

**IN THE HIGH COURT FOR THE STATE OF TELANGANA AT
HYDERABAD**

WRIT PETITION NO 44334 of 2022

Between:
Coromandel International Limited and another

...Petitioners

AND

1. The Chairman-cum-Presiding Officer (FAC), Additional Industrial Tribunal-cum-Additional Labour Court, 1st Floor, Chandra Viohar Building, MJ Road, Nampally, Hyderabad and two others

...Respondents

COMMON JUDGMENT PRONOUNCED ON: 28.07.2023

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE K.SARATH

1. Whether Reporters of Local : Yes/No
newspapers may be allowed to see
the Judgment ?
2. Whether the copies of judgment may : Yes/No
be marked to Law Reports/Journals
3. Whether Their Lordship/Ladyship : Yes/No
wish to see the fair copy of judgment

JUSTICE K.SARATH

THE HON'BLE SRI JUSTICE K.SARATH**+WRIT PETITION NO.44334 of 2022**

%Dated 28.07.2023

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1. \$ The Chairman-cum-Presiding Officer (FAC), Additional Industrial Tribunal-cum-Additional Labour Court, 1st Floor, Chandra Viohar Building, MJ Road, Nampally, Hyderabad and two others

...Respondents

! Counsel for Petitioners : Sri C.S.Sridharan,
Learned Senior Counsel appearing
For Sri G.V.S.Ganesh,
Learned Counsel for the petitioners

^ Counsel for Respondents 1 & 3 : Learned Govt. Pleader for Labour and Industries

^ Counsel for Respondent No.2 : Sri P.V.Rama Raju

< GIST :

> HEAD NOTE :

? Cases referred :

1. (2022) 6 SCC 167
2. AIR 1967 SC 1040
3. 2009 (1) ALD 133 (DB)
4. 2002 (6) ALD 492
5. (1975) 2 SCC 661
6. (2016) 6 SCC 290
7. (2022) 2 SCC 25
8. 2016 (6) SCC 290
9. 1983 (4) SCC
10. 1971 SCR (2) 758

THE HON'BLE SRI JUSTICE K.SARATH**WRIT PETITION No.44334 of 2022****ORDER:**

1. Heard Sri C.S.Sridharan, Learned Senior Counsel appearing for Sri G.V.S.Ganesh, Learned Counsel for the petitioner-company and the learned Government Pleader for Labour and Industries, appearing for respondents Nos.1 and 3 and Sri P.V.Rama Raju, learned Counsel appearing for the respondent No.2.
2. The Learned Senior Counsel appearing for the petitioner-company submits that the petitioner-company is a Public Limited company having its Registered Office at Secunderabad, engaged in the business of manufacture and sale of fertilizers and other Farm inputs. Initially the respondent No.2 joined in M/s. E.I.D Parry (India) Ltd., Secunderabad as Bradma Machine Operator in Fertilizer Division and thereafter

he got promotions from time to time as Supervisor, Assistant Officer (Accounts). The said EID Company and the Farm Inputs Division got amalgamated with the petitioner-company on 01.12.2003. The respondent No.2 after becoming the employee of the petitioner-company, he was designated as Officer (Accounts) and he was promoted as Senior Officer-Accounts (Officer/Administrative Cadre) in Grade CF-2, which is an Officer cadre and the respondent No.2 was transferred to Aurangabad. Ever since transfer of the respondent No.2 to Aurangabad his performance was at low level and used to remain absent from his duties oftenly.

3. The learned Senior Counsel appearing for the petitioner further submits that after reviewing the performance of the respondent No.2 for the period from 01.04.2010 and having found that his poor/low

performance has affected the functioning of the Branch and resulted in sharing of his workload by other employees, the services of the respondent No.2 were terminated vide letter dated 09.10.2013 by paying three months salary in lieu of notice along with full and final settlement amounting to Rs.87,131/- which was received by the respondent No.2. The said termination was effected while he was working at Aurangabad.

4. The learned Senior Counsel appearing for the petitioner further submits that the respondent No.2 filed I.D No.42 of 2013 before the Respondent No.1/Industrial Tribunal at Hyderabad (herein referred to as "Tribunal") challenging the termination orders dated 09.10.2013 issued by the petitioner-company. The petitioner-company filed W.P.No.8622 of 2014 and questioned the territorial jurisdiction by entertaining the I.D.No.42 of 2013 by the Respondent No.1/Tribunal and

the same was disposed of by this Court remanding the matter back to the respondent No.1 with a direction to frame a preliminary issue in respect of the territorial jurisdiction of the Tribunal and decide the same before further proceeding with the I.D and permitted the petitioner to raise plea regarding maintainability of I.D before the Tribunal/respondent No.1.

5. The learned Senior Counsel for the petitioner further submits that after hearing both sides the respondent No.1 passed orders on 01.10.2019 holding that the respondent No.1 is having jurisdiction to decide the ID raised by the respondent No.2 under Section 2 (A) (a) of the Industrial Dispute Act (ID Act). Without prejudice to the rights and contentions of the petitioner against the order dated 01.10.2019, the petitioner-company filed additional counter contending that the respondent No.2, who worked as Senior

Officer-Accounts and not a workman within the meaning of Section 2 (s) of the I.D Act and the termination order dated 09.10.2013 was passed by them was in accordance with the terms and conditions of the employment of the respondent No.2.

6. The learned Senior Counsel for the petitioner-company further submits that after hearing both sides the respondent No.1/Tribunal passed the impugned Order in I.D.No.42 of 2013 on 29.07.2022 and setting aside the orders passed by the petitioner-company for the termination of the Respondent No.2 dated 09.10.2013. As the respondent No.2 had already attained the age of superannuation within three years from the date of termination, he was awarded compensation in lieu of reinstatement amounting to Rs.16,18,500/, out of which Rs,.8,27,460/- towards back wages for 36 months as per the last pay drawn,

Rs.3,91,000/- was towards compensation equivalent to 15 days average pay for every completed year of continuous service, Rs.3,00,000/- towards compensation for Mental Agony and Rs.1,00,000/- towards damages and directed to pay the said compensation amount within three months from the date of publication award and the impugned Award came to be published on 27.09.2022 vide GO Rt.No.415, LET & (Lab.-II) Department dated 08.09.2022.

7. The learned Senior Counsel for the petitioner further submits that the respondent No.1-Tribunal failed to consider that the entire cause of action was arose for the present ID at Aurangabad and in the light of the Judgments of the Hon'ble Supreme Court as well as Judgments of this Court any ID shall be raised before a Tribunal, which has territorial jurisdiction over the last place of work of the employee.

8. The learned Senior Counsel for the petitioner further submits that the Tribunal erred in holding that the respondent No.2 to be 'Workman' under the ID Act, as the nature of duties of the respondent No.2 were mainly administrative in nature, as he was Officer Cadre, where he was posted and was drawing salary of Rs.22,985/- per month and hence the respondent No.2 was not a Workman within the definition of Section 2 (s) of the ID Act.

9. The learned Senior Counsel for the petitioner-company further submits that the Tribunal grossly erred in holding that the termination orders issued by the petitioner company is invalid.

10. The learned Senior Counsel for the petitioner-company further submits that as per Section 11-A of the ID Act, the Tribunal has power only to set aside the order of discharge or dismissal and direct for

reinstatement, reduce punishment and give relief, but it has no power to award compensation for mental agony or even damages and requested to allow the writ petition and set aside the impugned orders.

11. The learned Senior Counsel for the petitioner-company in support of his contention placed reliance on the following Judgments:

- 1. V.G.Jadishan Vs. Indofos Industries Ltd.,¹**
- 2. Workmen of Sri Ranga Vilas Motors (P) Ltd., Vs Sri Rangavailas Motors (P) Ltd.,²**
- 3. S.Padmanabham Vs. Industrial Tribunal-II, Hyderabad and others³**
- 4. Siemens Ltd., Vs. Presiding Officer, Additonal Industrial Tribunal-cum-Labour Court, Hyderabad and another ⁴**
- 5. The Cooper Engineering Ltd., Vs. Sri P.P.Mundhe ⁵**

12. The learned Counsel appearing for the respondent No.2/Workman submits that the Order of the Tribunal in I.D.No.42 of 2023, dated 01.10.2019 became final

¹ (2022) 6 SCC 167

² Air 1967 SC 1040

³ 2009 (1) ALD 133 (DB)

⁴ 2002 (6) ALD 492

⁵ (1975) 2 SCC 661

and the writ petitioner-company who was the respondent in ID No.42/20213 has submitted argument as to the territorial jurisdiction, participated in the trial before passing the order and therefore it is not open for the Writ petitioner again to raise the same point of territorial jurisdiction in the present writ petition as it has estopped from raising the decided point which constitutes *res judicata*.

13. The learned Counsel for the respondent No.2 further submits that the petitioner-company has examined its Vice President Sri R.V.Subramanyam as MW1 and in his cross-examination he admitted that the respondent No.2 was in the post of Senior Officer Accounts in the Cadre of Grade of CF2 and moreover the salary of the respondent No.2 was less than the salary of the Manager and no domestic enquiry was conducted on the allegation levelled against the respondent No.2 and the petitioner-company is having

certified Standing Orders and the respondent No.2 was working under the Supervisor viz., Mr.R.V.Ramana Murthy.

14. The learned Counsel for the respondent No.2 further submits that the termination orders dated 09.10.2013 reads that from 01.04.2010 onwards the performance of the respondent No.2 was at low level, which is contrary to the incentive payment made by the petitioner-company to the respondent No.2 to an amount Rs.53,252/- for the year 2011-12. The respondent No.1/Tribunal rightly held that the respondent No.2 was not designated in the Manager capacity though he was designated as CF2 Grade which is a Non-Managerial cadre and he used to work and discharged duties as that of clerical and he worked under the Supervisors and his actual work/grade/designation comes under the terms of

Workman, as defined under Section 2(s) of the ID Act. The Rule-21 (2) of the Standing Orders of the petitioner-company which is in force and the same is as follows:

“no order of punishment for misconduct shall be made except after holding an enquiry against the workman concerned in respect of the alleged misconduct”.

15. The learned Counsel for the respondent No.2 further submits that the petitioner-company passed the impugned order against the Workman who has completed 34 years of service on the ground of misconduct. The respondent No.1/Tribunal rightly allowed the I.D No.42 of 2013 by considering all the submissions made by both sides and relying on the decisions rendered by the Hon'ble Supreme Court as well as this Court and in view of the same there are no merits in the writ petition and requested to dismiss the writ petition.

16. The learned Counsel for the respondent No.2 in support of his contentions placed reliance on the following Judgments:

1. *Nandram Vs. Garware Polyester Limited*⁶

2. *Union of India and others Vs. N.Murugesan and others*⁷

17. After hearing both sides, this Court is of the considered view that the petitioner-company is a Public Limited company having its registered office at Secunderabad and the respondent No.2 worked as Senior Officer - Accounts (Officer/Administrative Cadre in Grade-CF2) and while he was working at Aurangabad his services were terminated on 09.10.2013 by paying three months salary in lieu of notice along with full and final settlement. The respondent No.2 approached the Tribunal at Hyderabad under Industrial Dispute Act, 1947 and

⁶ (2016) 6 SCC 290

⁷ (2022) 2 SCC 25

filed I.D.No.42 of 2013. The petitioner-company approached this Court and filed W.P.No.8622 of 2014 and questioned the jurisdiction of the respondent No.1 and the same was disposed of by this Court by remanding the matter to the respondent No.1 with a direction to frame a preliminary issue in respect of territorial jurisdiction and decide the same. Accordingly, the respondent No.1/Tribunal framed the preliminary issue and after hearing both sides, the objection raised by the petitioner-company was rejected and held that the Tribunals at Hyderabad as well as at Aurangabad have jurisdiction to entertain the I.D and accordingly passed order on 01.10.2019 on the preliminary issue. The said orders were not questioned by the petitioner-company pending the I.D and filed counter and participated in the proceedings before the Tribunal and the Tribunal after considering all the aspects and taking into account of the

judgments relied on both sides allowed the I.D on 29.07.2022 with the following findings:

- 1. The termination order passed by the respondent company dated 09.10.2013 is hereby set aside.*
- 2. The petitioner is entitled to receive compensation of Rs.16,18,500/- in lieu of reinstatement.*
- 3. The respondents are directed to pay the said compensation amount within three months from the date of publication of Award.*
- 4. Both the parties shall bear their own costs.*

18. Now, the petitioner-company filed the present writ petition questioning the orders dated 01.10.2019 and also Orders dated 29.07.2022 in I.D.No.42 of 2013 passed by the respondent No.1.

19. The learned Senior Counsel for the petitioner-company vehemently argued that the Tribunal at Hyderabad has no jurisdiction and cited various judgments including the Judgment of Hon'ble Supreme Court in **V.G.Jagdishan Vs Indofofos Industries Ltd.,** (*supra 1*) on the ground that as on the date of

termination, the respondent No.2 worked at Aurangabad and the Tribunal at Aurangabad only has jurisdiction to decide the I.D.

20. The Tribunal in its order dated 01.10.2019 categorically held that the respondent No.2 was appointed by issuing orders by the Head Office situated at Secunderabad and apart from this, the work performance of the Respondent No.2 was also appraised by Head Office at Secunderabad vide letters 01.07.2006, 01.01.2010 respectively and executive incentive for the year 2011-12 was also given to the Respondent No.2 by the petitioner-company, Head Office situated at Secunderabad on 16.7.2012, but the show-cause notice was issued from Ankaleshwar, Gujarath and the termination order was issued by Head Office at Secunderabad and also held that even though the respondent No.2 was transferred from

Secunderabad to Aurangabad Branch, the entire services and control of the respondent No.2 was under the control of Head Office at Secunderabad which includes payment of salary, incentives, appreciation of work, termination orders. Further the Tribunal held that the Branch at Aurangabad was closed and the same was merged in Pune Divisional Branch and taken a view that even if any orders passed by the Tribunal have to be implemented by the petitioner-Company, Head Office situated at Secunderabad, but not the Branch of Aurangabad or Pune.

21. The Tribunal relying on the judgment of the Hon'ble Apex court in ***Nandaram Vs. M/s Garware Polyesters Ltd.***⁸ held that Tribunal at Hyderabad as well as Aurangabad have jurisdiction, and once there is no branch at Aurangabad the entire control over the services of the respondent No.2 are vested with the

⁸ 2016 (6) SCC 290

Head Office at Secunderabad and came to conclusion that part of cause of action arose at Secunderabad and the Tribunal at Hyderabad is having jurisdiction to decide the issue raised by the petitioner/respondent No.2 herein under Section 2 (A) (a) of the Industrial Dispute Act.

22. The Hon'ble Apex Court in **V.G. Jagdishan Vs Indofo Industries (supra1)** held that the I.D cannot be entertained where Head Office is situated without any cause action. But, the facts of the instant case are different and there was a cause of action arose in the place of Head Office i.e. Secunderabad in the instant case and in the above Judgment. the Hon'ble Supreme Court also considered the **Nandaram's case**. The judgments relied on by the learned Counsel for the petitioner-company not apply to the instant case for the jurisdictional aspect. The Tribunal correctly applied

the ratio laid down in ***Nandaram's case*** and held that the Tribunal at Hyderabad has jurisdiction to entertain the ID and in view of the same the orders passed by the Tribunal on 01.10.2019 needs no interference with regard to the jurisdiction aspect.

23. The contention of the petitioner-company is that the Tribunal erred in holding that the respondent No.2 is a workman under Industrial Dispute Act as the nature of the works of the respondent No.2 was mainly administrative in nature and he was in Officer Grade and drawn salary of Rs.22,985/- and hence the respondent No.2 is not a workman under the I.D Act. But in the trial, the Senior Associate Vice-President of Petitioner-Company was examined as MW1 before the Tribunal and during the cross-examination, he admitted that the respondent No.2 worked under the Supervisor namely R.V.Ramana Murthy and he looked

after the clerical works in the Accounts Section. The Tribunal basing on the judgments of the Hon'ble Supreme Court reported in **S.K.Varma Vs. Mahesh Chandra and another⁹** and **Burma Shell Oil Storage and Distribution Co. India Ltd., Vs. Burma Shell Management Staff Association and others¹⁰** held that though the respondent No.2 is designated as Senior Officer–Accounts (Officer/Administrative Cadre) in Grade-CF2, he discharged the duties of the clerical in nature and he has to be treated as a Workman.

24. The Hon'ble Supreme Court in **S.K.Varma Vs. Mahesh Chandra (supra 9)** and another held as follows:

“Designation or name of the post not decisive-interpretation of the provisions should be liberal and pragmatic so as to advance the object of the Act. It is therefore necessary to interpret the definitions of ‘industry’ ‘workman’ ‘industrial dispute’ etc., so as not whittle down, but to advance the object of the Act”.

⁹ 1983 (4) SCC

¹⁰ 1971 SCR (2) 758

25. In ***Burma Shell Oil Storage and Distribution Company of India Ltd., Burma Shell Management Staff Association and others (supra 10)***, the Hon'ble Apex Court held as follows:

"If a person is mainly doing supervisory work and incidentally for a fraction of time also does some clerical work, it would have to be held that he is employed in a supervisory capacity, and conversely if the main work done is of clerical nature, the mere fact that some supervisory duties are also carried out incidentally or as a small fraction of the work done by him will not convert him his employment as clerk into one in supervisory capacity"

26. In view of the law laid down by the Hon'ble Supreme Court of India in the above cited judgments, the Tribunal rightly came to the conclusion that the respondent No.2 is a workman within the definition of Section 2 (s) of the Industrial Dispute Act.

27. The contention of the petitioner-company is that due to poor performance of the respondent No.2, in spite of giving several opportunities, the management

lost confidence in the respondent No.2 and terminated him from service and there was no necessity to conduct enquiry and the Tribunal without appreciating of the law laid down by the Hon'ble Apex Court allowed the I.D. In fact, after considering the judgments relied upon by both the sides, the Tribunal held that, if the enquiry was not held prior to termination, there was no other alternative to the Industrial Tribunal except to consider for reinstatement of the workman and now the position is that even if the enquiry is not held, validity of termination can be decided by the Industrial Tribunal by taking up enquiry by itself. In the present case, since there is no domestic enquiry conducted before termination of the Respondent No.2, the Tribunal has recorded the evidence of both the sides. Moreover, as per Standard Orders of the Petitioner-company the termination of the respondent No.2 is liable to be set aside on the ground of without

conducting any enquiry and the learned Tribunal rightly allowed the I.D by setting aside the termination orders.

28. The allegation against the respondent No.2 for termination that his performance at Aurangabad was very low from 01.04.2010 to 09.10.2013. The said allegation is contrary to the material on record filed by the petitioner-company, as the record shows that the respondent No.2 was granted incentive payment of Rs.53,252/- for the year 2011-12 by its letter dated 16.07.2012, which was issued by the Head Office of the petitioner company at Secunderabad. It clearly shows that the performance of the respondent No.2 while working at Aurangabad was not very low and the Tribunal rightly held that without any justifiable reasons, the respondent No.2 was terminated from the services by the petitioner company and the same is

unjust and liable to be set aside. The Tribunal rightly held that the respondent No.2 had rendered 34 years of unblemished services and the punishment imposed is harsh and shockingly disproportionate. In view of the same the impugned orders passed by the respondent No.1/Tribunal needs no interference.

29. The contention of the petitioner-company is that under Section 11-A of the ID Act, the Tribunal has the power only to set aside the order of discharge or dismissal and direct reinstatement, reduce punishment and give relief and it is not mentioned anywhere that the Tribunal has the power to award compensation for mental agony or even damages and the said direction is without jurisdiction.

30. It is settled law that where the workman loses employment on the ground of unjustifiable and premature termination of employee, he should get

something more than what he would have getting as compensation, if it was a proper case. In similar circumstances the Delhi High Court in **Prem Chand Vs M/s Joint Director, Information and Public Relations**¹¹, held as follows:

*"It is settled law that if the Labour Court is of the opinion that the award of said compensation would meet the ends of justice in a particular case, then keeping in mind the relevant facts and circumstances of that case, the Labour Court has the power to award compensation even though there may be no claim for back wages or reinstatement made by the workman. This power is derived from Section 11-A of Industrial Disputes Act which deals with power of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of Discharge or Dismissal of workmen. In **Anglo-American Direct Tea Trading Company Ltd. Vs. Workmen of Nahortoli Tea Estate (1961) 2 LLJ 625 (SC)**, the Supreme Court through Justice Wanchoo held that Section 11-A vests the industrial adjudicators with the discretionary jurisdiction to give 'such other relief to the workmen. in lieu of discharge or dismissal as the circumstances of the case may require,' where for some valid reason it considers that reinstatement with or without conditions will not be fair or proper. Compensation in such a case is the solatium for unjustified and premature termination of employment. In this case also, the same has been done. The relief of compensation is clearly incidental to any adjudication that goes into the question of unlawful termination of service of*

¹¹ Judgment in WP No.950 of 2008
of Delhi High Court dated 06.02.2008.

an employee. Even going by the general principles of Industrial Adjudication, it would be incorrect to conclude that compensation in lieu of reinstatement is not incidental to a dispute relating to dismissal or discharge of a workman. As already stated above, it is unquestionable that even after finding that termination is illegal, the Labour Court has the power to decline reinstatement if it is of the view that compensation will suffice".

31. The above judgment is squarely apply to the instant case and in this regard the Tribunal clearly held that no doubt the petitioner is entitled for reinstatement, but the petitioner attained the age of superannuation within three years from the date of termination and therefore the question of ordering the reinstatement does not arise and in view of the same the Tribunal granted compensation to the respondent No.2 instead of reinstatement into the service. The orders of the Tribunal needs no interference by this Court with regard to compensation.

32. In view of the above findings, the orders dated 01.10.2019 and the orders dated 29.07.2022 passed in I.D.No. 42 of 2013 on the file of Additonal Industrial Tribunal-cum-Labour Court, Hyderabad needs no interference by this Court. Accordingly, the Writ Petition is dismissed as devoid of any merits. There shall be no order as to costs.

33. Miscellaneous petitions, pending if any, shall stand closed. There shall be no order as to costs.

JUSTICE K.SARATH

Date:28.07.2023

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