

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.27704 of 2016

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed by M/s. Sravins Instruments & Systems, Nacharam, Hyderabad, ('petitioner company', for short) requesting to issue a Writ of Certiorari after calling for the records related to the Award, dated 02.06.2016, passed in I.D.no.13 of 2015 by the 5th respondent, learned Presiding Officer, Labour Court-II, Hyderabad, and quash the same since it is illegal, void, arbitrary and contrary to the principles of natural justice & the provisions of the Industrial Disputes Act, 1947, ('the Act', for short). A consequential direction is also sought to quash G.O.Rt.no.548, Labour Employment Training and Factories (Labour) Department, dated 28.07.2016.

2. I have heard the submissions of *Sri P.Hemamalini*, learned counsel appearing for the petitioner company; the learned Government Pleader for Labour appearing for respondents 1 to 5; and of *Sri G.Allabaksh*, learned counsel appearing for the 6th respondent-workman. I have perused the material record. Since a request was made by both the sides to dispose of the writ petition instead of the vacate stay petition, the writ petition is being disposed of by this order.

3. The introductory facts, in brief, are as follows:

The 6th respondent, who is working in the petitioner company as a Car Driver, approached the Deputy Commissioner of Labour-4th respondent and made a representation, dated 19.05.2014, stating that the management of the petitioner company has a grouse against him and that he was prevented from attending to his duties for the last 15 days and that the acts of the management are contrary to the provisions of

the Act and requested the Deputy Commissioner of Labour to render justice. It appears that the 6th respondent also made several representations in the above regard. On 03.11.2015, the Deputy Commissioner of Labour remanded the matter to the Assistant Commissioner of Labour. A notice for conciliation was issued. The petitioner company submitted a representation to the Deputy Commissioner of Labour admitting that the 6th respondent is working in the petitioner company since 2007-2008. It, however, stated that his services were terminated due to his indiscipline and bad character and as he had threatened the Administrative Manager, who is a lady officer, by employing un-parliamentary language and also the General Manager by stating that he will show his muscle power outside the gate. In the said representation, the petitioner company also stated that on account of the misconduct on the part of the 6th respondent, the management of the petitioner company lodged a report with the Station House Officer, Nacharam Police Station; and that before the said police officer, the 6th respondent executed a letter tendering pardon; and, that later, when a show-cause notice, dated 28.04.2014, was sought to be served, the 6th respondent refused to receive the same and that an enquiry was conducted on the same day and that the management of the petitioner company paid last salary to the 6th respondent, but did not pay the gratuity on account of his ineligibility. Be that as it may. The Conciliation Officer finally came to the conclusion that conciliation was not fruitful. Thereafter, a reference was made under Section 10(1) of the Act for answering the following questions.

“Whether the Management of M/s. Savins Instruments & Systems, Nacharam, Hyderabad is justified in removing the services of Sri P.Ramulu, Driver?

If not, what is the relief Sri P.Ramulu is entitled to?”

The learned Presiding Officer, Labour Court-II, Hyderabad, took the reference on file and registered a case in I.D.No.13 of 2015 and issued notices. The 6th respondent, who was the petitioner before the Labour Court, filed his claim statement. However, it appears that the writ petitioner, who is the respondent therein, failed to appear before the Labour Court and remained *ex parte*. By the Award, which is impugned in this writ petition by the petitioner company, the Labour Court awarded a compensation of Rs.3,00,000/- to the 6th respondent herein in lieu of reinstatement and had thus answered the reference. Be it noted that pursuant to the said Award, the Government of Telangana, issued aforesaid G.O.Rt.No.548, dated 28.07.2016, and notified that the Award be published on the Notice Board of Labour Court-II, Hyderabad.

4. In the above said backdrop of facts and events, the case of the petitioner company, in brief, is this:

The services of the 6th respondent as a car driver in the petitioner company were terminated. He behaved in a rude manner with a lady Manager and used un-parliamentary words against her. For his said behavior, a show cause notice, dated 15.04.2014, was issued. However, the 6th respondent refused to receive the same. Again, on 27.04.2014, he misbehaved with the General Manager of the petitioner company and employed rubbish language while talking to him and threatened him. Hence, another show-cause notice, dated 28.04.2014, was issued to the 6th respondent. Yet again the 6th respondent refused to receive the same. Even after he was counseled by the Managing Partner & Managing Director of the petitioner company, he continued his misbehaviour. His behaviour and indiscipline became intolerable. Hence, an enquiry was conducted, on 28.04.2014. In that enquiry, it was found that the 6th respondent is misbehaving with the Executives and Security Guards; and,

it was established that he had threatened the General Manager for no reason. After due enquiry, the petitioner company dismissed the 6th respondent from service with immediate effect. The minutes of the enquiry, dated 28.04.2014, were refused to be received by the 6th respondent. While so, the petitioner company received a notice from the Assistant Commissioner of Labour, Hyderabad. On 03.11.2014, the Deputy Commissioner of Labour remanded the 6th respondent's representation, dated 19.05.2014, to the Assistant Commissioner of Labour; and, he issued a notice for conciliation. The petitioner company submitted a representation with all facts and further stated that the management of the petitioner company paid the last salary to the 6th respondent; but, did not pay the gratuity as the 6th respondent was found ineligible for payment of the same as per the provisions of the Gratuity Act, 1972. The petitioner company did not receive any notice from the office of the Deputy Commissioner of Labour for conciliation. As the conciliation was not fruitful, a reference was made by the Government to the Labour Court. A notice in the ID on the file of the Labour Court-II was received. However, the date of adjournment and hearing are not informed to the petitioner company by the members of the staff of the said Court. Though the petitioner company made its appearance and submitted its statement, the Presiding Officer of the Labour Court erroneously set the petitioner company *ex parte* and passed the impugned award even without examining the facts and the documents. No witnesses were examined. No documents were marked. There was no material before the Labour Court. The Award was passed on the basis of the pleadings alone. The said award is void and illegal. The learned Presiding Officer of the Labour Court-II ought to have seen that a police complaint was lodged against the 6th respondent and that

he sought pardon. The Presiding Officer of the Labour Court failed to see the essence of the said complaint. The learned Presiding Officer failed to see that there are several incidents of insubordination and that when show-cause notices were issued before conducting the enquiry, the 6th respondent deliberately refused to receive the same and that after due enquiry, he was dismissed from service in view of his intolerable behaviour and serious acts of misconduct. The learned Presiding Officer of the Labour Court erroneously found fault with the management of the petitioner company for the delay in making the police complaint and for the corrections appearing in the pardon statement of the 6th respondent. However, the learned Presiding Officer of the Labour Court ought to have seen that there was no delay in approaching the police and that due to elections, the police did not attend to the case of the petitioner company and that, therefore, the petitioner company was constrained to lodge another complaint when threat calls were made by the 6th respondent and that the corrections in the pardon statement were made by the scribe of the document and that he also put his initials at the places of corrections. The said scribe is a Union leader who came in support of the 6th respondent. Hence, the learned Presiding Officer of the Labour Court ought to have seen that there is no reason to doubt the genuineness of the pardon statement given by the 6th respondent and that the corrections do not undermine the admissions made by the 6th respondent and that there is no tampering of the said document. In fact, the 6th respondent, in his claim statement stated that due to the threat of arrest he admitted his guilt but he has not denied even before the Labour Court, the incidents that happened and the imputations related to his conduct & character and his acts of insubordination and misbehaviour, which are the causes for his termination. Even after

termination also, he made threatening calls to the authorities and the management of the petitioner company and hence, the petitioner company was constrained to approach the police. The observation in the award that the petitioner company resorted to unfair labour practices is incorrect. The averments in the petition of the workman/ 6th respondent are false and incorrect. The same are invented. One woman employee of the petitioner company lodged a complaint against the 6th respondent stating that he misbehaved with her. The Labour Court rightly held that no sympathy shall be shown in case of such misbehaviour. Having held so, the Labour Court did not properly consider the facts and the legal position in proper perspective. Reinstatement cannot be ordered in case of proved misconduct involving acts of dishonesty, theft, misappropriation and riotous behaviour towards superiors. The 6th respondent is not a workman. He only worked as a car driver from 01.04.2007 to 28.04.2014. The Labour Court ought not to have admitted the claim of the workman. The Labour Court ought to have seen that the workman belatedly approached for redressal. Hence, the award is liable to be set aside and the consequential GO issued by the Government is liable to be quashed.

5. This Court, on 03.07.2017, while admitting the writ petition filed by the petitioner company, passed the following order:

“There shall be interim suspension as prayed for.”

6. The 6th respondent filed W.V.M.P.no.3696 of 2017 along with his counter affidavit. His case as pleaded in the said affidavit and the submissions made on his behalf, in brief, are as follows:

The writ petition filed by the petitioner/respondent is not maintainable either in law or under facts. It is not true to say that the

6th respondent misbehaved or behaved rudely with a lady Manager and used un-parliamentary words against her and that for his alleged misbehaviour, a show-cause notice, dated 15.04.2014, was issued by the petitioner company and that this respondent refused to receive the same. This respondent worked as a Driver for fourteen years in the petitioner company. He was terminated from service without following the provisions of Section 25-F of the ID Act and the principles of natural justice. He never behaved rudely with the lady Manager and never used un-parliamentary words against her. No show cause notice was issued by the petitioner company. The allegation that this respondent misbehaved with the General Manager of the petitioner company and used rubbish language and threatened him is false. The writ petitioner created a story of notices to project that this respondent did not oblige the writ petitioner. The petitioner company never issued any notices to this respondent. Therefore, the question of refusal to receive the alleged notices does not arise. If really this respondent misbehaved with the General Manager, who is a lady, the management of the petitioner company ought to have filed a complaint against him. No such complaint was lodged. The management of the petitioner company never issued show cause notices to this respondent and did not also counsel him. In the absence of misbehaviour and indiscipline, the question of counseling and conduct of enquiry, on 28.04.2014, does not arise. Without issuing notices and conducting enquiry, the petitioner company dismissed this respondent from service by resorting to unfair labour practice and violating the principles of natural justice. This respondent joined in service, on 05.02.2001, as driver with a salary of Rs.3,000/- . His salary was increased from time to time. The last salary received by him is Rs.9,000/- . But, the management of the petitioner

company falsely stated that this respondent joined the service in the year 2007-2008. The action of the writ petitioner is highly arbitrary, illegal and violative of Section 25-F of the Act & Article 21 of the Constitution of India. It is incorrect to state that the writ petitioner was not informed the date of adjournment of the ID case by the staff of the Labour Court. The Labour Court passed the award in a proper manner. The Labour Court did not commit any error. The writ petition is filed to harass this respondent and to prolong the litigation. The petitioner company intentionally avoided to appear before the Court in order to challenge the award on the ground that it is an *ex parte* award. The petitioner company never issued show cause notices, dated 15.04.2014, 27.4.2014 and 28.4.2014 and therefore, the question of refusal to receive the notices did not arise. The Labour Court examined the police complaint and the pardon letter and ultimately, passed the award in I.D.no.13 of 2015. The management of the petitioner company never approached the police and the statement made by it in this regard is false. The petitioner company received notice from the Deputy Commissioner of Labour. But, as there was no response from the petitioner company, this respondent is constrained to approach the Court below. The Court below rightly applied the relevant case law to the case on hand. This respondent worked as Driver from 05.02.2001 to 27.04.2014 in the petitioner company and the management without following Section 25F of the Act dismissed him from service and also tampered with the pardon letter. Therefore, the action of the management of the petitioner company is a clear violation of Article 21 of the Constitution of India. As the management has imposed harsh punishment, the family of the 6th respondent is facing starvation and

hardship. Hence, the writ petition is liable to be dismissed by imposing exemplary costs on the writ petitioner.

7. I have given earnest consideration to the facts & submissions. I have perused the material record.

8. The 6th respondent admittedly worked as Car Driver in the petitioner company. Alleging that he is being put to troubles by the Management of the petitioner company, he submitted a representation to the officer concerned of Department of Labour. A conciliation that was held pursuant thereto, turned out to be not fruitful. Hence, a reference was eventually made by the Government; and, that reference was taken on file as an Industrial Dispute on the file of the Labour Court-II, Hyderabad. The Learned Presiding Officer of the said Court adjudicated the dispute and passed the Award. The said Award is now impugned in this writ petition by the petitioner company. It is pertinent to note that an enquiry was held by the management of the petitioner company and that on the ground that in that enquiry, it was found that the 6th respondent misbehaved with all executives and security guards and it was established that he threatened the General Manager for no reasons and even refused to receive show cause notices sought to be served upon him, the 6th respondent was dismissed from service by minutes of enquiry, dated 28th April, 2014, with immediate effect and a decision was taken to lodge a police report and in fact, such a report was lodged on 20.05.2014. According to the management of the petitioner company, the 6th respondent tendered apology by addressing a letter, dated 28.05.2014, whereas the 6th respondent contends that the said letter was obtained under the threat of arrest and that the

dismissal proceedings dismissing him from service with effect from 29.04.2014 is an unfair labour practice.

9. Before the Labour Court-II, Hyderabad, the petitioner company did not enter appearance despite service of notice and therefore, it was set *ex parte*. The 6th respondent filed claim petition. The learned Presiding Officer of the Labour Court having considered the material before him found that the proceedings related to the enquiry that was conducted by the management revealed that minimum 7 days time has not been provided to the 6th respondent to answer the show cause notices and that the enquiry was conducted in a hurried manner and the 6th respondent was dismissed from service and that the letter of apology contained corrections and that the dismissal of the 6th respondent from service is an unfair labour practice and that the management of the petitioner company has not adhered to the provision of Section 25-F of the Industrial Disputes Act. Hence, by the impugned order, the order passed by the management dismissing the 6th respondent from service was set aside by the impugned order. It was also found by the learned Presiding Officer of the Labour Court that when the 6th respondent allegedly resorted to misbehaviour and acts of misconduct and insubordination, the management of the petitioner company ought to have promptly lodged a report with the police, but there is delay in lodging the police report; and, that the 6th respondent made a representation before the Deputy Commissioner of Labour, on 19.05.2014, and that a notice, dated 20.5.2014, was issued by the said authority fixing the meeting, on 29.05.2014, and that after receipt of the same, the petitioner company instead of attending the meeting foisted the police report, dated 20.05.2014, by antedating the same and had obtained the letter of apology, on 28.05.2014, under threat of arrest

and later dismissed the 6th respondent from service. Therefore, the learned Presiding Officer of the Labour Court -II also found that there is not only violation of the provisions of the Act but also the principles of natural justice.

10. The petitioner company did not pursue its defence in the ID before the Labour Court-II, Hyderabad, and remained *ex parte*. It, however, now contends that it could not appear for hearings before the Labour Court-II, as the staff of the said Court did not inform the date of posting of the case. Such a contention need not be countenanced as it is the duty of the petitioner company and its counsel to know the dates of adjournments of the case and appear before the Court on the dates of adjournments and prosecute its defence with diligence. Be that as it may. The 6th respondent contends that he worked as a Car Driver and that the last salary drawn by him was Rs.9,000/- per month. The petitioner company could not show as to how the 6th respondent is not a workman and could not substantiate its contention that the Labour Court has no jurisdiction to deal with the dispute. The questions now being raised by the petitioner company being pure questions of fact and are not substantiated, this Court finds that the petitioner company could not make out a case calling for interference with the impugned award.

11. Before parting, be it noted that by the impugned award, the learned Presiding Officer of the Labour Court-II, Hyderabad, while setting aside the order of dismissal of the 6th respondent thought it fit to award compensation in lieu of reinstatement and granted a compensation of Rs.3,00,000/- to the 6th respondent and accordingly, answered the reference.

12. Viewed thus, this Court finds that the writ petition, which is devoid of merits, is liable for dismissal.

13. In the result, the Writ Petition is dismissed.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

05.07.2018
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