

HIGH COURT FOR THE STATE OF TELANGANA

THE HON'BLE THE ACTING CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

WRIT APPEAL No.426 of 2019

Date: 04.06.2019

Between:

Hindustan Coca-Cola Beverages Private Limited

...Appellant

And

Mr. G. Narasimha Rao @ G. N. Rao,
and others.

...Respondents

Counsel for the appellant : Senior Counsel Mr. C. R. Sridharan
For
Mr. Salloori Ramesh

Counsel for the respondents: Mr. V. Narasimha Goud
GP for Labour

The Court made the following:

JUDGMENT: (Per the Hon'ble the Acting Chief Justice Raghvendra Singh Chauhan)

Hindustan Coca-Cola Beverages Private Limited, the appellant, is aggrieved by the order, dated 15.04.2019, passed by a learned Single Judge in W.P.M.P.No.28408 of 2016 in W.P.No.39742 of 2015, whereby the learned Single Judge has directed the appellant, the employer, to comply with the requirements of Section 48(4) of the Andhra Pradesh Shops & Establishments Act, 1988 ('the Act', for short), and to pay the last full wages which were being paid to the respondent No.1 – Mr. G. Narasimha Rao, before his services were terminated.

Briefly, the facts of the case are that in 2002 the respondent employee, Mr. G. Narasimha Rao, had joined the services of the appellant Company on the post of Sales Coordinator. He was designated as a Team Leader. However, during the course of his service, on 24.06.2010 he was issued a show cause notice, wherein it was alleged that a complaint by a co-employee has been received wherein she claimed that she was sexually harassed by the respondent employee. On 06.07.2010 the respondent employee submitted his explanation to the said show cause notice. After holding an enquiry, by order dated 27.09.2010, his services were terminated by the appellant Company.

Since the respondent employee was aggrieved by the termination order, dated 27.09.2010, he filed an appeal under Section 48(1) of the Act before the First Appellate Authority. By

order, dated 08.01.2013, the First Appellate Authority allowed the appeal, and set aside the termination order. Since the appellant Company was aggrieved by the said order, it filed an appeal before the Second Appellate Authority under the Act. However, by order dated 06.10.2015, the Second Appellate Authority dismissed the appeal filed by the appellant Company, and upheld the order passed by the First Appellate Authority. Since the appellant Company was aggrieved by the order passed by the Second Appellate Authority and the First Appellate Authority, it has filed a Writ Petition before this Court, namely W.P. No. 39742 of 2015.

While entertaining the said writ petition, by order dated 08.12.2015, a learned Single Judge had suspended the operation of the order passed by the First and Second Appellate Authority. Subsequently, during the pendency of the writ petition, the respondent employee filed an application under Section 48(4) of the Act. The said application has been allowed by the impugned order dated 15.04.2019. Hence, the present appeal before this Court.

Mr. C. R. Sridharan, the learned Senior Counsel, has raised the following contentions before this Court:

Firstly, in the interim application filed by the appellant Company, a prayer was made that the operation of Section 48(4) of the Act too should be suspended during the pendency of the

Writ Petition. The said prayer was granted by the learned Single Judge by order dated 08.12.2015.

Secondly, relying on the case of **Dena Bank v. Ghanshyam**¹ the learned Senior Counsel has pleaded that the High Court would be justified in not only entertaining the employer's challenge to an award, but also in appropriate cases, to stay the operation of the award in its entirety, or in regard to back wages only, or in regard to reinstatement without interfering with the payment of back wages, or on payment of wages in future irrespective of the result of the proceedings before it, or in imposing such condition as to the payment of the salary as on the date of the order, or a part of the back wages and its withdrawal by the workman as it may deem fit in the interests of justice. Therefore, the learned Single Judge was justified in suspending the operation of Section 48(4) of the Act by his order dated 08.12.2015.

Thirdly, the respondent employee did not file any application for either modification or for vacating the order dated 08.12.2015. The only application filed by the respondent employee was under Section 48(4) of the Act. Since the very operation of Section 48(4) of the Act was suspended by the order dated 08.12.2015, the learned Single Judge was not justified in directing the appellant Company to implement the provision of Section 48(4) of the Act, and to pay the last full wages to the respondent employee.

¹ (2001) 5 SCC 169

Lastly, from the initial stage, the appellant Company has been pleading that, since the respondent employee holds “a managerial post” and is drawing more than Rs.1,600/- as his monthly salary, as per Section 73(1)(a) of the Act, the Act is inapplicable to such an employee. Therefore, keeping in mind the non-applicability of the Act, the learned Single Judge was justified in suspending the operation of Section 48(4) of the Act by order dated 08.12.2015. Moreover, although the said contention has been raised before the learned Single Judge, however, notwithstanding the said plea, the learned Single Judge has erred in directing the payment of the last full wages in compliance of Section 48(4) of the Act. Therefore, the impugned order deserves to be set aside by this Court.

On the other hand, Mr. V. Narasimha Goud, the learned counsel for the respondent employee, has raised the following counter-arguments:

Firstly, while relying on the case of **Rajeshwar Mahto v. Alok Kumar Gupta**², the learned counsel has pleaded that Section 48(4) of the Act is in *para materia* with Section 17-B of the Industrial Disputes Act, 1947. While appreciating the scope of an application under Section 17-B of the Industrial Disputes Act, in the aforementioned case, the Hon’ble Supreme Court has clearly opined that the application under Section 17-B of the Industrial Disputes Act is an independent application. Therefore, even an application under Section 48(4) of the Act

² (2018) 4 SCC 341

has to be treated as an independent application. Hence, there was no need for the respondent employee to file an application for modification or vacating of the order dated 08.12.2015.

Secondly, relying on the case of **Ch. Saraiah v. Executive Engineer, Panchayat Raj Department**³, the learned counsel has pleaded that even if the employer were to succeed in his petition challenging the award passed by the Labour Court, even then, the employer would not be entitled to recover the amount paid by him to the employee under Section 17-B of the Industrial Disputes Act. Therefore, according to the learned counsel, even if in the present case the appellant Company were to succeed in its Writ Petition pending before this Court, even then it cannot recover the amount paid to the respondent employee under Section 48(4) of the Act.

Thirdly, the only requirement for an application filed under Section 48(4) of the Act is that, when an award passed by the First and Second Appellate Authority is under challenge before the High Court, during the pendency of the petition, the employee should be unemployed and such a declaration has to be submitted by the employee. Since Section 48(4) of the Act is a social beneficial piece of legislation, it is a mandatory provision which has to be given effect to during the pendency of the writ petition. According to the learned counsel, both the ingredients of Section 48(4) of the Act have been fulfilled in the present case. Therefore, the learned Single Judge was justified

³ (1999) 9 SCC 229

in directing the appellant Company to pay the last full wages to the respondent employee.

Fourthly, the reliance on the **Ghanshyam**'s case (supra) is highly misplaced. For, the issue before the Hon'ble Supreme Court was whether the High Court is justified in granting a relief beyond the provision contained in Section 17-B of the Industrial Disputes Act or not? However, according to the learned counsel, this is not the issue presently before this Court.

Lastly, the operation of a social beneficial piece of legislation cannot be suspended by any Court. Therefore, the learned Senior Counsel is unjustified in claiming that, by order dated 08.12.2015, the learned Single Judge has, in fact, suspended the operation of Section 48(4) of the Act. Hence, the learned counsel has supported the impugned order.

Heard the learned counsel for the parties, perused the impugned order and considered the case laws cited at the Bar.

Section 48(4) of the Act is as under:

“(4) Where in any case, an appellate authority by its award directs reinstatement of any employee and the employer challenges such award in any Court of Law, the employer shall be liable to pay such employee during the pendency of such proceedings, full wages last drawn by him, if the employee had not been employed in any establishment during such period and an affidavit by such employee had been filed to that effect in such Court:

Provided that where it is proved to the satisfaction of the Court that such employee has been

employed and has been receiving remuneration during any such period or part thereof the Court shall order that no wage shall be payable under this section for such period or part, as the case may be.”

A bare perusal of the said provision clearly reveals that there are certain pre-requisites for the application of the said provision: firstly, the award should direct reinstatement of an employee. Secondly, the said award should be challenged by the employer in any Court of law. Thirdly, the employee has to submit a declaration, before the Court, that he has not been employed in any establishment during such period. If these three conditions are fulfilled, then the employee is entitled to be paid the full wages last drawn by him. Moreover, it is only if the Court is satisfied that notwithstanding the affidavit filed by the employee, he was, indeed, employed during this period, it is only under this circumstance that the Court can direct that “no wage shall be payable under Section 48(4) of the Act for such period or part” thereof, meaning thereby, during the time that the employee was duly employed in an establishment.

The case of **Ghanshyam** (supra) does not rush to the rescue of the appellant. For, even in the said case, the Hon’ble Supreme Court has not observed that the High Court under its writ jurisdiction has the power to stay the operation of a provision of law. Therefore, the learned counsel for the appellant is unjustified in claiming that by order dated 08.12.2015 passed by the learned Single Judge, the learned

Single Judge had stayed the operation of Section 48(4) of the Act.

The said provision is similar, in content and character to Section 17-B of the Industrial Disputes Act. Both the provisions are social beneficial pieces of legislation. The aim and object of the provisions is to ensure that, while an award is under challenge, the workman or the employee have sufficient financial means to survive, and the workman and employee cannot be reduced to a hand to mouth existence during the pendency of the litigation.

Keeping in mind the social beneficial provision, in the case of **Rajeshwar Mahto** (supra) the Hon'ble Supreme Court has clearly opined that an application under Section 17-B of the Industrial Disputes Act, and there by extension, an application under Section 48(4) of the Act is an independent application which an employee is entitled to file before the Court while the case is pending before the Court. Hence, the respondent employee need not have filed an application for modification or for vacating the order dated 08.12.2015.

Since an application under Section 48(4) of the Act is an independent application, while considering the said application, the Court is required merely to examine whether the ingredients of Section 48(4) of the Act have been duly satisfied by the employee or not. While entertaining an application under

Section 48(4) of the Act, the Court is not required to enter into the merits or demerits of the case.

Although the learned Senior Counsel is justified in claiming that from the very first stage the appellant Company has been pleading that the case does not fall within the scope and ambit of the Act, he is further justified in claiming that even the said contention was raised before the learned Single Judge. However, as mentioned hereinabove, the said contention will touch upon the merits and demerits of the case. Therefore, the learned Single Judge possibly could not have dealt with the said contention while dealing with an application filed under Section 48(4) of the Act. Moreover, a bare perusal of the order passed by the First Appellate Authority clearly reveals that the said contention was raised even before the First Appellate Authority. But the said plea has been duly rejected. Hence, it is not for the learned Single Judge to presently go into the issue of whether the Act is applicable to the present case or not? The learned Single Judge is merely required to limit his examination to see whether the ingredients of Section 48(4) of the Act have been complied with or not?

Admittedly, the appellant Company has challenged the legality of the orders passed by the First and Second Appellate Authority under the Act. Indeed, the said challenge is still pending before this Court. According to the respondent employee, he has submitted a declaration that during the

pendency of the petition he continues to be unemployed. The said affidavit has not been countered by the appellant Company. In fact, no evidence has been produced so far by the appellant Company to establish the fact that during the pendency of the petition the respondent employee is/was employed with an establishment. Therefore, as all the ingredients of Section 48(4) of the Act have been duly complied with, the learned Single Judge was certainly justified in directing the appellant Company to pay the last full wages to the respondent employee.

For the reasons stated above, this Court does not find any merit in the present appeal; it is hereby dismissed.

The miscellaneous petitions pending in this Writ Appeal, if any, shall stand closed. There shall be no order as to costs.

RAGHVENDRA SINGH CHAUHAN, ACJ

Dr. SHAMEEM AKTHER, J

04.06.2019
vs