

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.17049 of 2005

ORDER:

This writ petition is filed seeking the following relief:

“For the reasons stated in the accompanying Affidavit, the Petitioner herein prays that this Hon’ble Court may be pleased to issue a Writ of mandamus or any other appropriate writ order or direction under Art. 226 of the Constitution of India declaring the Order of the Asst. Commissioner of Labour, Nizamabad cum Controlling Authority under Payment of Gratuity Act, 1972 in P.G.No.24/2004, dated 17-2-2005 directing the Corporation to pay to the petitioner an amount of Rs.2,17,895/- towards gratuity along with 9% interest from the date of superannuation of the employee (i.e. 28.2.2002) and it’s further Order dated 27.5.2005 Under Section 8 of Payment of Gratuity Act in P.G.No.24/2004 certifying that an amount of Rs.1,06,867/- is recoverable from the Corporation is illegal, arbitrary and violative Article 14 of the Constitution of India and pass such other Order or Orders as this Hon’ble Court may deem fit and proper in the circumstances of the case”.

Heard the learned Standing Counsel for the petitioner-Corporation and the learned Counsel for the 1st respondent-workman.

It has been contended by the petitioner-Corporation that the 1st respondent-workman was appointed as conductor in the Corporation and he was removed from service after conducting enquiry on certain allegations and challenging the same, the 1st respondent raised an industrial dispute in I.D.No.191 of 1999 on the file of the 2nd respondent – Labour Court under Section 2-A(2) of the Industrial Disputes Act, and the Labour Court without

properly appreciating any of the contentions raised by the corporation, passed an award dated 13.6.2002, setting aside the order of removal and directing the corporation to reinstate the 1st respondent into service with full back wages, continuity of service and attendant benefits, after the employee had attained the age of superannuation on 28.2.2002. Aggrieved thereby, the present writ petition is filed by the petitioner-Corporation.

The Corporation filed W.P.No.23978/2002 questioning the award in I.D.No.191/1999, dated 13.6.2002.

In the meanwhile, the respondent-employee filed P.G.No.24/2004, claiming Rs.2,17,895/- with 15% interest before the official respondent herein i.e. Assistant Commissioner of Labour, Nizamabad-cum-Controlling Authority under Payment of Gratuity Act. Even before the Corporation could file a written statement, the official respondent, through orders dated 17.2.2005, directed the Corporation to pay the petitioner the amount of Rs.2,17,895/- along with interest at 9% p.a., from the date of superannuation i.e. 28.2.2002, within 30 days from the date of receipt of the order. Immediately on receiving copy of the order, the Corporation has filed application/statement before the official respondent i.e., Controlling Authority to modify the order stating that the petitioner is entitled to only Rs.1,11,027-69 Ps., towards gratuity.

The petitioner-corporation further submits that the official respondent has not considered the application and issued a Show Cause Notice on 29.3.2005 for effecting the recovery proceedings. The Depot Manager

submitted his explanation to the Show Cause Notice pleading once again to the Authority – Official respondent to consider the application filed by the corporation on 25.3.2005, while at the same time it deposited an amount of Rs.1,11,028/- towards the admitted gratuity, through D.D.No.844243, dated 5.4.2005. The receipt of the demand draft was acknowledged by the Assistant Commissioner of Labour's office on 6.4.2005. However, without considering the case of the corporation, the official respondent passed an order on 27.5.2005, under Sec.8 of the payment of gratuity act certifying an amount of Rs.1,06,867/- along with interest from the corporation.

The petitioner-corporation further submits that the Hon'ble High Court passed interim directions in WPMP No.30091/2002 dated 3.1.2003 in W.P.No.23978/2002 granting interim stay of the award in I.D.No.191/1999 on the condition of Corporation depositing 50% of back wages and allowing the employee to withdraw the same. Accordingly, the Corporation has deposited Rs.89,000/- being the 50% of the award amount and the employee has withdrawn the same. However, the respondent employee, complaining that the corporation has not deposited back wages fully, filed an application before the Labour Court on 22.1.2003 in M.P.No.22/03 and the same was allowed as per its order dated 28.4.2004, awarding a sum of Rs.1,15,064,64 Ps.

The petitioner-corporation further submits that as against this, the Corporation has filed a second writ petition vide W.P.No.13330/2004 in

which this Hon'ble Court has granted interim stay on 28.4.2004 in W.P.M.P.No.17050/2004, dated 9.8.2004.

The petitioner-corporation further submits that this Hon'ble Court has, by a common order, dismissed both the W.P.Nos. 23978/2002 and 13330/2004 on 20.12.2004. Aggrieved by the said common order, the corporation has filed W.A.No.837/2005 (against W.P.No.23978/2002) and W.P.No.1219/2005 (against W.P.No.13330/2004). However, this Hon'ble Court has permitted the Corporation to withdraw both the Writ Appeals on 20.7.2005 with a direction to file a Review Petition before the learned Single Judge against the common Order in W.P.Nos. 23978/2002 and 13330/2004, dated 20.12.2004 with a petition to condone the delay in filing the Review Petition. This order was made by the learned Division Bench of the Hon'ble Court on 20.7.2005. The Corporation will be soon filing a Review Petition, as directed, immediately on receipt of the certified copies of this Hon'ble Court's Orders in the said two Writ Appeals.

The petitioner-corporation further submits that even if the corporation would not succeed in the proposed review petition, the respondent employee is entitled only for a maximum amount of Rs.1,40,000/- towards gratuity whereas the official respondent, by ordering an amount of Rs.2,17,895/- to be paid towards gratuity, has ordered the corporation to pay Rs.80,000/- in excess of his entitlement.

Learned Counsel for the 1st respondent has contended that the Labour Court has rightly passed the award in favour of the 1st respondent and, therefore, no interference is called for.

This Court, having considered the submissions made by the parties, is of the considered view that the Labour Court has rightly passed the award in favour of the 1st respondent. Further, no illegality or irregularity is pointed out by the learned Standing Counsel for the petitioner-Corporation in the award passed by the Labour Court. Unless and until any illegality or irregularity is pointed out by the learned Standing Counsel for the petitioner-Corporation in the award passed by the Labour Court, this Court cannot interfere with the findings of the Labour Court. There are no merits in the writ petition and the writ petition is liable to be dismissed.

Accordingly, the Writ Petition is dismissed. Consequently, miscellaneous petitions, if any, pending in the writ petition shall stand closed. No order as to costs.

ABHINAND KUMAR SHAVILI, J

26th December, 2018

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