

THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION NO.28853 OF 1995

DATE: 31st October 2006

Between:

P.Koteswara Rao, s/o Adinarayana Sharma,
H.No. Plot No.43, behind T.B.Hospital,
Kalyannagar, Hyderabad –500038.

... Petitioner.

And

1. Labour Court-III, Hyderabad,
rep. by its Presiding Officer,
4th Floor, Chandravihar Building,
M.J.Market Road, Nampally,
Hyderabad and another.

... Respondents

* * *

ORDER:

This writ petition is filed against the Award dated 13.9.1994 made in I.D.No.733 of 1993 on the file of the Labour Court-III, Hyderabad, by the workman seeking further relief.

2. It appears that the petitioner joined as a workman in the second respondent organization with effect from 01.3.1992. While so, his services were terminated orally on 08.9.1993. Though the petitioner made a representation, his case was not considered for re-engaging him. Under those circumstances he raised a dispute under Section 2 A (2) of the Industrial Disputes Act (for short 'the Act') before the first respondent.

3. According to the workman he joined service on 01.3.1992 and his services were terminated orally on 08.9.1993. By 08.9.1993 he had put in 240 days of continuous service (one year), therefore, his services could not have been terminated orally, particularly without complying with the requirements of Section 25F of the Act. Therefore, the oral termination of the petitioner was illegal.

4. The second respondent-management filed a counter denying the allegations made therein particularly saying that it is for the petitioner-workman to prove that he had worked for 240 days from the date of his initial appointment.

5. In support of his claim, the petitioner examined himself as W.W.1 and marked documents Exs.W-1 to W-4. On behalf of respondent No.2-management, M.W.1 was examined and documents Exs.M-1 to M-18 were marked.

6. After a detailed consideration of both oral and documentary evidence, the Labour Court came to the conclusion that the petitioner had completed 240 days of service and as such the management had violated the provisions of Section 25F of the Act and directed reinstatement of the petitioner as a fresh employee as provided under Section 25H of the Act. However, the past service of the workman was protected for future benefits in service. Further, in lieu of the back wages, it had awarded compensation at the rate of Rs.150/- per month for the period the petitioner was out of employment. Aggrieved by the same, the present writ petition is filed.

7. Learned counsel for the petitioner Sri V.Narasimha Goud, strenuously contended that once a finding is arrived at by the Labour

Court that the petitioner has completed 240 days of service within one year preceding the date of his termination, awarding of back wages and continuity of service is automatic. Further, this is not a case where there was any delay in approaching the Labour Court and raising dispute under Section 2A(2) of the Act. The services of the petitioner were terminated orally on 08.9.1993 and in the year 1993 itself he raised industrial dispute. Therefore, the question of denying full back wages and continuity of service does not arise.

8. *Per contra*, learned counsel for the 2nd respondent supported the Award made by the Labour Court and contended that in the facts and circumstances of the case and taking the organization's plight into consideration the Labour Court has rightly came to the conclusion that the petitioner is entitled for reinstatement as per Section 25 H of the Act while protecting his past service and also further awarding a compensation of Rs.150/- per month, and it cannot be said to be either arbitrary or illegal and no ground is made out to interfere with the said Award passed by the Labour Court.

9. I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the impugned Award and other material made available on record.

10. I am in full agreement with the submissions made by the learned counsel for the petitioner Sri V.Narasimha Goud that once a finding is arrived at by the Labour Court that the petitioner put in 240 days of continuous service preceding the date of his termination, awarding of back wages and continuity of service is automatic, and therefore, the management has violated the provisions of Section 25 F of the Act. Further, since there was no delay in approaching the Labour Court, the petitioner is also entitled for other benefits. However, the Labour Court

has granted compensation of Rs.150/- per month for the period, the petitioner was out of employment. But while protecting the past service, I am of the opinion that the petitioner is also entitled for reinstatement with continuity of service and the compensation awarded by the Labour Court is liable to be confirmed.

11. In the result, the Award dated 13.9.1994 passed in I.D.No.733 of 1993 by the Labour Court is modified to the following extent.

The petitioner is entitled for reinstatement with continuity of service and all attendant benefits, except back wages. However, the petitioner is entitled for compensation at the rate of Rs.150/- per month as fixed by the Labour Court for the period he was out of employment.

12. With the above modification, the writ petition is allowed. No costs.

C.V.RAMULU, J.

Date: 31st October 2006.
BSB