

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P. Nos.42746 and 42776 of 2017

COMMON ORDER :

Petitioner in both these cases is a Company registered under the Companies Act, 1956 engaged in infrastructure business activity.

2. The 3rd respondent was employed by the petitioner as its Head-Human Resource (India) and joined the petitioner on 08-03-2016.

3. While it is the contention of the petitioner that the 3rd respondent had resigned his job in the petitioner on 25-08-2016, the 3rd respondent disputes the same and contends that his resignation was not accepted and that after his resignation was submitted, an order of termination of service was passed on 25-08-2016, which was served post-resignation.

4. The 3rd respondent approached the 2nd respondent invoking Section 48(1) of Telangana Shops and Establishments Act, 1988 (for short "the Act") challenging his alleged illegal termination. It was numbered as S.E.No.3/2017.

5. Before 27-01-2017, the 2nd respondent issued notices through email to the petitioner on 3rd respondent's application. By 27-01-2017 the notices sent through email were served on petitioner, but petitioner was not present and so on 27-01-2017 the 2nd respondent posted the matter to 06-03-2017 for filing of counter by petitioner. However, the

matter appears to have been listed before the 2nd respondent on 07-02-2017 also, when a counsel filed memo on behalf of petitioner offering to file vakalat and the 2nd respondent directed the said counsel to file vakalat along with counter and adjourned the matter to 10-03-2017.

6. On that day, the petitioner filed I.A.No.1 of 2017 raising 4 points questioning the maintainability of the application filed by 3rd respondent before the 2nd respondent under the provisions of the Act.

7. Arguments on that application of both parties were heard by the 2nd respondent. He passed on 14-07-2017 an order dismissing I.A.No.1 of 2017 in S.E.No.3/2017.

8. Challenging the said order, W.P.No.42776 of 2017 is filed by the petitioner.

9. While dismissing I.A.No.1 of 2017 on 14-07-2017, the 2nd respondent again granted time to the petitioner to file counter in the main case and posted the matter to 28-07-2017 for issuance of notice in the main case. The matter was next listed on 23-10-2017 when petitioner's counsel requested further time to file counter. So, the matter was adjourned to 02-11-2017.

10. On 02-11-2017 since the petitioner did not file counter, it was set *ex parte*.

11. It appears that in the meantime, on 24-10-2017, 3rd respondent filed a rejoinder petition on 24-10-2017, for which the petitioner filed a reply on 10-11-2017, but petitioner however failed to file a counter in the main case even by 10-11-2017.

12. Thereupon orders were pronounced in the main case on 01-12-2017 allowing the claim of the 3rd respondent.

13. Assailing the same, W.P.No.42746 of 2017 is filed.

14. It is the contention of the learned counsel for petitioner in W.P.No.42776 of 2017 and 42746 of 2017 that the order in I.A.No.1 of 2017 said to have been pronounced on 14-07-2017 was not served on petitioner till 09-10-2017, which is disputed by the learned counsel for 3rd respondent. It is the further contention of the learned counsel for petitioner that the petitioner was deprived of opportunity to challenge the order immediately after it was pronounced; it was set *ex parte* on the ground that counter in the main case is not filed; and without hearing any arguments, after the petitioner was set *ex parte* on 02-11-2017, the order dt.01-12-2017 has been pronounced allowing S.E.No.3/2017.

15. Learned counsel for petitioner contends that the statement in the impugned order that arguments of both parties were heard, is factually incorrect. His further plea is that though in the application I.A.No.1 of 2017, 4 points were raised by petitioner, only one objection was

adverted to and rest of the objections have not been considered or adverted to and this has caused serious prejudice to the petitioner.

16. Per contra, Smt.A.Satya Sri, learned counsel for 3rd respondent contended that from 27-01-2017 to 23-10-2017 though time was granted to the petitioner to file counter in the main case, deliberately the petitioner did not choose to file counter; the petitioner therefore cannot complain that it was denied opportunity to file counter in the main case; and that this would amount to allowing the petitioner to take advantage of its own wrong. She also contended that the resignation of the 3rd respondent had not been accepted by petitioner and that there is an illegal termination of the service of 3rd respondent by petitioner.

17. However, it is not the case of the learned counsel for 3rd respondent that after setting the petitioner *ex parte* on 02-11-2017, the 2nd respondent had posted the matter “for hearing of arguments” to any particular date and “heard” the arguments of both parties.

18. In fact, the docket of the 2nd respondent, which has been produced by the learned Government Pleader for Labour does not disclose therein that after 3rd respondent was set *ex parte* on 02-11-2017, the arguments of parties were heard at all. It merely records that on 02-11-2017 matter was posted for orders after petitioner was set *ex parte*, and that when the matter was listed on 10-11-2017 petitioner filed reply rejoinder and did not file counter in

the main case, the 2nd respondent again posted the matter 'for orders' and orders were pronounced on 01-12-2017.

19. The 2nd respondent being a *quasi* Judicial authority, is bound to hear the arguments of both parties before pronouncing the order in the main case and he is not entitled to decide the matter on the pleadings filed by only one party without hearing the arguments of both sides. It is therefore clear that the statement in the impugned order dt.01-12-2017 passed by 2nd respondent that he had heard arguments of both parties, is factually incorrect and is not borne out by record.

20. In this view of the matter, the order dt.01-12-2017 in S.E.No.3/2017 of the 2nd respondent is set aside; the 2nd respondent is directed to list the matter for arguments, after notice to both parties and consider the pleadings and documents already on record and pass a reasoned order within six (06) weeks from the date of receipt of copy of this order and communicate the same to both parties. All contentions on law and arising out of pleadings already on record are open to be raised by both parties including the preliminary objections, which according to petitioner, have not been taken into account by 2nd respondent while deciding I.A.No.1//2017.

21. It is made is clear that this Court has not expressed any opinion on the merits of the contentions of both parties either on maintainability or otherwise.

22. Both these Writ Petitions are disposed of with the above directions. No costs.

23. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date : 13-03-2018

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