 2002 of Rs.2,00,895/-.

12. On 27-12-2016, this Court admitted the Writ Petition and granted interim suspension of the order dt.21-01-2016 in E.P.No.01 of 2002 in I.D.No.624 of 1991 of the 2nd respondent/Labour Court.

13. W.V.M.P.No.247 of 2017 has been filed by 1st respondent to vacate the said order.

14. Sri M.Pitchaiah, learned counsel for the 1st respondent, contended that his client did not receive the posting orders dt.01-09-1997 as contended by the petitioners, that it is not true that his client was employed in the postal department, that Labour Court had given valid reasons for its finding and that the same cannot be said to be perverse warranting interference by this Court under Article 226 of the Constitution of India. He further contended that the executing Court cannot go beyond the award and even if the 1st respondent was employed in the postal department, the execution of the award cannot be stayed since the award of the Labour Court had attained finality.

15. I have noted the contentions of both sides.

16. From the rival contentions of the parties, it is clear that 1st respondent's services were terminated by the petitioners on 30-11-1984, that he filed I.D.No.624 of 1991 under Section 2-A(2) of the Act, that in the said I.D., an award was passed on 07-06-1996 directing his reinstatement into service with continuity of service but without back-wages. The petitioners questioned the same in W.P.No.7401 of 1997 but the same was dismissed on 11-11-2004. The 1st respondent has filed the E.P.No.1 of 2002 seeking wages for the period from 1997 till 2002.

17. The contentions of the petitioners is that 1st respondent was gainfully employed in the postal department from 16-07-1992 and this is certified by the letter dt.18-09-2015 of the Senior Superintendent of Posts, Bhimavaram Division, which is marked as Ex.R-1 in the E.P. The said proceeding was addressed by the said official to the Deputy Director, Social Welfare Department, West Godavari District and his successor gave evidence as R.W.1 contending that 1st respondent cannot claim salary from two different departments.

18. Merely on the ground that no proceeding number was mentioned therein, the Labour Court cannot refuse to accept the same. The authenticity of the letter Ex.R1 was not disputed by the 1st respondent and the evidence of RW1 that it was received in response to his predecessor's request to the Postal authorities, is also not disputed by 1st respondent.

19. Even if the petitioners had failed to establish that 1st respondent did not join after receiving the posting orders, if Ex.R-1 is accepted, it would show that 1st respondent would not have been entitled to salary for the duration he was employed in the Postal department. He cannot be permitted to draw salaries from two different organizations (a) the Postal Department and (b) the Social Welfare Department of the State of Andhra Pradesh for the same period since it is impossible for him to have worked in both places simultaneously.

20. Though the learned counsel for 1st respondent sought to contend that nobody from the postal department is examined as a witness to prove Ex.R-1, the recipient of Ex.R-1 has been examined as R.W.1 and no material is placed by 1st respondent rebutting the said contention of the petitioners.

21. Therefore, I am of the opinion that the Labour Court erred in not accepting Ex.R-1. If Ex.R-1 is to be believed, then it is clear that 1st respondent played fraud on the Labour Court and obtained the award, and also misled this Court in W.P.No.7401 of 1997 by suppressing the fact that he was employed all the while in the Postal Department.

22. It may be that executing Court cannot go behind the decree but when award is obtained by 1st respondent by playing fraud on the Labour Court and also on this Court, this Court is not powerless to ensure that 1st respondent does not get unjustly enriched by his conduct.

23. Suppression of a material document would amount to fraud on the Court (**S.P.Chengalvaraya naidu v. Jagannath**¹). The Supreme Court in **State of A.P v. Pasala Suryachandra Rao**² held that an order obtained by playing fraud on Court is void. In **Ritesh Tewari and Another Vs. State of Uttar Pradesh and others**³ it was held that power under Article 226 of the Constitution of India is

¹ (1994) 1 SCC 1

² (2005) 6 SCC 149

³ (2010) 10 S.C. 677

discretionary and supervisory in nature. It is not issued merely because it is lawful to do so. The Supreme court held that extraordinary power in the writ jurisdiction should be exercised to advance justice and not to thwart it. As a Court of equity, the High Court when exercising its equitable jurisdiction is required to act so as to prevent perpetration of legal fraud and to promote good faith and equity, and that if party claims equity, he must come before the Court with clean hands.

24. In view of this settled legal position, I am satisfied that 1st respondent cannot be allowed to take advantage of fraud perpetrated by him on the Labour Court as well this Court and the fraud played by 1st respondent vitiates the award in I.D.No.624 of 1991 as well as the order dt.21-01-2016 in E.P.No.1 of 2002 of the Labour Court, Guntur.

25. Accordingly, the Writ Petition is allowed and the order dt.21-01-2016 in E.P.No.1 of 2002 in I.D.No.624 of 1991 is set aside as having been obtained by 1st respondent by playing fraud on the Labour Court. Consequently, the W.V.M.P.No.247 of 2017 is dismissed. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 04-07-2017

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