

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

THURSDAY, THE THIRD DAY OF OCTOBER
TWO THOUSAND AND TWENTY FOUR

PRESENT

HON'BLE SMT. JUSTICE V.SUJATHA

WRIT PETITION NO: 30040 OF 2015



Between:

Hindustan Petroleum Corporation Limited, (a Government of India Enterprise),
having its Registered Office at 17 Jamshedji Tata Road, Mumbai - 400 020
having its Refinery at Visakha Refinery, Post Box No.15, Visakhapatnam - 530
011, Andhra Pradesh, represented by its Executive Director - Visakh Refinery,
Shri G Sriganesh.

...PETITIONER(S)

AND

1. The Union of India, Rep. by the Under Secretary Ministry of Labour,
Government of India New Delhi - 110 001
2. The Conciliation Officer & Assistant Labour Commissioner, (Central)
Visakhapatnam.
3. The Regional Labour Commissioner (Central), Office of the Regional
Labour Commissioner (Central), Vidyanagar, Hyderabad.
4. The Chairman-cum-Presiding Officer, Central Government Industrial
Tribunal-cum-Labour Court, Manoranjan Complex M. J. Road, Hyderabad
- 500 001

Also at The Hon'ble Presiding Officer CGIT-cum-Labour Court (Camp at
Visakhapatnam) State Government Labour Court Premises GVMC
Complex Near Jagadamba Centre Visakhapatnam, Andhra Pradesh.

5. S. Veluchamy, S/o Sri U.Shanmugam MIG-80, Phase III, VUDA Colony
Samathanagar, Pedagantyada, Visakhapatnam, Andhra Pradesh

...RESPONDENTS

Petition under Article 226 of the Constitution of India is filed praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to:-

a) call for the records from the Respondent Nos. 1 to 3 herein culminating in the Order of Reference No.L-30012/2/2015 - IR(M), dated 11/05/2015 issued by the Respondent No.1 herein, by the issuance of a Writ, more particularly in the nature of Writ of Certiorari or any other appropriate Writ, Order of Direction and quash the same;

b) declare the Order of Reference No.L-30012/2/2015 - IR(M), dated 11/05/2015 issued by the Respondent No.1 herein, purportedly making a reference under Section 10(1) of the Industrial Disputes Act, 1947 as clearly illegal, invalid and void;

c) consequently, restrain the Respondent No. 4, viz., The Chairman-cum-Presiding Officer, Central Government Industrial Tribunal-cum- Labour Court, Manoranjan Complex, M. J. Road, Hyderabad - 500 001 also at the Hon'ble Presiding Officer, CGIT-cum-Labour Court (Camp at Visakhapatnam) State Government Labour Court Premises, GVMC Complex, Near jagadamba Centre, Visakhapatnam, Andhra Pradesh, from proceeding with ID No. 41 of 2015 pursuant to the impugned Order of Reference by the issuance of a Writ of Prohibition or any other appropriate Writ, Order or Direction.

I.A. NO: 1 OF 2015(WPMP. NO: 38883 OF 2015)

Petition under Section 151 CPC is filed praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay the operation of Order No.L30012/2/2015 -

IR(M), dated 11/05/2015 issued by the Respondent No.1 herein, including all further proceedings in ID No. 41 of 2015 on the file of the learned Respondent No. 4, The Chairman-cum-Presiding Officer, Central Government Industrial Tribunal-cum- Labour Court, Manoranjan Complex, M. J. Road, Hyderabad - 500 001 also at the Hon'ble Presiding Officer, CGIT-cum-Labour Court (Camp at Visakhapatnam) State Government Labour Court Premises, GVMC Complex, Near Jagadamba Centre, Visakhapatnam, Andhra Pradesh, pending disposal of the Writ Petition.

Counsel for the Petitioner: SRI G V S GANESH

Counsel for the Respondent No.1: SRI Y V ANIL KUMAR (CENTRAL GOVERNMENT COUNSEL)

Counsel for the Respondent No. 4: SRI DILIP JAYA RAM (DEPUTY SOLICITOR GENERAL OF INDIA)

Counsel for the Respondent Nos. 2, 3 & 5: ----

The Court made the following: ORDER

APHC010188902015



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

[3333]

THURSDAY, THE THIRD DAY OF OCTOBER
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SMT JUSTICE V.SUJATHA

WRIT PETITION NO: 30040/2015

Between:

Ed, Hindustan Petroleum Corp. Ltd, Visakhapatnam

...PETITIONER

AND

Secretary Ministry Of Labour New Delhi 4 Others and
Others

...RESPONDENT(S)

Counsel for the Petitioner:

1.G V S GANESH

Counsel for the Respondent(S):

1.Y V ANIL KUMAR (Central Government Counsel)

2.DILIP JAYA RAM (DEPUTY SOLICITOR GENERAL OF INDIA)

The Court made the following:

ORDER:

This writ petition is filed under Article 226 of the Constitution of India seeking the following relief:-

"....to call for the records from the Respondent Nos.1 to 3 herein culminating in the Order of Reference No.L-30012/2/2015-IR(M), dated 11/05/2015 issued by the Respondent No.1 herein, by the issuance of a Writ, more particularly in the nature of Writ of Certiorari or any other appropriate Writ, Order of Direction and quash the same; (b) declare the Order of Reference No.L-30012/2/2015-IR(M), dated 11/05/2015 issued by the Respondent No.1 herein, purportedly making a reference under Section 10(1) of the Industrial Disputes Act, 1947 as clearly illegal, invalid and void; (c) consequently, restrain the Respondent No.4, viz., The Chairman-cum-Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, Manoranjan Complex, M.J.Road, Hyderabad-500 001 also at the Hon'ble Presiding Officer, CGIT-cum-Labour Court (Camp at Visakhapatnam) State Government Labour Court Premises, GVMC Complex, Near Jagadamba Centre, Visakhapatnam, Andhra Pradesh, from proceeding with ID No.41 of 2015 pursuant to the impugned Order of Reference by the issuance of a Writ of Prohibition or any other appropriate Writ, Order or Direction; and issue such further Writ Order or Direction as this Hon'ble Court may deem fit and proper in the circumstances of the case...."

2. The brief facts of the case are:

a) The 5th respondent was appointed as a Junior Operations Technician on 15.09.1983 and was promoted from time to time and was the acting Supervisor of the LPG Plant. He was the overall in-charge of the shift pertaining to the LPG Plant and was discharging supervisory nature of duties attending/monitoring day-to-day functions of the plant. While things stood thus, a charge sheet-cum-suspension order was issued to the 5th respondent

on 03.02.1998 for certain acts of misconduct committed by him, calling upon his explanation. Being not satisfied with the explanation submitted by the 5th respondent, a domestic enquiry was conducted, wherein the 5th respondent was found guilty of negligence of work in performance of his duties, causing damage to the work of the petitioner Management endangering the life of another person, carelessness, resulting in the death of nearly 60 persons. Basing on the enquiry report, disciplinary authority *vide* its order dated 06.02.2003 imposed penalty of dismissal from service of the petitioner Management on the 5th respondent employee. On the appeal preferred by the 5th respondent, the appellate authority having convinced with the reasons assigned by the disciplinary authority, upheld the punishment imposed by the disciplinary authority *vide* its order dated 10.06.2003.

b) While the things stood thus, a notice 95/2013-ALC, dated (illegible)/07/2013 was issued by the 2nd respondent/Conciliation Officer cum Assistant Labour Commissioner (Central), Visakhapatnam by duly enclosing purported copy of letter dated 25.04.2013 said to have been submitted by the 5th respondent employee, directing the petitioner Management to offer their views and also to depute one of their officers to attend the discussions on 06.09.2013 at 12.00 hours, pursuant to which, the petitioner Management submitted their detailed reply, contending that the services of the 5th respondent were terminated by the disciplinary authority basing on the domestic enquiry for the proved acts of misconduct committed by the 5th respondent and the said orders of the disciplinary authority was also

confirmed by the appellate authority; and that the 5th respondent employee has not filed any review against such order. Accordingly, the petitioner Management requested the 2nd respondent to close the matter since the petitioner Management did not have any records as the matter relates to the year 2003. Instead of closing the matter, the 2nd respondent has chosen to refer the matter for arbitration as per the provisions of the Industrial Disputes Act. Pursuant to the said reference, the 1st respondent issued proceedings in NO.-L-30012/2/2015-IR(M), dated 11.05.2015 to both the parties, calling for their statements of claim with complete relevant documents and the witnesses, within a period of 15 days from the date of receipt of order of reference. Challenging the same, the present writ petition is filed.

3. Heard learned counsel for the petitioner and Mr.Y.V.ANIL KUMAR, Central Government Counsel appearing for respondent No.2.

4. Learned counsel for the petitioner submitted that the 1st respondent failed to appreciate that the services of the 5th respondent were terminated by the disciplinary authority on 06.02.2003, which is upheld by the appellate authority vide its order dated 10.06.2003, against which, no review application has been filed by the 5th respondent. He further submits that without preferring any review, the 5th respondent made a request vide letter dated 25.04.2013 to the 2nd respondent/Conciliation Officer cum Assistant Labour Commissioner (Central), Visakhapatnam, seeking his reinstatement into job with all consequential benefits after lapse of nearly ten years from the date of termination. In fact, the said request is totally in violation of the provisions of

the Industrial Disputes Act, 1947, in as much as the said request shall be made within a period of three (3) years from the date of his removal from service. But the 2nd respondent, without considering the said fact, had proceeded with the purported conciliation proceedings and accordingly, submitted failure report vide its order dated 28.08.2014, while suggesting the reference to the 1st respondent for arbitration as per the provisions of Industrial Dispute Act.

5. Before proceeding further, it may be relevant to refer the provisions of Section 2-A (2) & (3) of the Industrial Disputes Act, 1947:

2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.

(1) *Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.*

(2) *Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.*

(3) *The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1).*

6. As seen from the material on record, it appears that the 5th respondent was terminated from the services on 06.02.2003, which was upheld by the appellate authority, against which, there was no review by the 5th respondent. However, on a request made by the 5th respondent, a notice No.95/2013-ALC, dated (illegible)/07/2013 was issued by the 2nd respondent informing that the 5th respondent employee sought for indulgence in to his matter to render justice by reinstating him into job of the petitioner Management, whereby the petitioner Management was called for its views. Pursuant to the said notice, the petitioner Management submitted a detailed reply on 04.03.2014 and sought for closing the matter. Basing on the said reply as the discussions failed in the meeting held on 29.04.2014, the matter was ceased in conciliation on 23.05.2014 due to divergent views made by the parties and referred the matter for arbitration as per the provisions of Industrial Dispute Act.

STATE AMENDMENT

Andhra Pradesh

In Section 2A, After the existing sub-section (2), the following sub-section shall be added, namely:-

(3) Notwithstanding anything in sub-sections (1) and (2), no such dispute or difference between that workman and his employer connected with or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute if such dispute is not raised in conciliation proceeding within a period of three years from the date of such discharge, dismissal, retrenchment or termination:

Provided that the Labour Court or the Conciliation Officer, as the case may be, may consider to extend the said period of three years when the applicant workman satisfies the Court or Conciliation Officer that he had sufficient cause for not raising the dispute within the period of three years."

7. A reading of the above provision makes it clear that any dispute or difference between the workman and his employer connected with or arising out of, such discharge, dismissal, retrenchment or termination shall be raised within a period of three (3) years from the date of such discharge, dismissal, retrenchment or termination and that if such dispute is not raised within the period of three (3) years from the date of such discharge, dismissal, retrenchment or termination shall not be deemed to be an Industrial Dispute. The proviso to the Section-2A, also confers a power as the Labour Court or the Conciliation Officer to extend the period of limitation when the applicant satisfies sufficient cause for not raising of the dispute within a period of three years.

8. In the case on hand, it is not in dispute that nearly after lapse of 12 years from the date of dismissal of the appeal, the 5th respondent employee made the request to 2nd respondent, seeking his indulgence into the case for rendering justice for his reinstatement in the job with all consequential benefits and to settle all pending dues. Pursuant to which, the 2nd respondent issued notice No.95/2013-ALC, dated (illegible)/07/2013, calling for the petitioner Management views in respect of the 5th respondent employee and accordingly, the petitioner Management submitted a detailed reply and sought for closing the matter in favour of the petitioner Management as the conciliation ended in failure due to divergent views made by the parties, and that the Conciliation proceedings are ceased, while referring the dispute for arbitration as per the provisions of the Industrial Disputes Act. In fact, such a

reference is not maintainable in view of the bar contained in Section 2A sub Section (3) of the Industrial Disputes Act, according to which, the dispute shall be raised within a period of three (3) years from the date of termination or dismissal of the appeal. But keeping silent all these years, the 5th respondent employee raised the dispute nearly after lapse of nearly 12 years to cover up inexplicable delay more than ten (10) years in raising such industrial dispute. The 1st respondent ought to have looked into the matter whether such reference is made within a period of three (3) years from the date of dismissal of the services of the 5th respondent employee or not. However, he raised a plea that he has preferred a review against the appellate order dated 10.06.2003 even without filing a copy of the same.

9. It appears that the 5th respondent employee has not preferred any review or has not filed any documents to prove that he has filed review application, but, simply raised a dispute before the Conciliation Officer. It is also an admitted fact that the 1st respondent failed to appreciate that the services of the petitioner, were terminated on 06.02.2003 which was further confirmed by the appellate authority by its order dated 10.06.2003. The attempts made by the 5th respondent in referring the matter before the Conciliation Officer consequent upon which a reference is made before the 1st respondent amounts to misleading the Court and in totaling in violation of the provisions of the Industrial Disputes Act. Hence, the order of reference made by the 2nd respondent to the 1st respondent is directly hit by the amended

provision of Section 2A sub Section (3) of the Industrial Disputes Act. As such, it is barred by limitation.

10. Accordingly, the Writ Petition is allowed and the order of reference in No.L-30012/2/2015-IR(M), dated 11.05.2015 issued by the 1st respondent is hereby set aside. There shall be no order as to costs.

As a sequel, Interlocutory Applications pending, if any, in this Writ Petition, shall stand closed.

That Rule Nisi has been made absolute as above. Witness that Hon'ble the Chief Justice Sri Dhiraj Singh Thakur on this Thursday, Third day of October, Two Thousand and Twenty Four.

**Sd/- B CHITTI JOSEPH
ASSISTANT REGISTRAR**

//TRUE COPY//

SECTION OFFICER

To,

1. The Under Secretary, Ministry of Labour, Government of India, New Delhi - 110 001
2. The Conciliation Officer & Assistant Labour Commissioner, (Central) Visakhapatnam.
3. The Regional Labour Commissioner (Central), Office of the Regional Labour Commissioner (Central), Vidyanagar, Hyderabad.
4. The Chairman-cum-Presiding Officer, Central Government Industrial Tribunal-cumLabour Court, Manoranjan Complex M. J. Road, Hyderabad - 500 001 Also at The Hon'ble Presiding Officer CGIT-cum-Labour Court (Camp at Visakhapatnam) State Government Labour Court Premises GVMC Complex Near Jagadamba Centre Visakhapatnam, Andhra Pradesh.
5. One CC to Sri G V S Ganesh Advocate [OPUC]
6. One CC to Sri Y V Anil Kumar (Central Government Counsel) Advocate [OPUC]
7. One CC to Deputy Solicitor General of India, High Court of A.P. [OPUC]
8. Three CD Copies

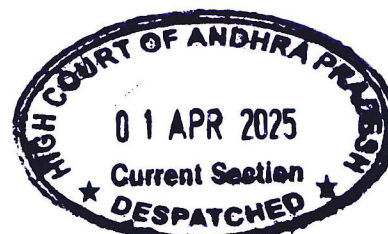
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HIGH COURT

DATED: 03/10/2024

ORDER

WP.No.30040 of 2015



ALLOWING THE W.P. WITHOUT COSTS