

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P.No.4483 of 2001

ORDER

This writ petition is filed seeking the following relief:

“...to issue a writ, order or direction more particularly one in nature of writ of Certiorari calling for the records relating to Award dt. 20-10-2000 passed in I.D.No.149/97 from the file of the Industrial Tribunal-cum-Labour Court, Visakhapatnam and quash the same by declaring the Award as illegal, arbitrary and consequently direct the 1<sup>st</sup> respondent to reinstate the petitioner into service with all attendant benefits including back wages and pass such other order or orders as are deemed fit and proper in the circumstances of the case.”

Heard Sri V.Sudhakar Reddy, learned counsel appearing for the petitioners and learned Government for Labour appearing for the 2<sup>nd</sup> respondent.

It is the case of the petitioner that he was appointed as Night Watchman in the 1<sup>st</sup> respondent-Industry in the year 1991 and he continuously worked upto 23.6.1997. When the 1<sup>st</sup> respondent failed to extend the minimum wages to him, he approached the Authority, under Section 15 of the Payment of Wages Act and the same was numbered as P.W.2/1997. During pendency of the said case, the 1<sup>st</sup> respondent had illegally terminated the services of the petitioner vide order dated 23.6.1997. Challenging the said termination order, the petitioner had approached the Industrial Tribunal-cum-

Labour Court, Visakhapatnam, and filed I.D.No.149 of 1997 under Section 2-A (2) of the Industrial Disputes Act, 1947. The petitioner lead evidence before the Tribunal by examining himself as WW1 and WW2 was examined on his behalf. WW2 deposed that the petitioner was working as a Night Watchman and as the petitioner along with other workers was demanding minimum wages, the respondents have illegally terminated his services with effect from 23.6.1997. The Tribunal vide order dated 20-12-2000 passed NIL Award. Questioning the same, the present writ petition is filed.

Learned counsel appearing for the petitioner submits that without appreciating any of the contentions raised by the petitioner, the Tribunal had mechanically dismissed the said ID; that during pendency of the writ petition, the petitioner had expired on 15.1.2006 and his legal representatives were brought on record *vide* order dated 19.7.2018; that the Tribunal ought to have considered his case, set aside the order of termination and reinstated the petitioner into service with all benefits; that the Tribunal erroneously held that there was no master and servant relationship between the petitioner and the 1<sup>st</sup> respondent, denied the benefit of minimum wages and reinstatement of the petitioner based on the certain fabricated documents produced by the 1<sup>st</sup> respondent; that though the 1<sup>st</sup>

respondent has contended that there was no master and servant relationship between them, but admitted about filing of P.W.2/97 by the petitioner before the Authority under the Payment of Wages Act; that the principle complaint of the petitioner is that the 1<sup>st</sup> respondent was not extending the minimum wages and not maintaining the statutory registers, muster rolls and acquittance register, and when such was complaint made by the petitioner, the Tribunal erred in relying on the fabricated documents produced by the 1<sup>st</sup> respondent and came to an erroneous conclusion that the petitioner was not employed with the 1<sup>st</sup> respondent; and that during pendency of the writ petition, the petitioner had expired and appropriate orders be passed granting suitable compensation to his legal representatives.

This Court adjourned the case on 17 occasions to enable the counsel appearing for the 1<sup>st</sup> respondent. When the 1<sup>st</sup> respondent counsel was not appearing before this Court, this Court on 5.10.2018 ordered fresh notice to the 1<sup>st</sup> respondent-Management and permitted the learned counsel appearing for the petitioner to take out personal notice and the learned counsel for the petitioner has taken out personal notice on the 1<sup>st</sup> respondent on 22.10.2018 and the same was served on the 1<sup>st</sup> respondent-Management on 25-10-2018.

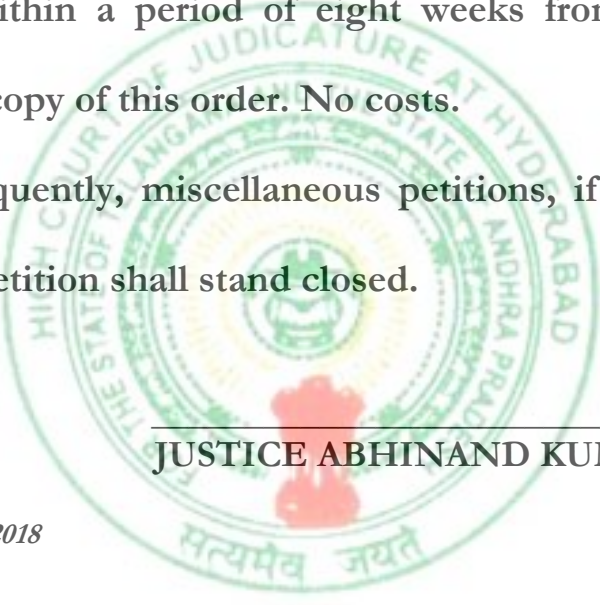
In spite of service of notice, the 1<sup>st</sup> respondent has not appeared and thereafter, this Court adjourned the case seven times to enable the 1<sup>st</sup> respondent-Management to appear. Since none appeared on behalf of the 1<sup>st</sup> respondent-Management, this Court has no option, except to decide the case on merits.

Having considered the submissions made by the learned counsel appearing for the petitioner, this Court is of the considered view that the Tribunal erred in not taking admission of the 1<sup>st</sup> respondent-Management that the petitioner had filed P.W.2/97 and came to an erroneous conclusion that there was no master and servant relationship between the petitioner and the 1<sup>st</sup> respondent. The complaint of the petitioner before the Tribunal was that the 1<sup>st</sup> respondent-Management was not maintaining statutory registers, muster rolls, and acquittance registers and that when such was the complaint before the Tribunal, the Tribunal was not right in relying on the documents produced by the 1<sup>st</sup> respondent and came to an erroneous conclusion that there was no master and servant relationship between the petitioner and the 1<sup>st</sup> respondent. In view of the admission of the 1<sup>st</sup> respondent about pendency of P.W.2/97 filed by the petitioner before the Authority under Payment of Wages Act,

this Court is of the view that the petitioner was illegally terminated by the 1<sup>st</sup> respondent on 23.6.97.

Accordingly, the Writ Petition is allowed and the impugned termination order dated 23.6.97 is set aside. Since the petitioner had expired during pendency of the writ petition, it is not possible to reinstate him into service. The 1<sup>st</sup> respondent is directed to pay an amount of Rs.1,00,000/- towards compensation to the legal representatives of the petitioner within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Consequently, miscellaneous petitions, if any, pending in the writ petition shall stand closed.



JUSTICE ABHINAND KUMAR SHAVILI

13<sup>th</sup> December, 2018  
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