

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)**

WEDNESDAY, THE SEVENTEENTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY ONE

PRESENT

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION NO: 3371 OF 2004

Between:

M/s. Orient Cement,, (Proprietors: Orient Paper & Industries Limited), 7-1-54A and 54B, OPP: Kanya Gurukul High School, Ameerpet, Hyderabad - 16, Rep. by its Executive Vice President.

...PETITIONER

AND

1. The Second Appellate Authority Under Sec.48(3), of the A.P. Shops and Establishments Act. 1988, & Dy. Commissioner of Labour, Hyderabad.
2. The Authority under the A.P. Shops & Establishments,, Act, 1988 - Assistant Commissioner of Labour, Hyderabad.
3. Sri K.S.S. Ram Kumar, Son of Sri K.V. Ramana Rao,, R/o. Flat No.58, Sri Srinivasapuram, Colony, Vanasthalipuram Post, Hyderabad-70.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ, Order or direction, more particularly one in the nature of Writ of Certiorari calling for the records relating to SA No. 5 of 2003 from the first respondent herein and consequently quash the order dated 20-12-2003 passed in SA No.5 of 2003 by the first respondent, is illegal and arbitrary in nature

WPMP. NO: 4443 OF 2004

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay the operation of the order dated 20-12-2003 passed by the first respondent in S.A. No.5 of 2003.

IA NO: 1 OF 2020

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to dispense with the payment of last drawn wage under section 48 (3) of the Shops and Establishment Act of State of Telangana and pass such order or further orders as this Honorable Court deems fit and proper in the circumstance of the case and in the interest of justice.

Counsel for the Petitioner: SRI SIVARAJU SRINIVAS

Counsel for Respondent Nos. 1 & 2: GP FOR LABOUR

Counsel for Respondent No. 3: SRI M. V. SURESH

The Court made the following: ORDER

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.3371 of 2004

ORDER:

This writ petition is filed seeking the following relief:

".... to issue a Writ, Order or direction, more particularly, one in the nature of Writ of Certiorari calling for the records relating to S.A.No.5 of 2003 from the first respondent herein, and consequently, quash the order dated 20.12.2003 passed in S.A.No.5 of 2003 by the first respondent, is illegal and arbitrary in nature and pass such other order or orders"

Heard Sri Sivaraju Srinivas, learned counsel appearing for the petitioner - Company, and Sri M.V. Suresh, learned counsel for respondent No.3 - Workman.

It has been contended by petitioner - Company that respondent No.3 was employed as a Stenographer in the Project Office of the petitioner - Company vide proceedings dated 15.10.1987 and his services were also confirmed vide proceedings dated 01.10.1988. Thereafter, he was promoted to the Managerial Cadre during 1993 and further promoted to the next level in Managerial Cadre in 2002 and finally respondent No.3 was working as Personal Secretary to the Executive Vice-President of the petitioner - Company.

Learned counsel for the petitioner had contended that the petitioner - Company has started a Project Office in Hyderabad in the year 1987, wherein respondent No.3 was

recruited as a Stenographer and as the petitioner - Company has closed down the said Project Office in Hyderabad during 2002, the petitioner - Company has terminated the services of respondent No.3 vide proceedings dated 01.09.2002 by giving three months notice and also paid an amount of Rs.27,574/- vide cheque No.955866, dated 25.09.2002 towards full and final settlement of wages etc. to respondent No.3. Having received the said amount towards full and final settlement, respondent No.3 has approached respondent No.2 - Authority under the A.P. Shops and Establishments Act, 1988 (for brevity "the Act") by way of filing S.E.No.3 of 2002 and respondent No.2, without appreciating any of the contentions raised by the petitioner - Company, was pleased to allow the same vide order dated 31.03.2003 in S.E.No.3 of 2002 holding that the termination of respondent No.3 is not justified and directed for reinstatement of respondent No.3 into service without back wages. Aggrieved by the said order dated 31.03.2003 in S.E.No.3 of 2002, the petitioner - Company has filed Second Appeal bearing S.A.No.5 of 2003 before respondent No.1 - Second Appellate Authority under Section 48(3) of the Act, which has also confirmed the order dated 31.03.2003 in S.E.No.3 of 2002 passed by respondent No.2 and further held that respondent No.3 is also entitled for full back wages, vide order dated 20.12.2003 in S.A.No.5 of 2003. Aggrieved by the same, the present writ petition is filed.

Learned counsel for the petitioner - Company had contended that in S.A.No.5 of 2003 preferred by the petitioner - Company, respondent No.1 has granted the relief in favour of respondent No.3, which is impermissible under law and, at best, respondent No.1 could have granted the relief of payment of full back wages in the Second Appeal preferred by respondent No.3 and hence, granting the relief of payment of full back wages to respondent No.3 in the Second Appeal preferred by the petitioner - Company is contrary to the order dated 31.03.2003 in S.E.No.3 of 2002 passed by respondent No.2 and, therefore, order dated 20.12.2003 in S.A.No.5 of 2003 passed by respondent No.1 is liable to be modified to the extent of granting full back wages to respondent No.3. Learned counsel for the petitioner - Company had further contended that during the pendency of the writ petition, the petitioner - Company has complied with the wages under Section 48(3) of the Act to respondent No.3 - Workman and he has also attained the age of superannuation on 31.08.2010. Learned counsel for the petitioner contends that order dated 20.12.2003 in S.A.No.5 of 2003 passed by respondent No.1 is contrary to law as the said relief was granted in favour of respondent No.3 in the Second Appeal preferred by the petitioner - Company and, therefore, operation of the order dated 20.12.2003 in S.A.No.5 of 2003 passed by respondent No.1 to the extent of granting full back wages to respondent No.3 may be set aside.

Learned counsel for respondent No.3 - Workman had contended that respondent No.3 had attained the age of superannuation on 31.08.2010 and due to passage of time, order dated 31.03.2003 in S.E.No.3 of 2002 passed by respondent No.2 and order dated 20.12.2003 in S.A.No.5 of 2003 passed by respondent No.1 have attained finality and hence, there are no merits in the writ petition and the same is liable to be dismissed.

This Court, having considered the rival submissions made by learned counsel for the respective parties, is of the considered view that respondent No.1 ought not to have granted the relief of grating full wages to respondent No.3 in the S.A.No.5 of 2003 preferred by the petitioner - Company. Therefore, while setting aside the relief of granting full back wages to respondent No.3, remaining portion of order dated 20.12.2003 in S.A.No.5 of 2003 passed by respondent No.1, confirming order dated 31.03.2003 in S.E.No.3 of 2002 passed by respondent No.2, is hereby confirmed. As respondent No.3 has already retired from service, this Court is of the considered view that one need not go into the merits of the case, as respondent No.3 has already received wages in terms of Section 48(3) of the Act, during the pendency of the writ petition.

With the above observations, this writ petition is allowed
in part. No order as to costs.

Pending miscellaneous petitions, if any, shall stand
closed.

That Rule Nisi has been made absolute as above.
Witness the HON'BLE THE CHIEF JUSTICE HIMA KOHLI, on this
Wednesday, the Seventeenth day of February, Two Thousand and Twenty One.

SD/-K.AMMAJI
ASSISTANT REGISTRAR

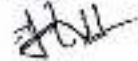
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SECTION OFFICER

To,

1. The Second Appellate Authority Under Sec.48(3), of the A.P. Shops and Establishments Act.1988, & Dy. Commissioner of Labour, Hyderabad
2. The Authority under the A.P. Shops and Establishments Act.1988,-Assistant Commissioner of Labour, Hyderabad
3. One CC to Sri Sivaraju Srinivas, Advocate [OPUC]
4. Two CCs to GP for Labour, High Court for the State of Telangana at Hyderabad.
[OUT]
5. One CC to Sri M V Suresh, Advocate [OPUC]
6. Two CD Copies

MBC



HIGH COURT

DATED:17/02/2021



ORDER

WP.No.3371 of 2004

PARTLY ALLOWING OF THE WRIT PETITION
WITHOUT COSTS

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4/3/21
HVL