

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

Writ Petition No.12601 of 2004

ORDER

This Writ Petition is filed challenging the order passed by the Labour Court-I, A.P., Hyderabad, in M.P.No.45 of 2001 dated 28.02.2004 and to quash the same.

2. Heard Sri G.Ramachandra Rao, learned counsel for the petitioner and learned Government Pleader for Labour appearing for respondent No.1.

3. It has been contended by the petitioner that it is running a hotel and in the Engineering Department of the petitioner hotel the respondent No.2 workman was appointed as Helper and respondent No.2 had remained unauthorisedly absent from 10.02.1998 and said conduct of respondent No.2 workman was construed as misconduct and the petitioner had initiated disciplinary proceedings and after conducting detailed enquiry the petitioner had terminated the services of respondent No.2 vide proceedings dated 11.01.1999. Thereafter respondent No.2 has challenged the action of petitioner before the first appellate authority under the Andhra Pradesh Shops and Establishments Act, 1988 (for short, 'the Act') by filing S.E.No.21 of 1998 and the first appellate authority vide order dated 04.09.2001 was pleased to grant compensation of Rs.10,000/- in lieu of reinstatement of respondent No.2 workman and thereafter, the petitioner had challenged the order, passed by the first appellate authority, before the second appellate authority by filing

S.A.No.37 of 2001 and the second appellate authority had dismissed the appeal, preferred by the petitioner, vide order dated 01.02.2002 by confirming the order passed by the first appellate authority and after dismissal of the Second Appeal preferred by the petitioner, the petitioner has complied with the order passed by the first appellate authority and paid Rs.10,000/- to respondent No.2 workman. The grievance of the petitioner is that the respondent No.2 workman without disclosing all these facts had filed M.P.No.45 of 2001 under Section 33-C(2) of the Industrial Disputes Act, 1947 claiming certain amounts from the petitioner. The Labour Court vide order dated 28.02.2004 had partly allowed the M.P., preferred by respondent No.2, and directed the petitioner to pay a sum of Rs.28,000/- with interest @ 12% per annum from the date of removal from service till the date of realisation. Challenging the same, the present Writ Petition is filed.

4. Learned counsel for the petitioner submits that the Labour Court, contrary to the pleadings made by respondent No.2 before the first appellate authority, had pleaded that the respondent No.2 workman was placed under suspension for the period from 20.02.1998 to 11.01.1999 and the petitioner has not paid any subsistence allowance and respondent No.2 workman was claiming wages and subsistence allowance during the relevant period of time. Respondent No.2 has specifically pleaded before the authority under the Act that he was terminated vide order dated 10.02.1998 and when respondent No.2 was terminated as pleaded by him on 10.02.1998, the question of placing the respondent No.2 under suspension for the period from 20.02.1998 to 11.01.1999 does not arise

and without appreciating these particular facts the Labour Court has mechanically allowed the M.P. preferred by respondent No.2, and the learned counsel for the petitioner contended that appropriate orders be passed by this Court by setting aside the order passed in M.P.No.45 of 2001 dated 28.02.2004.

5. After perusal of the record, it is noticed that though notice was served on respondent No.2, none appeared for respondent No.2.

6. This Court, having considered the above said facts, is of the considered view that the Labour Court heard in allowing the M.P.No.45 of 2001 vide order dated 28.02.2004 and the Labour Court failed to appreciate that for the very same relief respondent No.2 has approached the authority under the Act and pleaded contrary to the pleadings in M.P.No.45 of 2001, respondent No.2 is not entitled for the amounts as determined by the Labour Court. Therefore, the order passed by the Labour Court in M.P.No.45 of 2001 dated 28.02.2004 is liable to be set aside.

7. Accordingly and in the result, this Writ Petition is allowed and the order in M.P.No.45 of 2001 dated 28.02.2004 passed by the Labour Court is set aside. No order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

ABHINAND KUMAR SHAVILI, J

12.12.2018
MVA