

THE HON'BLE SRI JUSTICE M. GANGA RAO

WRIT PETITION No.11826 of 2002

ORDER:

The petitioner-Management filed this writ petition being aggrieved by the Award dated 22.12.2001 passed in I.D.No.132 of 1999 by the Industrial Tribunal-cum-Labour Court, Visakhapatnam whereby the petitioner-Management was directed to reinstate the 2nd respondent-Workmen into service with back wages @ Rs.1170/- per month as illegal and arbitrary and also to set aside the *ex parte* order dismissing I.A.No.352 of 2001 in I.D.No.132 of 1999 dated 3.12 2001.

The case of the petitioner-Management is that the 2nd respondent-workman was appointed as Scavenger in the year 1990 in Kalyanamandapam of Tirumala Tirupati Devasthanam, Srikakulam on a monthly salary of Rs.600/- per month and her services were terminated in the year 1992. She was appointed afresh on 26.8.1993 on a monthly salary of Rs.600/-. On 24.11.1995, she was transferred to work under the control of Tirumala Tirupati Devasthanam, Kalyana Mandapam, Vizianagaram and she worked there till 26.8.1996 and thereafter her services were terminated, without given any notice. At that time she was paid wages of Rs.1170/- per month. Aggrieved by the same, the 2nd respondent-workman filed I.D.No.132 of 1999 seeking reinstatement with back wages. As could be seen from the judgment of the Industrial Tribunal-cum-Labour Court, the 2nd respondent-workman was examined as WW.1 and Exs.W1 to W4

were marked. Ex.W.1 discloses that the 2nd respondent was appointed as Scavenger/Night Watchman in Tirumala Tirupati Devasthanam, Srikakulam at Rs.20/- per day meeting the expenditure from the P.A. Account. Ex.A.2, transfer order also discloses that the 2nd respondent was directed to report before the Manager, Tirumala Tirupati Devasthanam, Kalyanamandapam, Vizianagaram, along with joining report. The 1st respondent-Labour Court observed that though the 2nd respondent-workman was appointed on daily wage basis, her services seems to be in an existing vacancy and she was transferred from one place to another. The 2nd respondent-Labour Court further observed that the service conditions of the management were not filed and the documentary evidence adduced by the 2nd respondent-workman would clearly show that she continued her service for more than a year under the same employer and that she cannot be retrenched without giving one month's notice and without paying wages in lieu of the said notice and that the Management did not follow the procedure contemplated under Section 25(F) of the I.D. Act and therefore, retrenchment of the workman is illegal. The Labour Court, after considering the entire case, passed award directing the petitioner-management to reinstate the workman with back wages @ Rs.1170/- per month as claimed by her in the evidence from the date of termination. Aggrieved by the same, the petitioner-Management filed this writ petition.

This Court, at the time of admission, granted interim order in WPMP.No.14592 of 2002 suspending the order therein. Thereafter, WVMP.No.2875 of 2002 was filed. This Court vide orders dated 28.10.2002 modified the order of interim suspension

to the effect of stay of further proceedings of operation of award on condition of compliance under section 17-B of the I.D. Act

It is informed by the learned counsel for the petitioner-management that an amount of Rs.26,910/- was deposited to the credit of I.A.No.127 of 2017 in I.D.No.132 of 1999.

Ms.Sesha Veni, learned counsel appearing for the petitioner-Management would contend that the petitioner-Management filed I.A.No.352 of 2001 in I.D.No.132 of 1999 before the Industrial Tribunal-cum-Labour Court-1st respondent to set aside the *ex parte* award passed on 10.10.2001 in I.D.No.132 of 1999 but the 1st respondent-Labour Court dismissed I.A.No.352 of 2001 on 3.12.2001 without giving reasonable opportunity to justify their action. Learned counsel further contend that the 1st respondent-Labour Court had failed to consider that the workman was engaged on daily wage basis and she never worked continuously for 240 days and the petitioner-Management is not an industry and that the provisions of the Industrial Dispute Act are not applicable to the workman.

None appeared for the 2nd respondent.

In the facts and circumstances of this case and in considered view of this Court, it is found that there is no dispute that the 2nd respondent-workman was engaged as scavenger and the same was evidenced from Ex.W.1.The Labour Court observed that the 2nd respondent-workman worked continuously for more than a year continuously preceding the date of her termination and she cannot be retrenched without giving one month's notice in writing with reasons for retrenchment and without paying wages in lieu of the said notice. The Labour Court further observed that the

petitioner-management did not follow the procedure contemplated under Section 25 (F) of the Industrial Dispute Act. Therefore, this Court finds that the impugned order does not suffer from error of fact and law which warrants interference of this Court.

Accordingly, the Writ Petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M. GANGA RAO

Date: 08/08/2018

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