HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITIONS NOs.12443, 12444, 12445 of 2007, 14871, 14943 and 14950 of 2006

COMMON ORDER:

1. There are two sets of writ petitions and each set is of three writ petitions. Since the issue raised in all these writ petitions is one and the same and since all the writ petitions arose out of one common order, both the sets are heard together and are being disposed of by this common order.

2. The facts and the status of the parties in W.P.No.12443 of 2007 are referred to hereinafter for the sake of convenience.

3. One set of writ petitions viz., W.P.Nos.12443, 12444 and 12445 of 2007 are filed by the employer, and another set of writ petitions viz., W.P.Nos.14871, 14943 and 14950 of 2006 are filed by the employees. The employer filed above said first set of writ petitions challenging the order dated 24.4.2006 passed by the 1st respondent-second appellate authority in S.A.Nos.17, 18 and 19 of 2004 under Section 48(3) of the A.P. Shops and Establishments Act, 1988 confirming the order dated 19.7.2004 passed by the 2nd respondent-appellate authority in S.E.Nos.8, 9 and 10 of 2003 under Section 48(1) of the Shops & Establishments Act, 1988, and seeking to quash or set aside the same, whereas the employees filed

above said second set of three writ petitions challenging the order dated 24.4.2006 passed by the 1st respondent-second appellate authority in S.A.Nos.20 of 2004, 9 and 10 of 2005, only to the extent of not granting compensation with all consequential benefits.

4. The case of the petitioner-employer is as follows:

(i) The petitioner is a registered company under the Companies Act, 1956. It had started an in-house Share/Investor Service Cell. The unofficial respondents-employees in W.P.Nos.12443, 12444 and 12445 of 2007 were engaged as executives in the said investor service cell during the year 1987 on monthly wage of Rs.600/- per month each and subsequently, the employer promoted the said employees as Junior Executives. While the employees were working as such, the petitioner-employer during July, 2003 terminated their services on the ground that electronic share registration and Transfer work was entrusted to Securities and Exchange Board of India (SEBI) registered R & T agent viz., M/s. Bigshare Services Private Limited, with whom the petitioner had an agreement and arrangement in that regard. The petitioner-employer had to take such decision in view of Circular issued by SEBI dated 27.12.2002, according to which, all the work related to the share registry in terms of both physical and electronic should be maintained at one place at a single point i.e., either in-house by the company concerned or by a SEBI registered R & T agent. In the wake of the above circular issued by SEBI calling the petitioner-employer to implement its decision by 1.2.2003, the petitioner-employer considered the viability of maintaining both the physical and electronic in-house for the purposes of Investor Services and decided to have the entire share registry related work both physical and electronic maintained by an independent SEBI registered R & T agent. In those set of circumstances, in-house investor services' work was outsourced by the petitioner-employer with effect from 1.2.2003 to M/s. Bigshare Services Private Limited, R & T agent duly registered with SEBI and the services of the employees were terminated vide orders dated 4.7.2003.

(ii) The petitioner paid the amounts to which the employees are entitled and that the employees also accepted the amounts paid by the petitioner, and thereafter, the employees filed appeals before the 2nd respondent-appellate authority by filing S.E.No.8, 9 and 10 of 2003 under A.P. Shops and Establishments Act, 1988. The 2nd respondent-appellate authority issued notice to the petitioner and the petitioner contested the case to the effect that the investor services cell was disbanded as per the circular issued by SEBI, and therefore, the services of the employees were rightly terminated and the petitioner-employer paid all the benefits, to which the employees are entitled. But the appellate authority-2nd respondent under the Shops and Establishments Act had mechanically passed orders in favour of the employees on 19.7.2004 in S.E.Nos.8, 9 and 10 of 2003 granting compensation to the employees in lieu of reinstatement, i.e., Rs.6,56,304/- to D.S. Subba Rao-3rd respondent in W.P.No.12443 of 2007; Rs.4,64,800/- to G. Padmavathi-3rd respondent in W.P.No.12444 of 2007; and Rs.3,12,686/- to T.T. Raju-3rd respondent in W.P.No.12445 of 2007. Aggrieved by the said order, the petitioner-employer filed S.A.Nos.17, 18 and 19 of 2004 before the 1st respondent-2nd appellate authority, whereas the employees aggrieved by non-granting of reinstatement by the 2nd respondent-appellate authority, filed S.A.Nos.20 of 2004, 9 and 10 of 2005. The 1st respondent-2nd appellate authority passed a common order in all the above SAs confirming the said order of the appellate authority-2nd respondent. Challenging the said order of compensation, the employer filed first set of three writ petitions whereas aggrieved by non-granting of reinstatement, the employees filed second set of writ petitions.

5. It is the contention of the learned Counsel for the petitioner that when once the authority under the Shops and Establishments Act found that the employees are not entitled for reinstatement, then the authority should not have granted compensation in favour of the employees that too calculating 100 days wages for each completed year, and the said finding of the authorities is totally irrational and without any basis.

6. Further, the learned Counsel for the petitioner-employer contended that it is settled law that as per the Industrial Disputes Act, the retrenchment compensation liable to be paid to workman is 50 days wages for each completed year and that the calculation, based on which, the authorities took 100 days wages for each completed year of service, is totally arbitrary, irrational, exorbitant and without application of mind, and therefore, the orders passed by respondents Nos.1 and 2 are liable to be set aside.

7. The learned Counsel for the petitioner-employer further contended that the petitioner-employer preferred appeals before the second appellate authority-1st respondent by filing S.A.Nos.17, 18 and 19 of 2004 against the orders passed by the 2nd respondent in S.E.No.8, 9 and 10 of 2003 respectively and that the second appellate authority without considering the contentions raised by the petitioner dismissed the appeals filed by the petitioner and confirmed the order passed by the 2nd respondent-appellate authority, vide order dated 24.4.2006. It has been submitted that the employees also filed S.A.Nos.20/2004, 9 and 10 of 2005 before the 1st respondent-second appellate authority challenging the order of the 2nd respondent in not granting reinstatement of the employees and the said appeals were also dismissed along with the appeals filed by the petitioner-employer.

8. The learned Counsel for the unofficial respondents-employees contended that both the authorities having come to a conclusion that the termination orders are not in accordance with law, ought to have granted reinstatement of the employees with all consequential benefits, and that the order of compensation in lieu of re-instatement is arbitrary and illegal, and therefore, a direction may be issued to the petitioner-employer to re-instate the employees into service.

9. This Court has considered the submissions made by the parties and perused the material available on record. A perusal of the material on record would disclose that the petitioner admitted before the appellate authority that certain other employees working in the same cell were continued in the employment of the petitioner-employer. The first authority having taken the fact into account that the said investor services cell was not properly disbanded; the employees were selectively chosen and terminated, and certain other employees working in the same cell were continued, rightly held that the termination orders are bad in law. Further, the authorities also have taken into consideration the fact that there are strained relations between the employer and the employees, and decided to grant compensation in lieu of

reinstatement, by exercising powers under Section 48 of the A.P. Shops and Establishments Act, in favour of the employees.

10. Now, the contention raised by the learned Counsel for the petitioner-employer is that the amount of compensation awarded in favour of the unofficial respondents-employees is shockingly disproportionate and without any basis. To strengthen his contention, he relied upon several judgments of the Hon'ble Supreme Court. But the said judgments relied upon by the learned Counsel for the petitioner, are arising out of the Industrial Disputes Act and the matters pertaining to retrenchment. There is no difficulty in accepting the propositions laid down in catena of judgments where retrenchment compensation is liable to be paid at the rate of 15 days wages for each completed year. But the instant case is not a case of retrenchment arising under the Industrial Disputes Act. The present case is arising under the Shops and Establishments Act.

11. It is pertinent to extract the relevant provisions of the Shops and Establishments Act. Section 47 and 48 of the A.P. Shops and Establishments Act, 1988 reads as follows:

> ***47. Conditions for terminating the services of an employee, payment of service compensation for termination, retirement, resignation, disablement, etc., and payment of subsistence allowance for the period of suspension***
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> *(1) No employer shall, without a reasonable cause terminate the service of an employee who has been in his employment continuously for a period of not less than six months without giving such employee atleast one month' s*

notice in writing or wages in lieu thereof and in respect of an employee who has been in his employment continuously for a period of not less than one year, a service compensation amounting to fifteen days average wages for each year of continuous employment:

Provided that every termination shall be made by the employer in writing and a copy of such termination order shall be furnished to the Inspector having jurisdiction over the area within three days of such termination.

(2) The services of an employee shall not be terminated by the employer when such employee made a complaint to the Inspector regarding the denial of any benefit accruing to him under any labour welfare enactment applicable to the establishment and during the pendency of such complaint before the Inspector. The services of an employee shall not also be terminated for misconduct except for such acts or omission and in such manner as may be prescribed.

(3) Every employee who has put in a continuous service of not less than one year shall be eligible for service compensation amounting to fifteen days average wages for each year of continuous employment, (i) on voluntary cessation of his work after completion of 60 years of age, (ii) on his resignation, or (iii) on physical or mental infirmity duly certified by Registered Medical Practitioner, or (iv) on his death or disablement due to accident or disease:

Provided that the completion of continuous service of one year shall not be necessary where the termination of the employment of an employee is due to death or disablement:

Provided further that in a case of death of an employee service compensation payable to him shall be paid to his nominee or if no nomination has been made to his legal heir.

(4) Where a service compensation is payable under this section to an employee, he shall be entitled to receive his wages from the date of termination or cessation of his services until the date on which the service compensation so payable is actually paid.

(5) The payment of service compensation under this section shall not apply in cases where the employee is entitled to gratuity under the Payment of Gratuity Act, 1972 (Central Act 39 of 1972) and gratuity has been paid accordingly consequent on the termination or cessation of service.

(6) Where an employee is placed under suspension pending enquiry into grave misconduct the employer shall pay a subsistence allowance equivalent to fifty per cent of the last drawn wage for the first six months and at seventy five per cent of the last drawn wage beyond six months during the period of suspension. The total period of suspension shall not however exceed one year in any case. If the misconduct is not established or the total period of suspension exceeds one year, the employee shall be entitled to full wages during suspension period and the period of suspension shall be treated as on duty.

Explanation :-

(1) For the purpose of this section :

(a) the term employee shall include part time employee also;

(b) the expression average wages means the daily average of wages for the days an employee actually worked during the thirty days immediately preceding the date of termination or cessation of service;

(c) the expression wages does not include over time wages;

> *(d) an employee in an establishment shall be deemed to have been in continuous employment for a period of not less than six months if he has worked for not less than one hundred and twenty days in that establishment within a period of six months immediately preceding the date of termination or cessation of the service of that employee.*
> *(e) where the total continuous employment is for a fraction of a year or extends over a fraction of a year in addition to one or more completed years of continuous employment, such fraction, if it is not less than a half year shall be counted as a year of continuous employment in calculating the total number of years for which the service compensation is to be given;*
> *(f) the service compensation of an employee whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of property belonging to the employer, shall be forfeited to the extent of the damage or loss caused;*
> *(g) disablement means such disablement which incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.*

(2) An employee who has completed the age of sixty years or who is physically or mentally unfit having been so declared by a Registered Medical Practitioner or who wants to retire on medical grounds or to resign his service may give up his employment after giving to his employer notice of atleast fifteen days and where no such notice is given, the service compensation payable to him shall be forfeited to the extent of fifteen days in lieu of the notice.

8. Appointment of authority to hear and decide appeals arising out of termination of services:

(1)
(a) The Chief Inspector may, by notification, appoint for any area as may be specified therein, any authority to hear and decide appeals arising out of the termination of service of employees under Section 47:

> *Provided that the Chief Inspector may on administrative grounds transfer any appeal arising in the territorial jurisdiction of any authority to the file of another authority for disposal, and such authority to whom the appeal is transferred by the Chief Inspector shall dispose of the appeal so transferred.*

(b) Any employee whose services have been terminated may, appeal to the authority concerned within such time and in such manner as may be prescribed.
(2) The appellate authority may, after inquiry in the prescribed manner, dismiss the appeal or direct the reinstatement of the employee with or without wages for period he was kept out of employment or direct payment of compensation without reinstatement or grant such other relief as it deems fit in the circumstances of the case:

> *Provided that the authority concerned shall, without delay, hear such appeal and pass such orders within a period of three months from the date of receipt of such appeal:*
> *Provided further that where any such authority considers it necessary or expedient so to do, it may, for reasons to be recorded*

> *in writing, extend such period by such further period as it may think fit:*
>
> *Provided also that no proceedings before such authority shall lapse merely on the grounds that any period specified in this sub section had expired without such proceedings being completed.*

(3) Against any decision of the authority under sub section (2), a second appeal shall lie to such authority as may be notified by the Government within thirty days from the date of communication of the decision and the decision of such authority on such appeal shall be final and binding on both the employer and the employee and shall be given effect to within such time as may be specified in the order of that authority:

> *Provided that the second appeal shall not be entertained unless the employer deposits the entire amount of back wages as ordered by the appellate authority under sub section (2) or the amount of compensation ordered as the case may be:*
>
> *Provided further that if the second appeal is against the order of reinstatement given by the appellate authority under sub section (2), the employee shall be entitled to wages last drawn by him during the pendency of the proceedings before appellate authority.*

(4) Where in any case, an appellate authority by its award directs reinstatement of any employee and the employer challenges such award in any Court of Law, the employer shall be liable to pay such employee during the pendency of such proceedings, full wages last drawn by him, if the employee had not been employed in any establishment during such period and an affidavit by such employee had been filed to that effect in such Court:

> *Provided that where it is proved to the satisfaction of the Court that such employee has been employed and has been receiving remuneration during any such period or part thereof the Court shall order that no wage shall be payable under this section for such period or part, as the case may be.*

(5) Any amount directed to be paid under this section may be recovered :
(a) if the authority appointed under sub section (1) is a Magistrate, by the authority, as if it were a fine imposed by him as Magistrate; and
(b) If the authority is not a Magistrate, by any Magistrate to whom the authority makes application in this behalf as if it were a fine imposed by such Magistrate.

12. Perusal of the above provisions would make it clear that no employer shall without a reasonable cause terminate the services of the employee, who has been in his employment continuously for a period of not less than six months without giving such employee atleast one month’s notice in writing or wages in lieu thereof, and in respect of an employee who has been in his employment continuously for a period of not less than one year, a service

compensation amounting to fifteen days average wages for each year of continuous employment. The first requirement before termination is one must be paid one month salary in lieu of notice and that an employee is entitled to service compensation amounting to 15 days average wages for each completed year, which would mean that the prerequisite condition to terminate the services is payment of wages for 45 days as per Section 47(1) of the A.P. Shops and Establishments Act.

13. Insofar as the issue of awarding of compensation is concerned, Section 48(2) of the Shops and Establishments Act empowers the authorities concerned to direct payment of compensation in lieu of reinstatement. It is the contention of the petitioner-employer that 100 days wages is irrational and without any basis. The authority, in its wisdom, granted 100 days wages. As per Section 47(1) of the Act any terminated employee under the Shops and Establishments Act would be entitled for 45 days salary, in addition to that another 55 days were granted by the authorities. The authorities granted relief of compensation for 100 days for each year by duly taking into account the number of years' service rendered by the unofficial respondents-employees had, and further taking to consideration the fact that the investor services cell was not completely disbanded; some of the employees were continued in the said unit and that the petitioner had selectively chosen to

terminate the services of the unofficial respondents-employees. Further, the authorities have also taken into consideration the number of years of service completed by the employees. Therefore, the decision taken by the authorities to grant 100 days wages for each completed year of service is justified, and at no stretch of imagination, it can be said as arbitrary exercise. Therefore, W.Ps filed by the employer, are liable to be dismissed. Accordingly, they are dismissed.

14. It is the contention of the unofficial respondents-employees that they should be reinstated into service with all consequential benefits. The authorities, taking into consideration that there was strained relationship between the employer and the employees, considered their claim and rightly held that reinstatement cannot be ordered. The official respondents have rightly passed the orders impugned. Therefore, the W.Ps filed by the employees are also liable to be dismissed. Accordingly, they are dismissed.

15. Accordingly, all the above Writ Petitions are dismissed. No costs. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

JUSTICE ABHINAND KUMAR SHAVILI

Dated 11th October, 2018
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HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITIONS NOs.12443, 12444, 12445 of 2007, 14871, 14943 and 14950 of 2006

11.10.2018

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