

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.5862 of 2004

ORDER:

This Writ Petition is filed seeking a Writ of Certiorari to call for the records in A.P.S.E Case No.2 of 2001 dated 30.05.2002 passed by the Authority under Section 50 of the A.P.Shops & Establishments Act, 1988 and Labour Officer, Machilipatnam (for short 'the Authority') as confirmed by the Appellate Authority under Section 53 of the A.P.Shops & Establishments Act, 1988 and Assistant Commissioner of Labour, Vijayawada (for short 'appellate Authority') in A.P.S.E 2nd Appeal No.5 of 2002 dated 30.01.2003 and quash the same.

It has been contended by the petitioner that the 2nd respondent workman was employed with it and the 2nd respondent had indulged in misappropriation of funds and without disclosing the same, the 2nd respondent has approached the Authority complaining that incentive was not paid to him and the Authority vide order dated 30.05.2002 directed the petitioner to pay a sum of Rs.14,093/- to the 2nd respondent and the same was confirmed by the appellate authority. Challenging the same, the present writ petition is filed.

Learned counsel for petitioner submits that incentive is not forming part of wages and the 2nd respondent could not have filed such an application before the Authorities and the Authorities have failed to appreciate that incentive is not forming part of wages and mechanically allowed the claim made by the 2nd respondent in spite of raising objections by the petitioner. Apart from that, the 2nd

respondent had indulged in misappropriation of funds to a tune of Rs.3,61,656/- and the petitioner is taking appropriate steps against the 2nd respondent for recovering the said amount. Therefore, the orders passed by the Authorities are liable to be set aside.

Learned counsel appearing for the respondent workman has contended that when the incentive for the year 1996-97 was not paid, he had approached the Authority and the Authority vide order dated 30.05.2002 directed the petitioner to pay a sum of Rs.14,093/- towards incentive amount and the same was also confirmed by the appellate Authority. He further submits that he has not indulged in misappropriation of any amount as alleged by the petitioner and the said allegation is made only to deny the incentive to the 2nd respondent. Hence, there are no merits in the writ petition and the same is liable to be dismissed.

This Court, having considered the rival submissions, is of the considered view that the Authorities have rightly passed orders in favour of respondent workman and the petitioner could not point out any illegality or irregularity in the orders passed by the Authorities.

Hence, the writ petition is dismissed. It is needless to state that it is always open for the petitioner to proceed against the 2nd respondent for alleged misappropriation of amount. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

ABHINAND KUMAR SHAVIL, J

28-11-2018
Prv