



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3458]

WEDNESDAY, THE TWELFTH DAY OF NOVEMBER
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SMT JUSTICE KIRANMAYEE MANDAVA

WRIT PETITION NO: 2623/2021

Between:

- 1.KONDA VIJAYA KUMAR,, S/O. LATE SRINIVASA RAO, AGED ABOUT 39 YEARS, OCC. UN-EMPLOYEE, R/O. 19/426, BETHAVOLU PEDDA PETA, GUDIVADA, KRISHNA DISTRICT. A.P.
- 2.KONDA VINAY KUMAR,, S/O. LATE SRINIVASA RAO, AGED ABOUT 34 YEARS,,OCC. UN-EMPLOYEE, R/O. 19/426, BETHAVOLU PEDDA PETA, GUDIVADA, KRISHNA DISTRICT, A.P. (PETITIONERS ARE SONS OF LATE KONDA SRINIVASA RAO, WHO IS A PARTY TO THE AWARD DATED 23-02-2018 IN I.D. NO. 47 OF 2009 ON THE FILE OF LABOUR COURT CUM INDUSTRIAL TRIBUNAL, GUNTUR, WHICH IS SUBJECT MATTER OF CHALLENGE IN THE PRESENT WRIT PETITION)

...PETITIONER(S)

AND

- 1.THE LABOUR COURT CUM INDUSTRIAL TRIBUNAL, REP. BY ITS PRESIDING OFFICER, GUNTUR, GUNTUR DISTRICT, A.P.
- 2.SRI CHAKRA CEMENTS LIMITED, REP. BY ITS MANAGING DIRECTOR, ADMINISTRATIVE OFFICE, CONCRETE HOUSE, 6-3-668/10/66, DURGA NAGAR COLONY, PUNJAGUTTA, HYDERABAD - 500 082.
- 3.THE ASSISTANT MANAGER PERSONAL, SRI CHAKRA CEMENT LIMITED, NARASIMHAPURI POST, KARAMPUDI MANDAL, GUNTUR DISTRICT, A.P.

...RESPONDENT(S):

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 writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the award dated 23-02-2018 in I.D. No. 47 of 2009, on the file of Labour Court cum Industrial Tribunal, Guntur, in so far as it relates to rejection of relief of reinstatement with continuity of service with back wages only as arbitrary and violative of Art. 14 and 21 of Constitution of India and provisions of Y.D. Act, 1947 by modifying the same and consequently direct the respondents and 3 to pay an amount of Rs. 15, 00, 000/- (Fifteen Lakh Rupees) as compensation in lieu of reinstatement towards back wages and other attendant benefits in view of the death of the workman, and retirement benefits that fell due to the deceased workman to the petitioners with interest at the rate of 12 percentage per annum, grant costs of proceedings and pass

IA NO: 1 OF 2021

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 grant leave to the Writ Petitioners to file this Writ Petition challenging the Award dated 23-02-2018 in I.D. No. 47 of 2009, on the file of Labour Court cum Industrial Tribunal, Guntur, and pass

IA NO: 2 OF 2021

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 direct the respondents 2 and 3 pay retirement benefits due to deceased workman Late Srinivasa Rao to the petitioners with interest at the rate of 12 % per annum and pass

Counsel for the Petitioner(S):

1.M PITCHAIAH

Counsel for the Respondent(S):

1.GP FOR LABOUR

2.GORANTLA SRI RANGA PUJITHA

3.R SUDHA RANI

The Court made the following:

ORDER:

Heard Sri M. Pitchaiah, learned counsel for the petitioners, learned Government Pleader for Labour for respondent No.1 and Sri V.Rohith, learned counsel appearing for Ms. R.Sudha Rani, learned counsel for respondent No.2.

2. It is contended that the petitioner's father was employed as a welder in the 2nd respondent Company. He was appointed on 01.01.1985 and continued in service up to 11.04.2009 in the same capacity. Thereafter, he did not report for duty, whereupon the respondents issued a letter invoking the Standing Orders, viz., Clause 15(4) of Certified Standing Orders. Consequently, the petitioner's late father was declared to have voluntarily abandoned his employment and lost his lien on the job.

3. Aggrieved by the said order, the petitioner's late father approached the Labour Court and filed an industrial dispute case under I.D. No. 47 of 2009. The Labour Court *vide* award dated 23.07.2018 set aside the order passed by the 2nd respondent and remanded the matter for conducting a detailed domestic enquiry against the petitioner's late father. The award was published in the official gazette on 23.07.2018. After the said publication, the petitioner's father had passed away on 17.10.2018. Challenging the award, the petitioners have filed the instant writ petition.

4. In support of his contentions, the learned counsel for the petitioners relies on the following decisions of the Court:-

(i) the decision of the Hon'ble Apex Court in the case of ***A.K.S.Rathore (Dead) through LRs Vs. Union of India and Another.***

(ii) the decision of the Hon'ble Apex Court in the case of ***D.D.Tewari (Dead) through Legal Representations Vs. Uttar Haryana Bijli Vitran Nigam Limited and Others.***

5. The learned counsel for the respondents contends that, pursuant to the award dated 23.07.2018, notices were issued to the petitioner's late father on 24.09.2018 and 03.10.2018; however, he did not respond to the said notices. Therefore, consequential orders were not passed. The learned counsel for the petitioner, Sri M. Pitchaiah, argues that unless the award of the Labour Court, in terms of the provisions of Section 17 of the Industrial Disputes Act, 1947, is published in the Official Gazette, it will not come into effect. In the facts of the case, the publication was made on 23.07.2018 and subsequently affixed to the Labour Court's notice board on 04.09.2018. Thus argues that till such time the award has no enforceability, since the order of removal of the petitioner was set aside by the Labour Court and the fresh enquiry as directed by the Labour Court could not be made, further the pending proceedings, if any, initiated, pursuant to the order of the Labour

Court would abate, having regard to the same, the petitioners are entitled for all applicable wages from 12.04.2009 to 17.10.2018, and the terminal benefits with interest.

6. Considered the submissions.

7. The petitioner's late father was removed from service on 11.04.2009. The order of removal was set aside by the Labour Court and remanded to the 2nd respondent for conducting a domestic enquiry afresh, which came into effect on the date of its publication in the gazette on 23.07.2018. Even before the conclusion of the enquiry, pursuant to the order of the Labour Court, the petitioner's father had expired. Therefore, the proceedings pending before the respondent Company have abated. Upon such abatement, the consequence is that the disciplinary enquiry stands set aside. Consequently, the petitioners are entitled to all applicable wages from 12.04.2009 to 17.10.2018, and the terminal benefits, however, without interest, having regard to the fact that the order of removal was under challenge since 2009 and was set aside in 2018. The petitioner's father had died in 2018. The principle laid down in the judgment relied upon by the petitioner would only come into play if the management unjustly withheld the pensionary benefits upon superannuation. The case on hand is thus distinguishable, as it involves removal from service.

8. In view of the foregoing, the respondents are directed to pay all terminal benefits and the wages for the period from 12.04.2009 to 17.10.2018 of the petitioner's late father, to the petitioners herein, within a period of three (3) months from the date of receipt of the order.

9. With the above direction, the writ petition is disposed of. There shall be no order as to costs.

As a sequel, interlocutory applications, pending if any, shall stand closed.

JUSTICE KIRANMAYEE MANDAVA

Date: 12.11.2025

ANI

10. When the matter was taken up for Pronouncement of Orders today, the learned counsel Sri V. Rohith, for respondent No.2, argued further placing reliance on the decision of the Hon'ble Apex Court in the case of ***P. Karupaiah (Dead) through Legal Representatives Vs. General Manager, Thruuvalluvar Transport Corporation Limited.***¹ wherein it is observed as follows:

“11. Indeed, the employee in order to claim the relief of back wages along with the relief of reinstatement is required to prove with the aid of evidence that from the date of his dismissal order till the date of his rejoining, he was not gainfully employed anywhere. The employer too

¹ (2018) 12 SCC 663

has a right to adduce evidence to show otherwise that an employee concerned was gainfully employed during the relevant period and hence not entitled to claim any relief of back wages.

12. On proving such facts to the satisfaction of the Court, the back wages are accordingly awarded either in full or part or may even be declined as the case may be while passing the order of reinstatement. The courts have also applied in appropriate cases the principle of "no work no pay" while declining to award back wages and confining the relief only to the extent of grant of reinstatement along with grant of some consequential reliefs by awarding some benefits notionally, if any, in exercise of discretionary powers depending upon the facts of each case."

And the decision of the Hon'ble Apex Court in the case of ***State of Haryana and another Vs. Saminder Singh***², wherein it is observed as under:

"2. The counsel for the appellant contended that the services of the respondent were terminated in July 1994. Therefore, he is not entitled to the benefit of GO dated 17-8-1994. The appellant had also contended that the respondent had not worked for more than 240 days and was not entitled to be retained in the muster roll. We do not find any force in this contention. The Labour Court held that no documents were produced to substantiate the contentions advanced by the appellant."

11. The judgments relied upon by the learned counsel for respondent No.2 Company relates to the mode of computation of back wages. Whereas in the facts of the case on hand, the pending proceedings before the

² (2007) 15 SCC524

2nd respondent, pursuant to the order of the Tribunal setting aside the order of removal/dismissal of the late delinquent employee from service, by operation of the law, got abated; the consequences the same would follow by operation of law. Thus the case law relied upon by the learned counsel for the 2nd respondent is not applicable to the present fact situation.

JUSTICE KIRANMAYEE MANDAVA

Date:12.11.2025

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THE HON'BLE SMT. JUSTICE KIRANMAYEE MANDAVA

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