

(2010) 12 AP CK 0010

Andhra Pradesh High Court

Case No: Writ Petition No"s. 22, 3714, 3715 and 3717 of 2004

R. Nagi Reddy

APPELLANT

Vs

Authority-cum-Labour Officer,
Circle-I, Ranga Reddy District,
Hyderabad and others.

RESPONDENT

Date of Decision: Dec. 23, 2010

Citation: (2011) 5 ALD 736

Hon'ble Judges: L. Narasimha Reddy, J

Bench: Single Bench

Advocate: R.K. Suri, for SIC, for the Appellant; V. Haribaran, Counsel for the Respondent
No. 3, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

L. Narasimha Reddy, J.

All the four writ petitions are filed by the same petitioner, and they are inter-related. Hence, they are disposed of through a common order. For the sake of convenience, the parties are referred to, as arrayed in WP No. 22 of 2004.

2. The petitioner filed SE No. 5 of 2000 before the Authority under the A.P. Shops and Establishments Act, 1988 (for short the "Shops Act"), the 1st respondent herein, claiming certain reliefs. He pleaded that he joined as Clerk, on 29.8.1980, with M/s. Power and Industrial Equipment and Accessories Limited, said to be one of the companies established by M/s. Minar Heat Transfer, the 3rd respondent herein, and after 10 years, he joined as Commercial Manager, with the 3rd respondent itself. He is said to have been terminated on 12.8.2000, without conducting any enquiry and without following the procedure prescribed under law. He claimed a sum of Rs. 11,06,400/- towards gratuity, future salary, yearly medical reimbursement, etc. The 3rd respondent opposed the case by raising several objections. Through order

dated 27.4.2000, the 1st respondent dismissed the case, by taking the view that the petitioner has to avail the remedies under the relevant provisions of law, and not under the Shops Act.

3. The petitioner filed an appeal being SE No. 2 of 2002 before the Appellate Authority, the 2nd respondent herein. The appeal was dismissed through order dated 14.10.2003. WP No. 22 of 2004 is filed against the said order.

4. The petitioner filed P.G. Case No. 4 of 2002 before the Authority under Payment of Gratuity Act, 1972 (for short "the Gratuity Act"), with a prayer to pass an order, directing recovery of arrears of gratuity from 29.8.1980 to 12.8.2000 against the 3rd respondent. The Authority passed an order dated 12.6.2003 directing that the 3rd respondent shall pay a sum of Rs. 85,385/- being the gratuity payable from the period 1.12.1990 to 16.8.2000. The petitioner, on the one hand, and the 3rd respondent, on the other hand, filed separate appeals, being Appeal Nos. 2 and 3 of 2003 before the Appellate Authority. Through a common order dated 31.12.2003, the Appellate Authority upheld the order passed by the Primary Authority, but, observed that a sum of Rs. 9,231/- was awarded in excess. WP No. 3714 of 2004 is filed by the petitioner, challenging the action of the Appellate Authority in deducting Rs. 9,231/-, and WP No. 3715 of 2004 is filed challenging the exclusion of the period from 29.8.1980 to 31.12.1989, for the purpose of computation of gratuity. WP No. 3717 of 2004 is filed by the petitioner challenging the denial of interest on the amounts of gratuity.

5. Heard Sri R.K. Suri, learned Counsel for the petitioner, learned Government Pleader for Labour, and Sri V. Hari Haran, learned Counsel for the 3rd respondent.

6. The subject-matter of WP No. 22 of 2004 is the order passed by the 1st respondent in SE No. 5 of 2000 dated 27.4.2002, as upheld by the 2nd respondent, through order dated 14.10.2003 in SE No. 2 of 2002. The Shops Act mainly provides for the relief against dismissal of an employee from service, contrary to the provisions of the enactment or the Standing Orders. Admittedly, the petitioner was functioning as Commercial Manager. Sub-section (8) of Section 2 of the Shops Act excludes from its purview, the employees, who are discharging managerial functions. Further, the various reliefs claimed in SE No. 5 of 2000 are dealt with under different enactments, which, in turn provide for separate remedies. Taking these aspects into account, the 1st respondent dismissed SE No. 5 of 2000, leaving it open to the petitioner to work out his remedies under the relevant enactment. That order was upheld by the 2nd respondent. The petitioner is not able to point out, legal or factual defect in the said orders. Hence, WP No. 22 of 2004 is dismissed.

7. On dismissal of SE No. 5 of 2000, the petitioner filed P.G. Case No. 4 of 2002 before the Competent Authority. Gratuity was claimed from 29.8.2000 till the date of termination, dated 18.8.2000. The 3rd respondent contested the claim on several grounds. According to them, there was neither termination nor cessation of

employment, and at any rate, the petitioner cannot claim gratuity for the period during which, he was in employment with another organization. The record discloses that the service benefits of the petitioner for his employment with M/s. Power and Industrial Equipment and Accessories Limited, upto January, 1990 were settled. The 3rd respondent is a separate legal entity, and it is not in dispute that the petitioner joined that organization only in January 1990. The Authority under the Gratuity Act took note of this fact, and awarded the amount of gratuity payable for the period during which, the petitioner was in employment of the 3rd respondent. The Appellate Authority upheld that order by correcting arithmetical error. It has rejected the appeal filed by the 3rd respondent also. Once it is not in dispute that the petitioner joined the 3rd respondent organization in January 1990, he cannot claim gratuity for any period, anterior thereto. The deduction of Rs. 9,231/- was on the basis of calculations.

8. This Court does not find any legal or factual error in the orders passed in P.G. Case No. 2 of 2003 and the appeals filed against it. Hence, WP Nos. 3714 and 3715 of 2004 are dismissed.

9. The Gratuity Act provides for award of interest on any dues of gratuity. The 3rd respondent did not challenge the orders passed by the Authorities under that Act. Thereby, the entitlement of the petitioner to be paid the gratuity remains unchallenged. The amount was payable in August 2000. With the cessation of employment of the petitioner with the 3rd respondent, he is entitled to be paid interest thereon.

10. Hence, WP No. 3717 of 2004 is allowed, directing that the employer of the petitioner, i.e., the 3rd respondent herein, is under obligation to pay interest @ 9% per annum, on the gratuity, from 18.8.2000, till the date of payment.

11. There shall be no order as to costs.