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THE HON'BLE MS JUSTICE G.ROHINI

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W.P.NOs.3723 to 3732 of 2003

COMMON ORDER

All these writ petitions, arising out of the common order dated.28-01-2003 passed by the Industrial Tribunal-cum-Labour Court, Warangal, are heard together and decided by this common order.

The petitioner in all the writ petitions is the Municipal Corporation of Warangal (hereinafter referred to as "the Corporation"). Some of the Public Health Workers of the Corporation whose services were terminated approached the Industrial Tribunal-cum-Labour Court challenging the orders of termination under Section.2-A(2) of the Industrial Disputes Act,1947 (for short "the Act") . It was claimed by the workmen that though they were initially appointed during the NGOs strike period for doing sanitary works from 21-11-1986 to 26-12-1986 and again from 25-08-1988 to 19-12-1988 on daily wages, they were continued on consolidated pay of Rs.450/- per month from 19.12.1988 to 19-08-1989 and again on NMR basis from 19.08.1989 to 30-12-1989. Thereafter their services were terminated orally. Claiming that since they worked for more than 240 days in the calendar year prior to the oral termination, the removal from service without complying with Sec.25-H of the Act was arbitrary and illegal, they approached the Industrial Tribunal. It was contended by the Corporation before the Tribunal that the workmen never worked continuously for 240 days prior to the date of removal and at any rate since they were not appointed following due selection process their claim for reinstatement was unsustainable. After hearing both the parties, the labour Court concluded that the oral termination was illegal for not following the mandatory provisions of the Act. Accordingly, reinstatement of the workmen into service as fresh recruits on daily wage basis in the Warangal Municipal Corporation was ordered.

Aggrieved by the same the Corporation filed separate writ

petitions being W.P.No.13851 of 2000 and etc., All the said writ petitions were heard and disposed of together by this Court by a common order dated.07-09-2000. It was argued before this Court on behalf of the Corporation that as per G.O.Ms.No.69 dated. 18-02-1987 which directed that those *ad hoc* employees engaged during the strike period be given preference in the recruitment in the respective units, the Corporation had considered about 12 employees and selected two of them for being appointed on regular basis. Though it was contended behalf of the workmen that even a retrenched employee who had accepted compensation or other benefits cannot be denied the right of reemployment, this court without going into the larger question whether the workmen who availed the 'opportunity' as per the provisions of the Sec.25-F of the Act can still maintain an industrial dispute, disposed of the batch of writ petitions recording the submission of the counsel for the Corporation that the Government was addressed seeking appropriate permission to absorb all the workmen in whose favour the Tribunal passed the award and the cases of the workmen would be considered for appointment as fresh recruits as and when appropriate orders were received.

Thereafter the workmen filed Execution Petitions being E.P.No.40 of 2001 and etc for execution/implementation of the award of the Tribunal as well as payment of wages. The said Execution Petitions were allowed by the Labour Court by a common order dated 28.1.2003 and the Management/Corporation was directed to implement the award by giving appointment to the petitioners/workmen as fresh recruits. There was also a direction to pay the wages as claimed up to filing of E.Ps on or before 28-02-2003 failing which attachment of movables shall be effected.

As against the said common order dated.28-01-2003 in E.P.No.40 of 2001 and batch the present writ petitions are filed by the Corporation.

I have heard the learned counsel for both the parties.

This Court while directing *rule nisi* granted interim stay for a limited period. In the circumstances the Corporation deposited the wages to which the petitioners were entitled to till the date of filing of the execution petitions. The amounts so deposited were withdrawn by the respective workmen and E.P.No.40 of 2001 & etc., were also closed.

As could be seen from the material on record the workmen were engaged during the NGOs strike period on *ad hoc* basis for doing sanitary works. However, even after the strike period the petitioners were continued on consolidated pay and ultimately their services were terminated orally on 30-12-1989. After a long lapse of time they approached A.P. Administrative Tribunal and the matters were disposed of directing the Management to consider their cases in accordance with G.O.Ms.No.69 dated.18-02-1987 under which the *ad hoc* employees engaged during the strike period were directed to be given preference in the recruitment in the respective units. Pursuant thereto, some of the workmen were also given employment on regular basis. However, the other workmen who could not be accommodated raised industrial disputes under Sec.2-A(2) of the Act. The Labour Court on appreciation of the evidence adduced by both the parties recorded a finding that the termination was illegal for non-compliance with the provisions of Sec.25-F of the Act. Though the Corporation filed W.P.No.13851 of 2000 & etc., challenging the awards passed by the Labour Court, admittedly the said awards were not set aside by this Court. However, the statement of the counsel for the Corporation that the cases of the workmen would be considered for appointment as fresh recruits as and when orders are received from the Government granting permission to absorb all the workmen in whose favour the Tribunal had passed awards, was recorded and the writ petitions were accordingly disposed of. Seeking clarification of the said order the workmen filed WPMP No.20321 of 2002 and the same was disposed of by order dated.18-09-2002 which runs as under:-

“ in W.P.Nos.13851, 13852, 13853, 13854, 13855, 13856, 13857, 13858, 13859, 13860, 13861 and 13862, the Awards of the Industrial Tribunal-cum-Labour Court, in which a direction was given by the Industrial Tribunal to reinstate the workmen as “fresh recruits” were impugned. After hearing the learned counsel for the petitioner as well as the learned counsel for the respondents, while disposing of the writ petition, this court, only recorded the submission of the learned Standing Counsel for Warangal Municipal Corporation that the Municipal Corporation will consider the cases of the workmen for being appointed as fresh recruits as and when the Government issues appropriate orders. Except observing that, the Awards have not been set aside.

Clarified accordingly.”

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From the above it is clear that the awards passed by the Tribunal were not set aside and consequently the Corporation was bound to implement the same. In the circumstances the Labour Court was justified in holding that the workmen are entitled to get the awards executed.

However admittedly the wages claimed by the workmen in E.P.No.40 of 2001 and etc., were deposited by the Corporation and the same were also withdrawn by the respective workmen during the pendency of these writ petitions. It is not disputed before this Court that E.P.No.40 of 2001 & etc., were closed and subsequently the workmen filed fresh E.Ps for payment of the wages for the subsequent period from 01-02-2001 to 31-03-2004 and the same were also allowed by the Labour Court directing attachment of the properties of the Corporation.

Since E.P.No.40 of 2001 and etc., out of which the present writ petitions arose were already closed, nothing remains for consideration in the present writ petitions. May be that, fresh E.Ps filed by the workmen for payment of the wages for the subsequent period were also ordered directing attachment of the movables of the Corporation. However since the said orders gave rise to a fresh cause of action, it is

not necessary for this Court to express any opinion as to the validity of the said orders passed by the Labour Court during the pendency of these writ petitions. Accordingly, the Management is granted liberty to challenge the said orders by working out the appropriate remedy as available under law. It is also open to the Corporation to raise the question whether the workmen who availed the opportunity as per the provisions of Sec.25-F of the Act can still maintain in an Industrial dispute as observed by this Court in W.P.No.13851 of 2000 and etc.

The writ petitions are accordingly disposed of. No costs.

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G.ROHINI,J

30th APRIL 2009

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