

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.17702 of 2001

ORDER:

This writ petition is filed seeking to issue a writ of mandamus, declaring the action of the 1st respondent in seeking to recover the amount, as ordered in APSE Case No.4/1996, without adjudicating the petition to set aside the *ex parte* order, dated 30.01.1997 in APSE Case No.4/1996 along with condonation delay petition, as illegal and arbitrary, and consequently direct the 1st respondent to restore APSE Case No.4/1996 on file duly setting aside the *ex parte* order dated 30.01.1997.

Brief facts of the case are that the 2nd respondent-M.Lingaiah filed a petition under Section 50 of A.P.Shops and Establishment Act before the 1st respondent Authority for payment of service compensation leave with wages, due wages and bonus, amounting to Rs.15,529/- payable by the writ petitioner. The 2nd respondent worked as a Sark Master (Cook). The petitioner herein has not paid the wages from 01.06.1996 to 31.12.1996, bonus for the year 1995-96 and due wages etc. Notices were served on both the parties in the claim petition. The writ petitioner, being opposite party in the claim petition, called absent and he was set *ex parte* on 16.12.1996. The 2nd respondent was examined and marked Exs.A1 to A5. Based on the evidence, the claim petition was allowed, vide order, dated 30.01.1997, directing the writ petitioner herein to deposit the quantified amount by way of demand draft in favour of the 1st respondent Authority within 30 days. The 1st respondent Authority has quantified the amount as under:

1. Service Compensation from 22.11.1990 to 01.05.1996 4,254-00

2. Leave with wages limited for (2) months 2,950-00
@Rs.1,475/- p.m.
3. Due wages from 01.11.1995 to 8,850-00
30.04.1996 @Rs.1,475/- p.m

Total:

Rs.16,054-00
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The claim of Rs.1,475/- towards bonus is rejected, as the same is required to be filed separately under Payment of Bonus Act. Against the said order, the opposite party/writ petitioner filed the present writ petition.

The petitioner states that he used to run a small hotel, by name "Maruthi Vilas" at Rathavada, Huzurabad to eke out his livelihood. He used to engage 6 workmen, including the 2nd respondent, to run the hotel business. After working for some time, the 2nd respondent resigned his job with effect from 01.06.1996 on health grounds. The 2nd respondent was paid all the wages and allowances. After receiving the entire amount, the 2nd respondent approached the 1st respondent Authority and filed APSE Case No.4/1996 seeking amounts due. As the petitioner could not appear before the 1st respondent Authority, he was set *ex parte* and an *ex parte order* was passed awarding an amount of Rs.16,054/- in favour of the 2nd respondent. He could not able to file a petition to set aside the *ex parte order* and to restore the case in time. But the petitioner approached the 1st respondent Authority with delay to set aside the *ex parte order*, along with a delay condonation petition, which was dismissed. Thereafter, the 2nd respondent approached the Judicial Magistrate of First Class, Huzurabad by filing CrI.M.P.No.5397 of 1997 for recovery of the amounts. Notices were issued to the writ petitioner. The writ petitioner further states that he already paid an amount of Rs.6,000/- but he could

not able to pay the remaining amount of Rs.10,000/- as he incurred loss in the business.

This court, while admitting the writ petition, granted interim stay, vide order dated 27.08.2001.

Heard the learned counsel for the writ petitioner, as well as learned counsel for the respondents. Both the learned counsel submitted their arguments, reiterating the averments made in the writ affidavit and in the counter affidavit.

Having regard to the facts and circumstances of the case, this court is of the considered view that the 2nd respondent has proved his case by adducing documentary evidence under Exs.A1 to A5 in support of his claim before the 1st respondent Authority, whereas the writ petitioner was set *ex parte*. The writ petitioner could not succeed in setting aside the *ex parte* order. The petitioner has not paid the amounts, as ordered and quantified by the 1st respondent Authority, vide order dated 30.01.1997, passed in APSE Case No.4/1996. Hence, the 2nd respondent filed CrI.M.P.No.5397/1997 before the Judicial Magistrate of First Class, Huzurabad. I find no illegality or irregularity in the impugned order, dated 30.01.1997, passed by the 1st respondent Authority in APSE Case No.4/1996.

In view of the above, the writ petition is dismissed. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.GANGA RAO,J

Date: 12.06.2018
Dsr