

THE HON'BLE THE CHIEF JUSTICE SATISH CHANDRA SHARMA

AND

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

W.A.No.409 of 2021

JUDGMENT: *(Per the Hon'ble the Chief Justice Satish Chandra Sharma)*

The present writ appeal is arising out of the order dated 27.01.2021 passed by the learned Single Judge in W.P.No.1083 of 2021.

The undisputed facts of the case reveal that respondent No.1 in the present writ appeal was appointed as a Junior Lineman on 02.08.2011 on contractual basis. Though respondent No.1 was initially appointed only for a period of one year, he was continued in service and a Memo was issued on 12.09.2012 for engaging a private person unauthorisedly for attending the electrical breakdown. He submitted his explanation on 29.09.2012 and an order was passed on 21.11.2012 terminating his services as per the terms of the contract. The respondent No.1 raised an Industrial Dispute in I.D.No.12 of 2013 and an award was passed by the Labour Court on 23.09.2020 setting aside the order of termination dated 21.11.2012 and directing reinstatement of the respondent No.1 with continuity of service and all other consequential attendant benefits, if any, but without any backwages, against which a writ petition was preferred and the learned Single Judge has dismissed the writ petition.

Learned counsel for the appellant has argued before this court that respondent No.1 was not at all authorised to engage the services of another daily wager/unauthorised person to rectify the electrical breakdown. However, as he has engaged another person to rectify the electrical breakdown, who got electrocuted and fell on

the ground resulting in injuries, he has been rightly removed from service. He has further stated that the Labour Court has not considered the evidence in its true perspective and therefore, as the findings are perverse findings, the award passed by the Labour Court deserves to be set aside.

This court has carefully gone through the award passed by the Labour Court as well as the order passed by the learned Single Judge.

The learned Single Judge, in paragraphs 5 to 9 of the impugned order, has held as under:-

“5. The primary issue for consideration by the Labour Court was whether the 1st respondent employed a private person unauthorisedly to do official work which was to be undertaken by him and while the unauthorised person was doing job work, accident occurred causing injuries to that person. The Labour Court has discussed at length, the evidence brought on record.

6. From Paragraph No.10 of the Award it is seen that the Assistant Engineer (Operation), Substation, Kowtala instructed the 1st respondent and Koduripaka Laxman to attend the break down work. In support of the assertions of 1st respondent, he examined WW.2 and also placed reliance on Ex.W.12-xerox copy of statement of Koduripaka Laxman. The Labour Court has considered Ex.W.12 and observed that on 12.06.2012 at 3.30 P.M., the Assistant Engineer of Sub-Station Kowtala informed Koduripaka Laxman and 1st respondent about break down at 11 KV line and they were asked to go to the spot for rectification of the said problem. The Labour Court therefore, observed that Koduripaka Laxman was not employed by the 1st respondent, but was attending to the work along with the 1st respondent, on instructions of Assistant Engineer. The Labour Court has also assessed further evidence substantiating the claim of 1st respondent that Koduripaka Laxman was not employed illegally/unauthorisedly by the 1st respondent, but was asked to attend to the work on instructions of concerned Assistant Engineer.

7. It is a finding of fact arrived at by the Labour Court on assessing the evidence brought on record. It is not a case where the conclusions arrived by the Labour Court are contrary to material on record or without any basis. Nor the findings of Labour

Court be said as perverse. It is a well considered decision on due assessment of the material brought on record.

8. *It is a settled principle of law that in exercise of power of judicial review against the Award of Labour Court, the scope of consideration by the writ Court is very limited as held by this Court in **Ultra Tech Cement Limited Vs Industrial Tribunal-cum-Labour Court**¹. Therefore, I do not see any merit in the writ petition.*

9. *Accordingly, the Writ Petition is dismissed. Pending miscellaneous petitions, if any, shall stand closed.”*

The charge against respondent No.1 was that he has engaged one Koduripaka Laxman to attend the electrical breakdown. The Labour Court has looked into the aforesaid aspect whether an employee was engaged by the respondent No.1 or not. There is a document on record i.e., Ex.W.12, which was produced by the employer, as reflected from paragraph 10 of the award, in which it is stated categorically that the Assistant Engineer instructed respondent No.1 as well as Koduripaka Laxman to rectify the fault. The relevant partition of paragraph 10 of the award passed by the Labour Court reads as under:-

“10. Apart from that, the petitioner has categorically stated that the statement of Kodurupaka Laxman/injured has been recorded by the Asst. Engineer (Operation) sub station, Kowtala under Ex.W12 which has revealed the fact that the Asst. Engineer Kowtala instructed him and Kodurupaka Laxman to attend the break down work at Goodlabori 11 KV Electric line and he has never engaged the said Kodurupaka Laxman to attend the same work. In support of his contention, he has got examined WW2 and also Ex.W12 xerox copy of statement of Kodurupaka Laxman as per the orders vide I.A.No.12 of 202 as per the directions of this Court the respondent has produced Ex.W12 xerox copy of statement/report of injured Kodurupaka Laxman before this Court along with other documents, the same has been got marked by the petitioner. Since, the said xerox copy has been produced from the respondent custody and the existence of document is admitted by respondent hence there will not be any objection to consider the

¹ 2016 (4) ALD 67

said xerox copy. According to the said Ex.W12 statement of Kodurupaka Laxman/injured it is clear that on 12-6-2012 at about 3.30 p.m., A.E. of Sub Station, Kowtala/MW1 informed him and the petitioner about the break down at 11 KV Gudlabori on that they went to the said sport to rectify the same. So, the said fact has categorically established that Kodurupaka Laxman/injured and petitioner were informed about the break down at 11 KV Gudlabori by the Asst. Engineer (operation) substation, Kowtala/MW1 accordingly they went to the sport for rectification of the said problem. So, the said fact made clear about the fact of no role of the petitioner to get the Kodurupaka Laxman/injured to the spot to rectify the break down problem.”

In the considered opinion of this court, keeping in view the aforesaid, the Labour Court was justified in setting aside the order of termination, keeping in view Section 11-A of the Industrial Disputes Act, 1947. The learned Single Judge has also meticulously scanned the entire award and has arrived at a finding that the Labour Court was right in holding that the findings are perverse. Therefore, the question of interference by this court, in the peculiar facts and circumstances of the case, does not arise.

The writ appeal is dismissed. Respondent No.1 shall be free to file an appropriate application for withdrawal of the amount deposited by the employer before the Labour Court.

Pending miscellaneous applications, if any, shall stand closed.

SATISH CHANDRA SHARMA, CJ

A.RAJASHEKER REDDY, J

29.11.2021
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