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W.A. No. 1387 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2023

CORAM

THE HON'BLE MR.JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MR.JUSTICE K. RAJASEKAR

W.A. No. 1387 of 2021

P. Ravichandran

..Appellant

Vs.

1. The Management,
Sharp Industries,
Sharp Nagar, Kalapatti,
Coimbatore – 641 048.

2. The Presiding Officer,
Labour Court
Coimbatore.

..Respondents

Prayer: Writ Appeal as against the order dated 28.11.2019 passed in

W.P. No. 28185 of 2018.

For Appellant :: Mr.V.Sivakumar



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For Respondents :: Mr.S. Ravindran,
Senior Counsel for
Mr.S. Bazeer Ahmed for R1

J U D G M E N T

(Delivered by S. Vaidyanathan,J.)

Challenging the order dated 28.11.2019 passed in W.P. No. 28185 of 2018, the present writ appeal has been preferred.

2. The appellant/writ petitioner joined the service of the respondent Management as a fitter on 03.05.1988 and was a permanent worker. During the course of his work, all of a sudden, the appellant was directed to report duty at Nagpur to attend to certain service works. He was transferred to Nagpur to attend to the service works. According to the petitioner, though he submitted his objections, he joined duty at Nagpur and finally, he was transferred again to Coimbatore. However, the appellant/writ petitioner was not permitted to join duty and he was orally terminated from service. The appellant/writ petitioner raised an industrial dispute in I.D. No. 131 of 2013 questioning his oral termination. The



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Labour Court, Coimbatore, after analysing the materials on record, passed an award on 28.11.2017 directing the Management to pay lumpsum compensation of Rs.3 lakhs as full and final settlement with regard to the entire claim. Aggrieved over the award passed by the Labour Court, the appellant/writ petitioner approached this Court by way of writ petition in W.P. NO. 28185 of 2018 seeking reinstatement, continuity of service with full backwages and other attendant benefits and by order dated 28.11.2019, the learned Single Judge dismissed the writ petition confirming the award passed by the Labour Court. Challenging the same, the present intra court appeal has been preferred by the employee.

3. Heard both sides and perused the materials on record.

4. Questioning the oral termination, the industrial dispute was raised by the workman and the Labour Court, after analysing the evidence on record, came to the conclusion that the employee would be entitled to compensation of Rs.3 lakhs which will be in full and final settlement of all the claims pertaining to the industrial dispute. The Labour Court also



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observed that as there was strained relationship between the employer and the employee, it would not be feasible for the employer to provide employment and the employee can be given adequate compensation instead of reinstatement. As the employee, while deposing as W.W.1, had stated that he had suffered loss of Rs.3 lakhs in view of illegal retrenchment, the quantum of compensation payable by the Management was fixed as Rs.3 lakhs. The claim of reinstatement and other benefits were not granted.

5. Before the Labour Court, the Management had taken a plea that the employee was sent to Nagpur and after going to Nagpur, he had returned back to Coimbatore without prior intimation or information to the officers concerned and in spite of several letters issued by the Management vide Exs. M1, M6 and M7, the employee did not report for work. Apart from denying verbal termination, in the written statement and additional written statement filed before the Conciliation Officer and also in the counter statement filed before the Labour Court, the Management has stated that there was no refusal of employment and though the employee was asked to report for work, he did not do so. The relevant portions indicating the



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above stand of the Management are extracted hereunder:

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".....மனுதாரர் வேலை செய்ய தயாராக இருப்பதாக மனுவில் கூறிக் கொண்டு விட்டு இதுநாள் வரை பணிக்கு ஆஜராகாமல் இருந்து கொண்டு தொழிற்தாவா மூலம் சட்ட விரோத பலன் பெறுவதிலேயே குறியாக இருந்து வருகிறார். மனுதாரரை பணிக்கு ஆஜராகும்படி நிர்வாகம் பல்வேறு கடிதங்கள் அனுப்பியும் அதனை அவர் அலட்சியப்படுத்திக் கொண்டு பணிக்கு ஆஜராகாமல் இருந்து வருகிறார். மனுதாரர் நிர்வாகத்திற்கு எவ்வித நிபந்தனையும் விதிக்காமல் பணிக்கு ஆஜராகும் பட்சத்தில் அவருக்கு பணி வழங்க தயாராக உள்ளது.

"இந்த வழக்கைப் பொறுத்தவரை, முன்தாரரை நிர்வாகம் பணி நீக்கமும் செய்யவில்லை. பணி வழங்கவும் மறுக்கவில்லை. ஆகவே அவரது தொழிற்தாவா நிலைநிறுத்தத்தக்கதல்ல. அவரது தாவா - தொழிற்தாவாவே அல்ல என்பதால், அதன் மீது தாங்கள் சமரச பேச்சு மேற்கொள்ளும் அவசிய தூழலும் ஏற்படவில்லை. மனுதாரரை பணிக்கு திரும்புமாறு பலமுறை அறிவுறுத்தி கடிதங்கள் அனுப்பி அதன்



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நகல்களும் தங்களுக்கு அனுப்பப்பட்டுள்ளது.

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இந்நிலையில் மனுதாரர், மேற்படி போலியான தாவாவை வாபஸ் பெற்றுக் கொண்டு பணிக்கு திரும்புவதை விடுத்து பிடிவாதப்போக்கோடு, மேற்படி தாவாவை வலியுறுத்தி சமரச முறிவறிக்கை கோரி வருகிறார். மனுதாரரை நிர்வாகம் வேலை நீக்கமே செய்யவில்லை என்பதால், அவரது போலியான தாவா மீது சமரச பேச்சு வார்த்தை மேற்கொள்ளவோ, சமரச முறிவு அறிக்கை அனுப்பும் சூழலோ எழவில்லை என்பதை மனுதாரருக்கு எடுத்துக்கூறி, புரியவைத்து அவரது தொழிற்தாவா நிலைநிறுத்தத்தக்கதல்ல என்பதையும் தெளிவுபடுத்தி இந்த கோப்பை முடித்துக் கொள்ளுமாறு கேட்டுக் கொள்ளப்படுகிறது."

"8. The respondent management submits that it is prepared to provide employment to the petitioner as usual, as they neither refused employment to the petitioner nor retrenched him from service. However, the petitioner should not press the Industrial dispute raised before this Honourable Court and he may be report for work without imposing any



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conditions or reserving rights to continue the "so called" dispute before this Honourable Court."

Besides, there is no iota of evidence to show that the employee had been terminated. Even assuming for the sake of argument that there was termination, before the Conciliation Officer as well as before the Labour Court, the Management had asked the employee to report for work contending that there was no denial of employment. Even after counter statement filed before the Labour Court wherein the Management had stated that it was prepared to provide employment, the employee could have joined duty and put an end to the dispute, instead, he had received the compensation in the industrial dispute, which was also confirmed by the learned Single Judge. As observed by us, even assuming that the employee who had joined service on 03.05.1988, had been divested of his duty, in spite of repeated requests to him by various communications and also the statement made before the Conciliation Officer and Labour Court by the Management, it is the employee, who had not reported for work.



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6. This Court had earlier suggested to the employer as to whether the compensation could be increased to Rs.5 lakhs. Mr.S. Ravindran, learned Senior Counsel for the 1st respondent Management submitted that he he would put across the same to the Management and report back to Court. When the matter is taken up today, learned Senior Counsel for the Management would submit that the employer is willing to give compensation of Rs.4 lakhs and not more than that.

7. Taking note of the finding of the Labour Court about the strained relationship between the employer and the employee, the employee's failure to report for work, absence of evidence as to whether there was any verbal termination at all as the employee, having gone to Nagpur for work did not report back and in spite of repeated requestes by the Management, the employee did not join duty, in order to give a quietus to the matter, as agreed by the employer, compensation of Rs.4 lakhs is granted and the employee would not be entitled to any other benefits except gratuity, if he is otherwise eligible. We make it very clear that in case, the employee is going to receive the compensation under protest, he shall return



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the amount to the employer. It is also made clear that the compensation of Rs.4 lakhs is exclusive of Gratuity and it is towards full and final settlement of all the claims pertaining to the industrial dispute and in lieu of reinstatement. The amount payable to the employee shall be paid within a period two months from the date of receipt of a copy of this order. The writ appeal is disposed of accordingly. No costs.

nv

(S.V.N.J.) (K.R.S.J.)
27.06.2023

To

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Coimbatore – 641 048.
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