

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No. 1154 of 2002

ORDER:

1. This writ petition is filed under Article 226 of the Constitution of India seeking a writ of certiorari to call for the records connected with and relating to M.P.No.54 of 1995 on the file of the Labour Court, Guntur, and quash the award dated 04.10.2001 passed therein.

2. Heard Sri S. Ravindranath, learned Counsel for the petitioners, learned Government Pleader for Labour (AP) appearing on behalf of the 1st respondent, and Sri Saloori Ramesh, learned Counsel appearing on behalf of the 2nd respondent.

3. During pendency of the writ petition, the writ petitioner died and his legal representatives were brought on record as petitioners No.2 to 5 vide order dated 04.11.2015 passed in W.P.M.P.No.29999 of 2015.

4. Briefly, the case of the petitioners is that the deceased petitioner was appointed as a Stall Clerk in the 2nd respondent company by way of service agreement dated 16.06.1970 on a monthly salary of Rs.40/-. As per the said agreement, the 2nd respondent agreed to pay commission at the rate of 3% on total sales. Initially, the deceased petitioner was appointed at Gudur and he was paid salary and commission as per the service agreement. Thereafter, he was transferred to Vijayawada on 01.05.1972 and he worked there till his

retirement on 12.11.1992. Meanwhile, another service agreement was entered into on 01.11.1985, according to which monthly salary was enhanced to Rs.360/- and the rate of commission was enhanced from 3% to 5% on the total sales. But, the deceased petitioner was only paid commission at the rate of 2% only on total sales right from 01.05.1972 the date on which he was transferred to Vijayawada till the date of his retirement. The commission is also wage under the provisions of the Minimum Wages Act. The deceased petitioner made several oral representations demanding the difference of commission, but of no avail. He did not get any legal notice issued or he did not move any Court to avail remedies during his service period on the apprehension that he will loose his job. During the period from 01.11.1986 to 31.1.1988, the deceased petitioner was paid commission at the rate of 1 ½ % only for the reasons best known to the management of the 2nd respondent company and thereafter started paying the commission at the rate of 2%. The deceased petitioner was asked to handover the charge on 01.09.1991 on the ground of defalcation of cash. Thereafter, the deceased petitioner was entrusted with the stalls on 24.12.1991. Though the 2nd respondent company paid the salary, the deceased petitioner lost commission as he was kept away from conducting sales during the above period. Thus, he is entitled for a total sum of Rs.4,00,765-82 ps. towards difference of commission and retiral benefits. After retirement, the deceased petitioner made an application before the Labour Court, Guntur-1st respondent herein,

claiming the said amount, which came to be numbered as M.P.No.54 of 1995. The said application was dismissed vide order dated 04.10.2001. Aggrieved thereby, the present writ petition is filed.

5. The learned Counsel appearing for the 2nd respondent contended that the deceased petitioner was not a workman and he was appointed as a stall Manager and he had to look after the affairs of five stalls, which were under his control, and that the nature of duty performed by the deceased petitioner would disclose that he was not a workman and he was entrusted with the managerial and supervisory functions, and that the Labour Court has rightly dismissed the M.P.No.54 of 1995 on 4th October, 2001.

6. This Court considered the submissions made by the parties. The petitioners relied upon the initial service agreement made between the deceased petitioner and the 2nd respondent. In the 1st clause of the said agreement, it was stated that the deceased petitioner was employed as a stall clerk. There is also reference as to the payment of commission at the rate of 3% on sales. The petitioners also relied upon the Rules and Regulations governing the payment of commission. These Rules and Regulations came into effect from 1.11.1985. Rule No.4 of the said Rules would make it clear that employee shall be eligible for 5% commission only on the sales made in the appropriate stalls. Rule No.5 would make it clear that employee shall be eligible for commission at the above mentioned rate only, for sales exceeding

Rs.25,000/-. Though the petitioners relied upon the initial service agreement and the Rules and Regulations governing the payment of Commission, those documents were not filed as to when the deceased petitioner achieved the sales target of Rs.25,000/- so as to claim 5% commission. In the absence of any material before this Court to show that the deceased petitioner accomplished/exceeded the sales target of Rs.25,000/-, it would be difficult for this Court to adjudicate as to whether the deceased petitioner is entitled for 5% of commission as stated in the Rules and Regulations governing the payment of commission and service agreement.

7. Admittedly, the deceased petitioner was paid 2% commission in excess of the targets fixed for his supervision, co-ordination and running the stalls. Moreover, the 2nd respondent amply demonstrated before the Labour Court that the deceased petitioner discharged duties in supervisory and managerial capacity. The Labour Court has considered all the aspects and rightly dismissed the case of the petitioners while observing that the deceased petitioner is not a workman within the meaning of Section 2(S) of the I.D. Act.

8. Finding no merits, the Writ Petition is dismissed. No costs. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

ABHINAND KUMAR SHAVILI, J

Dated:27-07-2018.

Nn.

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI



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27.07.2018

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