

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.10296 OF 2018

ORDER :

This Writ Petition is filed seeking writ of mandamus declaring the order of the 3rd respondent in A.P.S.E (A) No.03/2013, dated 19.12.2017 received on 02.01.2018 in confirming the order in APSE No.18 of 2018 of Deputy Commissioner of Labour, Kakinada, without giving reasons as illegal and arbitrary and also violative of the provisions of the A.P.Shops Establishments Act, 1988 (for short 'the Act').

The only grievance of the petitioner society is that the 3rd respondent has dismissed the second appeal filed by the petitioner society on the ground that there is no compliance of Section 48 (3) of the Act by the petitioner society.

Heard learned counsel for the petitioner, who submits that the petitioner society had deposited Rs.2,20,000/- pending second appeal before the 3rd respondent and the 4th respondent had withdrawn the same, without any protest. He submits that the 3rd resonant has not only dismissed the second appeal filed by the petitioner but also on merits, without giving proper opportunity to the petitioner society, to put forth it's case. He further submits that after merger of the petitioner society with the Subhadrampeta PACS Ltd., Subhadrampeta, the 4th respondent was working with the petitioner society, there was reduction in salary and the amounts were deposited as reduced salary. There is no determination even with regard to deposit of amounts and the

Advocate who appeared on behalf of the petitioner's society also passed away. The absence of proper determination with regard to compliance of Section 48(3) of the Act, the 3rd respondent could not have dismissed the second appeal. He submits that the matter may be remanded to the authority for the purpose of determination of amounts to be paid under Section 48(3) of the Act. He also submits that the 4th respondent was absent for long period of time and that he was also working elsewhere.

On the other hand, learned counsel for the 4th respondent submits that since the petitioner has not complied with the conditions of Section 48(3) of the Act, the 3rd respondent has rightly dismissed the appeal. He would submit that the petitioner has not given any calculation memo about the compliance of Section 48(3) of the Act within time.

A reading of the impugned proceedings dated 19.12.2017 goes to show that an amount of Rs.2,20,000/- was deposited and the impugned order is also passed on merits. Petitioner contends that he has deposited amounts as per salary being paid to 4th respondent, but respondents dispute the same, but there is no proper determination and 3rd respondent could not have dismissed the case on merits also.

In view of the same, the impugned order is set aside and the matter is remanded to the 3rd respondent. The 3rd respondent is directed to pass order afresh, affording an opportunity of hearing to the petitioner as well as to 4th respondent regarding compliance under Section 48(3) of the Act by considering all the objections raised by the petitioner as well as 4th respondent. Said

exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order.

With the above direction, this Writ Petition is disposed of. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

11.04.2018
kvs

A.RAJASHEKER REDDY, J



HON'BLE SRI JUSTICE A.RAJASHEKER REDDY



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