

HONOURABLE SRI JUSTICE M. GANGA RAO

Writ Petition No.15696 of 2009

ORDER:

The petitioner is the Management and the 2nd respondent is the Workman. The Management filed this writ petition before this Court being aggrieved by the Award of the Chairman cum Presiding Officer, Industrial Tribunal cum Labour Court, Visakhapatnam, passed in I.D.No.9 of 2005 dated 05.01.2009, whereby the petitioner/Management is directed to reinstate the Respondent/Workman into service and directed the respondent/Workman to report duty within 30 days after publication of the Award at its Kakinada office and after that it is open to the petitioner/Management to post him at any territory of its choice including Davanagere and within a reasonable time the petitioner/Management shall initiate disciplinary proceedings against the Respondent/Workman and after conducting domestic enquiry, it has to decide whether the Respondent/Workman is entitled for continuity of service or otherwise, as being arbitrary, illegal contrary to the provisions of Industrial Disputes Act.

2. This Court, on 04.08.2009, while issuing *rule nisi* in the main writ petition passed an interim order in WPMP.No.20614 of 2009 that there shall be interim suspension as prayed for subject to compliance with Section 17B of the Industrial Disputes Act, pending writ petition.

3. Brief facts of the case are that the 2nd respondent was originally appointed in Hindustan Ciba Geigy Limited (CIBA) at its Ongole Headquarters as Trainee on 10.11.1992 and on successful completion of training he was employed as Medical Representative from 09.11.1993 on probation for a period of six months. Thereafter, his services were confirmed with effect from 09.05.1994.

4. As per the Bombay High Court order dated 29.8.1997 approving the scheme of Amalgamation of Sandoz (India) Limited (SIL) with Hindustan Ciba Geigy Limited (HCG), HCG was renamed as Novartis India Limited on 21.10.1997. SIL stands merged with Novartis India Limited on 27.10.1997. As per the Court orders, the services were transferred to Novartis India Limited with a continuation of existing terms and conditions and without any break.

5. The 2nd respondent was transferred *vide* Letter dated 9.10.2001, transferring him from Kakinada to Davanagere with effect from 15.10.2001. He was informed that after closure of working hours on 14.10.2001, he would stand relieved from Kakinada. By letter dated 23.10.2001, the 2nd respondent requested the petitioner to retain him at Kakinada to look after his aged parents. The 2nd respondent's request was declined and directed him to proceed to Davanagere and report for duty with effect from 12.11.2001. Then, the 2nd respondent applied for sick leave and he was referred to the Civil Surgeon, Government Hospital for second opinion. The Civil Surgeon Dr. Venkata Prasad examined the 2nd respondent on 21.11.2001 and by a letter dated 23.11.2001 intimated to the petitioner that the 2nd respondent has a healing abscess on the sole of the foot secondary to burns and that he required 10 days for complete healing. The petitioner granted 10 days sick leave *vide* its letter dated 26.11.2001 from 21.11.2001 to 30.11.2001 to the 2nd respondent. He was directed to report for duty at Devaragere on 01.12.2001. The 2nd respondent filed O.S.No.1511 of 2001 before the Ist Additional Civil Judge, Kakinada and moved an injunction application No.1561 of 2001 and the same was granted by the

Civil Judge on 18.2.2002. But on contest, the order passed in I.A.No.1561 of 2001 was vacated on merits, by order dated 11.4.2002. Thereafter, the 2nd respondent did not report for duty at Devanagere but sent a Telegram on 12.4.2002 asking for privilege leave for unspecified period which was rejected by the petitioner by way of Telegram and the 2nd respondent was directed to report for duty to Sales Manager on 19.4.2002. But, he did not do so. The petitioner by its final letter dated 25.4.2002 directed the 2nd respondent to report for duty at Devanagere by 10.00 A.M on 04.05.2002 and if he failed to report for duty, action will be taken. But the 2nd respondent did not report for duty. The petitioner, by order dated 08.05.2002 terminated the services of the 2nd respondent. In the mean time, C.M.A.No.22 of 2002 filed by the 2nd respondent against the orders in I.A.No.1561 of 2001 was dismissed on 13.11.2002.

6. Being aggrieved by the termination order dated 08.05.2002, the 2nd respondent moved application under Section 2-A (2) of the Industrial Disputes Act before the Industrial Tribunal cum Labour Court, which came to be numbered as I.D.No.5 of 2005, mainly on the ground that the termination order came to be passed without conducting any

enquiry, no charges are framed, no opportunity was given to the 2nd respondent to put forth his case and against the principles of natural justice. The Labour Court having considered the evidence adduced on record passed Award on 05.01.2009 holding that no enquiry is conducted before passing the termination order and even before the Tribunal no evidence is placed in support of its termination by the petitioner. No one was examined on behalf of the petitioner/Management before the Labour Court, in spite of opportunity given to the petitioner to prove its case before the Labour Court. The Labour Court having considered all the issues framed in the case, held that the 2nd respondent's service was put to an end without following the procedure. The Labour Court following the decision in the case of **State of Punjab Vs. Desh Dandha**¹, wherein it is held that the effect of non-compliance with Section 25-F of the Industrial Disputes Act would be a direction for reinstatement only to restore the Workman to the same status which they held when their services were terminated. In the case of **Novartis India Vs. State of West Bengal**², it is held that an employee refusing to join at new territory on transfer, it is a misconduct

¹ (2006 (108) FLR 78)

² (2008) SCC 475

but the employer shall initiate disciplinary proceedings and that a mere order of discharge is not a substitute for an order of punishment. The Labour Court having followed the **Novartis case**, held that there shall be a finding by the authority that there is misconduct on the part of the employee and the certified standing order, if any, empower the management to impose a major punishment for such misconduct. The punishment if once put to judicial review, it should satisfy as to its proportionality to the misconduct. All these tests could be applied only when there is employee and a finding. If the management resolves to terminate the services as a measure of punishment without following the principles of natural justice, thereby avoid judicial scrutiny of the administrative action, the only consequence is to order reinstatement of the employees, which is a justifiable order that can be passed in the opinion of the Labour Court. In the case of **Devinder Singh Vs. Municipal Council, Sanaur**³, the Apex Court held that termination of Workman who worked for more than 240 days as required under Section 25-B of Industrial Disputes Act, without holding enquiry as required under the provisions of Section-F of Industrial

³ (2011) 6 SCC 584

Disputes Act is illegal and Workman is entitled for reinstatement.

7. Hence, the contra contention of the counsel for the petitioner that no enquiry need to be conducted before his termination as he himself absconded from duties, application under Section 2-A2 of the Industrial Disputes Act is not maintainable, holds no water as per the law laid down by the Apex Court. The Labour Court after elaborately considering the contentions of the parties passed well reasoned and articulated Award. It does not suffer from any legal infirmities.

8. This Court found that the impugned Award passed by the Chairman cum Presiding Officer, Industrial Tribunal cum Labour Court, Visakhapatnam, in I.D.No.9 of 2005 dated 05.01.2009 does not suffer from any error of fact and law which warrants interference of this Court by exercising the power of writ of certiorari jurisdiction under Article 226 of the Constitution of India. In fact, notification publishing the Award issued under Section 17 of the Industrial Disputes Act is not challenged and mere challenge of Award in the writ petition is not maintainable.

9. For the reasons stated above, the Writ Petition is devoid of merits and is liable to be dismissed. Accordingly, the Writ Petition is dismissed. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

M. GANGA RAO, J

Date: .04.2023

CSR

HON'BLE SRI JUSTICE M. GANGA RAO

W.P.No.15696 OF 2009

DT: .04.2023

CSR