

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT APPEAL No.1556 of 2018

JUDGMENT: (per Hon'ble Sri Justice Sanjay Kumar)

The appellant is the petitioner in W.P.No.11254 of 2002. The said writ petition was filed with the following prayer:

'Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue any appropriate writ, order or direction, particularly one in the nature of "Writ of Certiorari" calling for the records pertaining to award dt.25-4-2001 in ID No.154/1999, on the file of Industrial Tribunal cum Labour Court, Godavari Khani, and published on 7-7-2001, vide G.O.Rt.No.1337, dt.11-6-2001, and quash the same by reinstating the petitioner with all consequential benefits.'

By order dated 17.09.2018, a learned Judge of this Court dismissed the said writ petition. Hence, this appeal.

The primary grievance of the appellant-petitioner in I.D.No.154 of 1999 on the file of the Industrial Tribunal-cum-Labour Court, Godavarikhani, was that he was removed from service as a daily wage Night Watchman on 07.01.1996 only on the strength of a show-cause notice without adhering to the due procedure by holding an enquiry. It is however significant to note that aggrieved by his removal from service, the appellant-petitioner initially approached this Court by way of W.P.No.2323 of 1996. He sought a writ of Mandamus declaring the removal order dated 07.01.1996 as illegal on the ground of violation of the principles of natural justice. This violation was alleged in the context of the employer not holding an enquiry prior to the removal order being passed. However, the said writ petition was dismissed by a learned Judge of this Court *vide* order dated 28.10.1999. Therein, the learned Judge

specifically held that as the appellant-petitioner was only a NMR Watchman appointed on daily wages, a regular enquiry as contemplated under the service rules would not be required or applicable to his case. Having held so, the learned Judge, while dismissing the said W.P.No.2323 of 1996, further observed that as the appellant-petitioner was a workman, he had an alternative remedy under the Industrial Disputes Act, 1947, and he could raise an Industrial Dispute before the proper forum constituted under the said Act. Merely because the said liberty was given to the appellant-petitioner, it does not oblivate from the fact that the observation of the learned Judge to the effect that no regular enquiry needed to be held against the appellant-petitioner as he was a daily wage NMR Watchman and that issuance of a show-cause notice prior to his removal was sufficient, attained finality.

In the light of the aforestated binding finding, it is not open to the appellant-petitioner to reopen the same issue, be it before the Industrial Tribunal-cum-Labour Court, Godavarikhani, or before this Court in continuation of the I.D. proceedings. We therefore find no grounds to interfere with the order of the learned Judge holding to this effect and in non-suited the appellant-petitioner.

The writ appeal is devoid of merit and is accordingly dismissed.

Pending miscellaneous petitions, if any, shall also stand dismissed.

No order as to costs.

SANJAY KUMAR,J

M. GANGA RAO, J

Date: 26.11.2018
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