

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No. 21605 OF 2011

DATED : 08.02.2018

Between :

The Executive Engineer (Civil),
APSRTC, Kadapa,
Kadapa district

.. Petitioner

And

Kupparthi Suryanarayana Reddy,
S/o K.Narayana Reddy,
Aged 33 years, K.Kothapalli (village & Post)
Muddanur Mandal,
Kadapa district and another

.. Respondents



This court made the following :

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ORDER:

The 1st respondent herein claimed that he was engaged by the petitioner Corporation from 22.10.1992 and worked upto 20.12.2000. From 20.12.2000, he was asked not to attend to work. Alleging said action of the petitioner Corporation amounts to retrenchment in violation of Section 25(F) of Industrial Disputes Act, 1947 (for short, 'the Act'), the 1st respondent raised Industrial Dispute under Section 2-A (2) of the Act in the Industrial Tribunal-cum-Labour Court, Anantapur. The Labour Court numbered the dispute as I.D.No.24 of 2008. By Award dated 27.1.2011, the Labour Court has set aside oral termination and directed reinstatement of petitioner into service in the post of Non-Technical Maistry or in the equivalent post with continuity of service but without attendant benefits and back wages.

2. This Writ Petition is instituted by the petitioner Corporation challenging the Award dated 27.1.2011.

3. Heard learned Standing Counsel Sri A.Rama Rao, learned counsel, Sri S.D. Gowd for 1st respondent and learned Government Pleader for Labour.

4. The main contention of learned Standing Counsel for petitioner Corporation is that there was no relationship of Master and Servant between petitioner Corporation and 1st respondent; that 1st respondent was never engaged by the Corporation and therefore, question of termination of service by the Corporation did not arise and, therefore, contention of 1st respondent that petitioner

Corporation has not observed mandate of Section 25 (F) of the Act, is not valid.

5. According to learned Standing Counsel for the petitioner Corporation, the Labour Court erred in holding that 1st respondent worked with the Corporation and that there was non-compliance of the statutory requirement to terminate the services. He further submits that except for placing reliance on identity cards issued to 1st respondent, no material was placed on record to show that 1st respondent was employed by the petitioner Corporation. Mere issuance of identity card, is not proof of relationship since 1st respondent was required to undertake certain works in the Corporation. The identity card is issued only to gain entry into the premises of the petitioner Corporation and does not per-se would mean appointment of the 1st respondent by the petitioner Corporation.

6. In support of the said contention, learned Standing Counsel placed reliance on the decision of this Court in the case of **EXECUTIVE ENGINEER, APSRTC, KARIMNAGAR vs. K.KANAKAIAH AND ANOTHER**¹. According to learned Standing Counsel, facts in the said decision are identical to facts in this case and for reasons assigned therein, this Writ Petition is also liable to be allowed.

7. Per contra, Sri S.D. Gowd, learned counsel, submits that the 1st respondent was employed by the petitioner Corporation. The identity card issued, would support contention of the 1st respondent. No material was placed on record by the petitioner

¹ 2015 (5) ALD 705

Corporation before the Labour Court to hold that the 1st respondent was not working in the petitioner Corporation. He would, therefore, submit that there is no illegality in the declaration given by the Labour Court holding that the provisions of Section 25(F) of the Act were violated and in declaring the termination as illegal. He would further submit that even though the Award was passed on 27.1.2011 and interim order granted by this Court earlier was valid only for two months from 1.8.2011, the Award is not implemented and even wages under Section 17-B of the Act were not paid, causing lot of hardship and suffering to the 1st respondent.

8. Learned Counsel placed reliance on the decision of this Court in W.P.No.6161 of 2007.

9. According to the 1st respondent, he was first engaged on 22.10.1992 and has continuously worked till 20.12.2000, for more than eight years before he was terminated. In terms of Section 25 (F) of the Act, if a person works for more than 240 days in a year, the services of such workman cannot be terminated without following due procedure as required by Section 25(F) of the Act and such termination is per se illegal. In support of assertion of the 1st respondent that he worked, he has produced xerox copies of the identity cards and E.D. passes as Exhibits W-1 to W-3 and letter addressed by the Assistant Engineer to the Security Branch dated 3.1.1996 as Ex.W-4. By relying on these documents, the 1st respondent contended that he was employed by the petitioner Corporation and worked continuously.

10. Learned Standing Counsel extensively referred to earlier litigation instituted by the 1st respondent to contend that the 1st respondent was agitating for service benefits as if he was engaged by the petitioner Corporation and consistently, the petitioner Corporation was holding that the 1st respondent was never employed. The 1st respondent filed Writ Petition No.13686 of 1996 praying to declare action of the respondent Corporation therein in not absorbing petitioner therein as Driver/Conductor or in any other post of Class-IV services as illegal and unjust. A Division Bench of this Court, by order dated 22.10.1997 disposed of the Writ Petition by directing the 1st respondent herein to give representation to the authorities seeking regularization of services subject to the condition that he was still working as Casual Labour on NMR basis. The petitioner Corporation herein was further directed to consider the said representation in the light of the Circular dated 18.2.1996 etc., and to pass appropriate orders. It appears, the petitioner Corporation rejected claim of 1st respondent holding that 1st respondent was never an employee of the petitioner Corporation. The 1st respondent filed Writ Petition No.18770 of 2000 seeking a declaration that action of the respondents therein in not absorbing/regularizing the petitioner Man Mazdoor therein or any other post as per Circular mentioned in the prayer as illegal. According to the learned Standing Counsel for the petitioner Corporation, the 1st respondent later withdrew the said Writ Petition and raised Industrial Dispute.

11. It is no doubt true that the 1st respondent though instituted two Writ Petitions praying to grant a direction to regularize his services and the stand of the petitioner Corporation was that he

was never engaged, to appreciate the view taken by the Labour Court what is relevant to note is the stand expressed by the petitioner Corporation before the Labour Court. The petitioner Corporation filed counter before the Labour Court. Paragraphs 7, 7-A and B read as under:

“7. It is submitted that all the averments and allegations made in the claim statement are false, incorrect and hence denied. In reply to the contentions made in the claim statement is submitted that:

A) The petitioner is not at all employee of the Corporation. He was engaged whenever capital works are taken-up by the Corporation. During the work 4% of the capital expenditure is allotted for the petty supervisory charges payable to the temporarily engaged Mazdoors. Till the P.S. charges are available the Mazdoors were engaged and on the exhaust of P.S. charges the Mazdoors were not engaged by the Engineers.

B) All the employees of the Corporation will be given appointment order and disengagement order. Only Mazdoors who were engaged on seasonal/temporary works will be engaged orally and payment will be made on hand receipt from the P.S. charges of the capital work available at that time. The contents of the petitioners that they are employees of the Corporation is not correct. The W.P.No.1025/98 filed by the petitioners is already dismissed. Again the petitioners approached this Hon'ble Court without any valid ground. Hence, the question of reinstatement into regular service is not permissible by the rules and regulations of the A.P.S.R.T.C.

THE IDENTITY CARDS WERE ISSUED FOR THE PURPOSE OF IDENTIFICATION BY THE SECURITY STAFF TO ALLOW THEM INSIDE DEPOT PREMISES. THE E.D. PASSES ARE ISSUED FOR CARRYING OUT DEPARTMENTAL WORK AT VARIOUS PLACES INSTEAD OF ISSUING MONEY FOR THE BUS CHARGES. THOSE EVIDENCE DO NOT CREATE ANY RIGHT FOR REGULAR EMPLOYMENT WITHOUT RECRUITMENT PROCEDURE AS STIPULATED IN ARTICLE 14, 16 AND 309 OF THE CONSTITUTION.”

12. As seen from the above extracted averments in the counter affidavit, the petitioner Corporation admitted of engagement of the 1st respondent by the Corporation to attend to capital works, also admits of issuance of identity cards and E.D. passes to carryout departmental work at various places. Thus, stand of the petitioner

Corporation was that the 1st respondent was engaged by the Corporation. Though a different stand is taken now, what is relevant is the stand expressed before the Labour Court. Therefore, the contention of the learned Standing Counsel that the Labour Court heavily relied on identity cards filed by the 1st respondent and identity cards cannot be the basis to hold the establishment of relationship of Master and Servant, has no merit. Based on the material available on record, Labour Court held that the 1st respondent continuously worked, and the termination is in violation of the Act. The statements of the petitioner Corporation extracted above, would show that the 1st respondent worked with the Corporation. No other material is placed on record to show that the 1st respondent has not worked for 240 days in a calendar year to dislodge the finding recorded by the Labour Court.

13. In the facts of this the decision of this Court in the case of **EXECUTIVE ENGINEER, APSRTC, KARIMNAGAR vs. K.KANAKAIAH AND ANOTHER¹** relied upon by the learned Standing Counsel, has no application.

14. Finding arrived at by the Labour Court cannot be held as perverse warranting interference by this Court. Therefore, I do not see any merit in the Writ Petition.

15. The Writ Petition is, accordingly, dismissed. Miscellaneous petitions, if any, shall stand closed. No order as to costs.

P. NAVEEN RAO, J

Date: 8.2.2018
KPM