

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P.No.10863 OF 2004

ORDER

This writ petition is filed seeking to issue a Writ of Certiorari calling for the records relating to and connected with Award dated 20-08-2003 passed in I.D.No.16 of 2001 by the Labour Court-II, Hyderabad, and to quash or set aside the same by holding it as arbitrary and illegal and consequently to the respondents to pay back wages and other attendant benefits.

Heard Sri C.Narender, learned counsel appearing for the petitioner and Sri D.Ravi Shankar Rao, learned Standing Counsel appearing for respondents 1 to 3.

It is the case of the petitioner that he was appointed as a Helper in the respondent-Company on 2.3.1994 and while discharging his duties as such, due to ill health, he had applied for leave on 11.8.1999 and thereafter, he was hospitalized. After discharge from ESI Hospital, Erragadda, he once again admitted in the said ESI Hospital. On 24.08.1999, he was referred to Osmania General Hospital by the Doctors of ESI and he underwent operation at Osmania General Hospital on 26.08.1999 and he was discharged on 05.10.1999. Since then, he was not keeping good health, and on

the same day, he again readmitted in ESI Hospital, Erragadda and discharged on 16.10.1999. As the Doctors advised him to take rest for two months, he made an application on 17.11.1999 to the 3rd respondent seeking leave from 20-11-1999 to 20-01-2000 as he intended to go to his native place. The 1st respondent, *vide* letter dated 29-01-2000, informed the petitioner that his leave period would expire by 20-1-2000 and he was directed to be reported to duty within seven days. The petitioner received the said letter on 14.02.2000 and reported to duty on 21.02.2000, but the respondents have not allowed the petitioner to join duty. When he was not permitted to join duty, he approached the Assistant Commissioner of Labour, Patancheru, Medak District, and submitted a representation, to intervene into the matter. But the respondents, instead of allowing the petitioner to discharge his duties, had addressed a letter dated 18.01.2000 to the Assistant Commissioner of Labour, to dismiss his representation. Thereafter, the respondents have orally terminated the services of the petitioner with effect from 21.02.2000. Challenging the oral rejection, the petitioner had preferred I.D.No.16 of 2001 before the Labour Court-II, Hyderabad, under Section 2-A (2) of the Industrial Disputes Act, 1947 (for short 'the Act'). After considering the entire case, the Labour Court passed Award

on 20-08-2003, directing the respondents to reinstate the petitioner into service, with continuity of service and notional increments, but without back wages.

Learned counsel appearing for the petitioner contends that the Labour Court, having given a specific finding that no enquiry was conducted before terminating the services of the petitioner, ought to have granted the back wages. He further contends that the petitioner has received letter dated 29-1-2000 of the respondents on 14.2.2000, which itself is enough to invoke Clause 15 of the Standing Orders.

Learned Standing Counsel appearing for the respondents submits that as per the Standing Orders, the respondents are empowered to pass an order of voluntary retirement from service as they have issued a notice on 29-01-2000 to the petitioner to report to duty within one week, but the petitioner had failed to report to duty. As per the Standing Orders, no enquiry needs to be conducted and the respondents have rightly terminated the services of the petitioner.

Having considered the rival submissions made by the learned counsel on either side, this Court is of the considered view that the Labour Court, while placing reliance on the judgment of the Apex Court in *D.K.Yadad vs J.M.A.Industries*

*Limited*¹, has come to the rescue of the petitioner and directed the respondents to reinstate the petitioner into service. The operative portion of the said judgment reads as under:

“This conclusion leads us to the question as to what relief the appellant is entitled to. The management did not conduct any domestic inquiry nor gave the appellant any opportunity to put forth his case. Equally the appellant is to blame himself for the impugned action. Under those circumstances 50 per cent of the back wages would meet the ends of justice. The appeal is accordingly allowed. The award the Labour Court is set aside and the letter dated December 12, 1980 of the management is quashed. There shall be direction to the respondent to reinstate the appellant forthwith and pay him back wages within a period of three months from the date of receipt of this order. The appeal is allowed accordingly. The parties would bear their own costs.”

A perusal of the above said decision, makes it abundantly clear that the petitioner is entitled to the back wages and in view of the specific finding of the Labour Court that the respondent-management has not followed the procedure while imposing the punishment. In the instant case, admittedly, the respondents have not conducted any enquiry and no opportunity was given to the petitioner. As a specific finding was recorded by the Labour Court that no opportunity was given to the petitioner and no enquiry was

¹ (1993) 3 SCC 259

conducted, it ought to have exercised its power under Section 11-A of the Act and granted atleast 50% of the back wages.

Hence, ends of justice would be met if a direction is given to the respondents to pay 50% of the back wages in addition to the relief granted by the Labour Court.

Accordingly, the Writ Petition is disposed of directing the respondents to pay 50% of the back wages in addition to the relief granted by the Labour Court. No costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

28th August, 2018
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