

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILU

WRIT PETITION No.20205 of 2014

ORDER:

This writ petition is filed seeking the following relief :-

“....to issue a Writ order or direction and more particularly one in the nature of writ of Mandamus declaring the reference made to the Labour Court-I, Hyderabad under Section 10(1) of the Industrial Dispute Act 1947 by the 2nd respondent herein vide proceedings No.B/ 1161/ 2013 dated 20.03.2013 pursuant to Lr.No.A/ 157/ 2012 dated 18.03.2012 of the 3rd respondent as illegal, arbitrary, unconstitutional and set aside the same”.

Heard Mr.P.Venkat Reddy, learned counsel for petitioner, learned Government Pleader for Labour for respondents 1 to 3 and Mr.K.V.Smhadhri, learned counsel for the 4th respondent.

It has been contended by the petitioner that it is a registered Software Company and the 4th respondent was employed as a Team leader with the petitioner. The petitioner has terminated the services of the 4th respondent, as the work done by the 4th respondent was not satisfactory. The 4th respondent has raised a dispute before the Conciliation Officer, who in turn entertained the complaint and initiated conciliation proceedings. The Conciliation Officer had made an effort to resolve the issue and issued notice to the petitioner. The petitioner has appeared before the Conciliation Officer and has taken a specific stand that the 4th respondent is not a workman and the petitioner's Software Company would not come within the purview of Industrial Disputes Act, 1947 (for short 'the Act'). The Conciliation Officer has submitted a failure report to the 2nd respondent, who in turn referred the dispute to the Labour Court-I, Hyderabad, vide proceedings dated 20.03.2013.

Challenging the same, the petitioner has filed the present writ petition.

Learned counsel for petitioner has contended that the Conciliation Officer and the 2nd respondent ought to have adjudicated the issues whether the 4th respondent is a workman or not and whether the petitioner's Software Company comes within the purview of the Act. Without appreciating any of the contentions raised by the petitioner, the 2nd respondent referred the dispute to the Labour Court for adjudication. Therefore, the counsel for petitioner contended that the impugned reference made by the 2nd respondent is liable to be set aside and the writ petition be allowed.

Learned Government Pleader appearing for respondents 1 to 3 has contended that the Conciliation Officer has submitted a failure report to the 2nd respondent and the 2nd respondent is a competent authority to refer the dispute to the Labour Court. Accordingly, the 2nd respondent has referred the dispute to the Labour Court-I, Hyderabad. The issues whether the 4th respondent is a workman or not and whether the petitioner's Company comes within the purview of the Act or not, are all matters, which have to be gone into by the Labour Court, after appreciating the evidence. At this stage, the issue whether the 4th respondent is workman or not cannot be adjudicated. Therefore, there are no merits in the writ petition and the same is liable to be dismissed.

Learned counsel appearing for the 4th respondent has contended that the workman comes within the meaning of Section 2(s) of the Act and the petitioner's company has illegally

terminated the services of the 4th respondent. The 4th respondent has rightly approached the Conciliation Officer and the Conciliation Officer, after conciliation proceedings, had submitted a failure report to the 2nd respondent, who in turn in exercise of power under Section 10(1) of the Act, had rightly referred the dispute to the Labour Court. Therefore, there are no merits in the writ petition and the same is liable to be dismissed.

This Court, having considered the rival submissions, is of the considered view that the issue whether the 4th respondent is a workman or not cannot be adjudicated in a writ jurisdiction and if the petitioner is contending that the 4th respondent is not a workman, then it must lead evidence before the Labour Court to that effect. The petitioner is also contending that it would not come within the purview of the Act. Even, this ground can also be raised by the petitioner before the Labour Court. This Court is informed by the counsel that right to lead evidence by the petitioner has been forfeited by the Labour Court. Therefore, this Court is of the considered view that the issues raised in the writ petition can be raised before the Labour Court. This Court is not inclined to interfere with the impugned reference. However, the petitioner is given liberty to raise all issues before the Labour Court and the Labour Court shall permit the petitioner to participate in the proceedings before the Labour Court, and if necessary, give one more opportunity to lead evidence. It is needless to say that the Labour Court would consider the entire case and dispose of the dispute raised by the 4th respondent within a reasonable period of time,

preferably within six months from the date of receipt of a copy of this order.

With the above observations, the writ petition is disposed of.
No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

ABHINAND KUMAR SHAVIL, J

Date: 04-04-2019
Prv



