

HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No. 1828 of 1997

Between:

The Executive Engineer, R & B Dept. Khammam and another.

..... PETITIONERS

AND

The Industrial Tribunal-cum- Labour Court, Warangal, rep. by its
Presiding Officer, & others.

.....RESPONDENT(S)

HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No. 1828 of 1997

ORDER:

Aggrieved by the award of the Industrial Tribunal-cum-Labour Court, Warangal in I.D.No. 266 of 1993, dated 13.03.1996, the present writ petition is filed.

The second respondent-workman filed an application before the Industrial Tribunal under Section 2-A(2) of the Industrial Disputes Act, 1947 (for short 'the Act'), contending that he was illegally retrenched from service as gang-mazdoor by petitioners 1 and 2, though he had continuously worked for 453 days.

Before the Tribunal, the second respondent examined himself as WW.1 and stated that he worked as gang-mazdoor continuously from 29.09.1986 to 31.03.1988; no notice was given to him and no retrenchment compensation was paid to him; his juniors Nadam, Bhadraiah, Swamynadam and some others were continuing as NMRs; since the date of retrenchment, he had not secured employment anywhere; and he used to get Rs.275/- to Rs.300/- when he was working as gang-mazdoor. The Executive Engineer, who was examined as MW.1, admitted that the second respondent had worked during the years 1986 and 1987; and he worked for 239 days as per Exs.W.1 and W.3.

The Tribunal observed that the record revealed that the second respondent worked for 318 days from September, 1986 to March, 1988; his services were terminated on 01.04.1988 though his juniors were continued in service; and the termination of the second respondent was not only contrary to Section 25-F of the Act, but was also in violation of Section 25-G of the Act as the last come first go principle was not adhered to. Inasmuch as the petitioner had approached the Tribunal after a long lapse of six years after his termination from service, an award was passed directing the petitioners to reinstate the second respondent as NMR-gang mazdoor with continuity of service but without backwages and to appoint him as a regular employee since he had completed 1½ years.

Learned Government Pleader for Transport would vehemently contend that the Tribunal had exceeded its jurisdiction in directing the petitioners herein to treat the second respondent-workman as a regular employee as, even if the finding of fact recorded by the Tribunal were held to be valid, the only relief that could have been granted is to reinstate the second respondent-workman in the very same post which he occupied prior to his termination i.e. NMR-gang mazdoor; and the Tribunal had no jurisdiction to direct the petitioners herein to treat the respondent-workman as a regular employee merely because he had worked for more than 240 days.

I find considerable force in the submission of the learned Government Pleader. While termination of the respondent-workman is in violation of Section 25-F of the Act and his termination is void *ab initio*, the only relief that could have been granted is to reinstate the workman in the same post which he

held prior to his termination which, admittedly, is that of NMR-gang mazdoor. The Tribunal is a body create under the Industrial Disputes Act and its jurisdiction to grant relief is confined within the four corners of the Act and not beyond. The Tribunal could not, in an application under Section 2-A(2) of the Act, direct regularization of the services of the workman. The award, to the limited extent that the Tribunal had directed that the second respondent-workman be treated as a regular employee, is set aside. The respondent-workman shall only be entitled to the relief of reinstatement into service as NMR-gang mazdoor.

The Writ Petition is allowed to the extent indicated above. However, in the circumstances, without costs.

RAMESH RANGANATHAN,J

Date:16.02.2010
usd