HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE P.KESHAVA RAO

WRIT APPEAL No.1633 OF 2018

JUDGMENT: *(per V. Ramasubramanian, J)*

Aggrieved by a common order passed by the learned Single Judge in a batch of six Writ Petitions, three at the instance of management and three at the instance of the workmen, the management has come up with the above Writ Appeal.

2. Heard Mr.Sridharan, learned senior counsel appearing for the appellant and Smt.Udaysri, learned counsel who takes notice for third respondent workman.

3. Three employees by name D.S.Subbarao, G.Padmavathi and T.T.Raju (the third respondent in the above Writ Appeal) were terminated from service, by the management by an order dated 04.07.2003. Challenging the order of termination, all the three employees including the third respondent in this Writ Appeal filed separate Appeals before the Assistant Commissioner of Labour, Hyderabad – II, under Section 48 of the Andhra Pradesh Shops and Establishments Act, 1988 (for short, 'the Act of 1988'). The original authority passed a common order dated 19.07.2004, holding that the termination of the employees was not in accordance with the principle of "last come first go" and that some of the juniors of

the terminated employees were retained in service. After holding so, the original authority, instead of ordering re-instatement with consequential benefits, chose to grant only compensation in lieu of re-instatement with back wages. This compensation was calculated at the rate of 100 days average wages per every completed year of service.

4. As against the common order passed by the original authority on 19.07.2004, the management as well as the employees filed separate appeals before the second appellate authority under Section 48(3) of the Act of 1988. By the common order dated 24.04.2006, the second appellate authority dismissed all the appeals, filed both by the management as well as by the employees.

5. Challenging the order of the first appellate authority as well as the second appellate authority, the management filed three Writ Petitions and the employees filed three Writ Petitions. All the six Writ Petitions were dismissed by a learned Judge of this Court by a common order dated 11.10.2018. The employees have not so far come up with any appeal against the dismissal of their three Writ Petitions. However, the management came up with three Writ Appeals, the first two of which in W.A.Nos.1631 and 1632 of 2018, were listed for hearing before another Bench of this Court. By an order dated 10.12.2018 a Bench of this Court

dismissed the two Writ Appeals W.A.Nos.1631 and 1632 of 2018, confirming the judgment of the learned Single Judge.

6. What is before us today is the third Writ Appeal filed by the management, as against the dismissal of one of their Writ Petitions by the learned Single Judge. Since the order of the learned Single Judge passed in all the six Writ Petitions, has actually merged with the order of the Division Bench in the two Writ Appeals W.A.Nos.1631 and 1632 of 2018, this Court should actually dismiss the present Writ Appeal, without much ado as the doctrine of merger applies.

7. Yet Mr.Sridharan, learned Senior counsel for the appellant argued that the dismissal of the two Writ Appeals by another Bench of this Court will not prevent the appellant from canvassing the correctness of the order of the learned Single Judge. Though we do not agree with the said contention, in view of the fact that we cannot avoid the doctrine of merger yet we shall deal with the submissions raised.

8. The main contention of the learned senior counsel for the appellant is that the Act of 1988 prescribes under Section 47 (1), a formula for calculating service compensation payable to an employee whose services are terminated. Therefore according to the learned senior counsel for the appellant, it is not open to an authority created under the Statute, to evolve

its own formula for calculation of a service compensation, thereby throwing the Statutory prescription to the winds.

9. In order to appreciate the said contention, it may be necessary to extract Section 47(1) of the Act of 1948 which reads as follows:

> **"47. Conditions for terminating the services of an employee, payment of service compensation for termination, retirement, resignation, disablement, etc., and payment of subsistence allowance for the period of suspension:-** (1) No employer shall, without a reasonable cause, terminate the service of an employee who has been in his employment continuously for a period of not less than six months without giving such employee at least one month's notice in writing or wages in lieu thereof and in respect of an employee who has been in his employment continuously for the period of not less than one year, a service compensation amounting to fifteen days average wages for each year of continuous employment:
>
> Provided that every termination shall be made by the employer in writing and a copy of such termination order shall be furnished to the Inspector having jurisdiction over the area within three days of such termination."

10. After drawing our attention to the language employed in Sub Section (1) of Section 47 which mandates the payment of service compensation at the rate of 15 days average wages for each year of continuous employment, the learned senior counsel for the appellant drew our attention to a few judgments of the Supreme Court, which are as follows:

(1) Gordon Woodroffe Agencies (P) Limited v. Presiding Officer, Principal Labour Court and others[1],

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[1] (2004) 8 SCC 90

(2) N.S.Giri v. Corporation of City of Mangalore[2],

(3) Kerala Solvent Extractions Limited v. A.Unnikrishnan and another[3],

(4) Maruti Udyog Limited v. Ram Lal and others[4].

11. Drawing our attention to the principles of law formulated in the aforesaid decisions, it is contended by Mr.Sridharan, learned senior counsel for the appellant that there is no basis for the first appellate authority to fix service compensation at the rate of 100 days average wages for each year of continuous employment, when the Statute clearly stipulates under Section 47 (1) of the Act of 1988, payment of service compensation at the rate of 15 days average wages for each year of continuous employment. According to the learned senior counsel, what is fixed by Statute cannot be tinkered or tampered with by the creature of the very Statute itself.

12. We have carefully considered the above submissions.

13. It is true that the creature of the Statute cannot go beyond the four corners of the Statute by which the authority was created. Therefore before going into the principles of law enunciated in the aforesaid decision, it may be necessary to take note of the jurisdiction and powers of the first appellant authority as conferred by the Act of 1988.

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[2] (1999) 4 SCC 697
[3] (2006) 13 SCC 619
[4] (2005) 2 SCC 638

14. As pointed out by the learned senior counsel for the appellant the conditions for terminating the service of an employee are enumerated in Section 47 of the Act of 1988. But beyond prescribing what are the conditions to be complied with by the management before terminating the services of an employee, nothing else is stated by Section 47 of the Act of 1988.

15. In contrast, we may have to look at Section 48(2) of the Act of 1988, to see what are the powers and functions of the appellate authority. Section 48 (2) of the Act of 1988 reads as follows:

> Section 48(2): The appellate authority may, after inquiry in the prescribed manner, dismiss the appeal or direct the reinstatement of the employee with or without wages for the period he was kept out of employment or direct payment of compensation without reinstatement or grant such other relief as it deems fit in the circumstances of the case;
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> Provided that the authority concerned shall, without delay, hear such appeal and pass such orders within a period of three months from the date of receipt of such appeal;
>
> Provided further that where any such authority considers it necessary or expedient so to do, it may, for reasons to be recorded in writing extend such period by such further period as it may think fit;
>
> Provided also that no proceedings before such authority shall lapse merely on the ground that any period specified in this sub-section had expired without such proceedings being completed.

16. It may be seen from Section 48(2) of the Act of 1988 that the first appellate authority is entitled to do any one of the following:

1. To dismiss the appeal,

2. To direct the re-instatement of the employee with or without wages for the period he was kept out of the employment or
3. To direct payment of compensation without re-instatement,
4. To grant such other relief as it deems fit in the circumstances of the case.

17. Therefore the correctness of the order of the first appellate authority in this case has to be decided not with reference to Section 47(1) of the Act of 1988 but with reference to the power available under Section 48 (2) of the Act of 1988. Under Section 48(2) of the Act of 1988, the powers available to the first appellate authority, are almost similar to the powers available to the Labour Court under the Industrial Disputes Act. In fact Section 11(A) of the Industrial Disputes Act, 1947 (for short, the Act of 1947) merely empowers the Labour Courts and Industrial Tribunals, to direct re-instatement of the workmen on such terms and conditions as the Court may think fit or to give such other relief to the workmen including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. In contrast to Section 11 A of the Act of 1947, Section 48(2) of the Act of 1988 confers power to direct payment of compensation without re-instatement or to grant such other relief as the

first appellate authority may deem fit in the circumstances of the case.

18. Therefore it is clear that the conclusion reached by the first appellate authority to grant compensation in lieu of re-instatement at the rate of 100 days average wages, is not something that was weaved out of imagination or which came out of the blue. As a matter of fact the moment the first appellate authority found that the termination was unjustified, the remedy that could be provided by the first appellate authority was to direct re-instatement with or without back wages. What the first appellate authority has granted is only a lesser relief. For fixing the quantum of the lesser relief, the first appellate authority has chosen something which is almost equivalent to 25% or 30% of the back wages (if we take the proportion between 100 days and 365 days).

19. Therefore the exercise of the power by the first appellate authority and the confirmation of the same both by the second appellate authority and by the learned Judge of this Court, cannot be said to be arbitrary but they flow out of the specific Provisions of Section 48 (2) of the Act of 1988.

20. It must be remembered that the scope of jurisdiction under Article 226 of the Constitution of India over the quasi judicial orders of the authorities like those under the Act of 1988 as well as the Courts like Labour Courts, is limited and

it is not open to this Court to act like a super appellate authority to scrutinize the correctness. The moment it is found that a power available under the Statute has been exercised, the Court under Article 226 will switch over to the hands off mode.

21. Now let us come to the decisions relied upon by the learned Senior counsel. In ***Gordon Woodroffe Agencies (P) Limited v. Presiding Officer, Principal Labour Court and others*** ***(supra 1),*** what was observed by Supreme Court in para – 13 of its decision was that the Labour Court had no authority to direct payment of an additional sum by way of ex-gratia of payment, over and above what is provided by the Statute provided (i) the act of management in the closing down was found to be valid and (ii) the legally payable amounts have been paid or offered in time. Therefore, the conditions precedent for the termination, should have been complied with. It is only in such cases that the ratio laid down in ***Gordon Woodroffe Agencies (P) Limited v. Presiding Officer, Principal Labour Court and others*** ***(supra 1)*** will apply.

22. In ***N.S.Giri v. Corporation of City of Mangalore*** ***(supra 2)***, all that was stated was that an award under the Industrial Disputes Act cannot be in-consistent with the law laid down by the Legislature or by the Supreme Court. We do not find in this case that the order of the appellate authority runs

contrary to the powers conferred by Section 48(2) of the Act, 1988.

23. If the interpretation sought to be given by the learned senior counsel for the appellate is accepted, it will lead to the consequence of holding that the first appellate authority can award compensation in lieu of reinstatement only at the rate of 15 days average wages. In other words, even in cases where the conditions precedent prescribed under Section 47(1) are not complied with, the first appellate authority will be bound only to direct the management to comply with the very same condition. That is not the purport of the judgment in ***N.S.Giri v. Corporation of City of Mangalore*** ***(supra 2).***

24. In ***Kerala Solvent Extractions Limited v. A.Unnikrishnan and another*** ***(supra 3)***, the Court found fault with the tendency of Courts in granting reliefs beyond the framework of law, based upon misplaced sympathies. We do not know how the said decision can be invoked in this case.

25. As we have pointed out earlier, the retrenchment of the employees in this case was held to be unjustified. But reinstatement was denied to the workmen and a lesser relief was granted. In other words, this is a case where the employees were not shown the sympathy that they deserved and the same will not fall under the category of misplaced

sympathy. It is actually a case of displaced sympathy and not misplaced sympathy.

26. Coming to the next decision namely the one in ***Maruti Udyog Limited v. Ram Lal and others*** ***(supra 4)*** all that the Court implored was that the deeming provisions have a limited role to play and that there is no discretion to expand the same. The said decision will also not go to the rescue of the appellant.

27. As we have pointed out earlier, the order of the learned Single Judge in the batch of Writ Petitions has already merged with the order of the Division Bench in two Writ Appeals filed by the management itself. Yet we did not adopt the shortcut method of disposing the Writ Appeal on that singular basis but chose to deal with the submissions since legal arguments were advanced. We find that the first appellate authority has exercised the jurisdiction vested in it under Section 48(2) of the Act of 1988 and the second appellate authority chose not to interfere with the same. Therefore, the learned Judge was right in choosing to uphold the orders of two authorities in a Writ Petition under Article 226 of the Constitution of India. Hence, we find no justification to take a different view from the view taken by the other Bench which dismissed W.A.Nos.1631 and 1632 of 2018.

28. Accordingly this Writ Appeal is dismissed. No order as to costs.

Consequently, miscellaneous petitions if any pending in the Writ Appeal shall stand dismissed.

V. RAMASUBRAMANIAN, J

P. KESHAVA RAO, J

25.01.2019
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