



W.P.Nos.30080 of 2019 & 500 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 11.03.2024

ORDER PRONOUNCED ON : 15.04.2024

CORAM:

THE HON'BLE MRS.JUSTICE.N.MALA

W.P.Nos.30080 of 2019 & 500 of 2020
and W.M.P.Nos.30020 & 35395 of 2019

W.P.No.30080 of 2019

The Management
Elgi Electric and Industries Limited,
(Formerly known as L.G. Electricals and
Industries Limited)
Rep. by its Senior Manager HR,
Mullupadi Village,
Thamaraikulam (Post),
Pollachi,
Coimbatore – 642 109.

... Petitioner

/Vs./

1.K.Karthikeyan

2.S.Saravanan

3.R.Radhakrishnan

4.K.Agateeswaran

5.C.Santhakumar



W.P.Nos.30080 of 2019 & 500 of 2020

6.S.Sakthivel

7.S.Manikandan

8.K.Singaravel

9.A.Kumaravel

10.R.Mohanraj

11.M.Manickaraj

12.S.Manikandan

13.K.Sivasankar

14.V.Gopal

15.A.Mahendran

16.T.S.Josvagananaraj

17.S.Ayyasamy

18.V.Sabareeswaran

19.M.Thirugnanasambantham

20.U.Ramesh (Deceased)

21.T.Manickam

22.R.Dharmaraj

23.M.Senthilkumar

24.K.Anilkumar



W.P.Nos.30080 of 2019 & 500 of 2020

25.Kasthuri

WEB COPY

26.Utthandan

(R25 and R26 are substituted as Lrs of deceased R20

as per order dated 27.11.2023 in WMP.No.19844 of 2022) ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the Principal Labour Court, Coimbatore in I.D.Nos.90, 47, 52, 56, 58, 59, 62, 63, 70, 72, 73, 75, 78, 80, 81, 82, 83, 87, 88, 93, 94, 95, 98 and 104 of 2013 and quash its award dated 06.06.2019.

For Petitioner : Mr.S.Ravindran, Senior Counsel for
Mr.S.Bazeer Ahamed

For Respondents : Mr.N.Manoharan

W.P.No.500 of 2020

1.K.Karthikeyan

2.S.Saravanan

3.R.Radhakrishnan

4.K.Agatheeswaran

5.C.Santhakumar

6.S.Sakthivel

7.S.Manikandan



W.P.Nos.30080 of 2019 & 500 of 2020

8.K.Singaravel

9.A.Kumaravel

10.R.Mohanraj

11.M.Manickaraj

12.S.Manikandan

13.K.Sivasankar

14.V.Gopal

15.A.Mahendran

16.T.S.Josvagananaraj

17.S.Ayyasamy

18.V.Sabareeswaran

19.M.Thirugnanasambantham

20.U.Ramesh (Deceased)

21.T.Manickam

22.R.Dharmaraj

23.M.Senthilkumar

24.K.Anilkumar

25.Kasthuri



W.P.Nos.30080 of 2019 & 500 of 2020

26.Utthandan

(R25 and R26 are substituted as Lrs of deceased R20
as per order dated 27.11.2023 in WMP.No.19844 of 2022) ... Petitioners

/Vs./

The Management
Elgi Electric and Industries Limited,
(Formerly known as L.G. Electricals and
Industries Limited)
Rep. by its Senior Manager HR,
Mullupadi Village, Thamaraikulam (Post),
Pollachi, Coimbatore – 642 109.

... Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the award dated 06.06.2019 made in I.D.Nos.90, 47, 52, 56, 58, 59, 62, 63, 70, 72, 73, 75, 78, 80, 81, 82, 83, 87, 88, 93, 94, 95, 98 and 104 of 2013 passed by the learned Additional Labour Court, Coimbatore, quash the same in so far as the denial of full backwages, and consequently direct the respondent to pay the entire backwages, bonus and allowances from the date of their oral termination dated 11.05.2010 to the date of reinstatement on par with their experience.

For Petitioners : Mr.N.Manoharan

For Respondent : Mr.S.Ravindran, Senior Counsel for
Mr.S.Bazeer Ahamed



W.P.Nos.30080 of 2019 & 500 of 2020

WEB COPY

* * * * *

COMMON ORDER

W.P.No.30080 of 2019 is filed to call for the records of the Principal Labour Court, Coimbatore in I.D.Nos.90, 47, 52, 56, 58, 59, 62, 63, 70, 72, 73, 75, 78, 80, 81, 82, 83, 87, 88, 93, 94, 95, 98 and 104 of 2013 and quash its award dated 06.06.2019.

2.W.P.No.500 of 2020 is filed to call for the records pertaining to the award dated 06.06.2019 made in I.D.Nos.90, 47, 52, 56, 58, 59, 62, 63, 70, 72, 73, 75, 78, 80, 81, 82, 83, 87, 88, 93, 94, 95, 98 and 104 of 2013 passed by the learned Additional Labour Court, Coimbatore, quash the same in so far as the denial of full backwages, and consequently direct the respondent to pay the entire backwages, bonus and allowances from the date of their oral termination dated 11.05.2010 to the date of reinstatement on par with their experience.

3.The above said writ petitions arise out of a common award dated



W.P.Nos.30080 of 2019 & 500 of 2020

06.06.2019 and hence disposed by this common order.

WEB COPY

4.The petitioner in W.P.No.30080 of 2019 will be referred to as the petitioner and the respondent therein as respondent.

5.The Writ Petition in WP.No.30080 of 2019 is filed challenging the Award dated 06.06.2019 made in I.D. Nos. 90, 47, 52, 56, 58, 59, 62, 63, 70, 72, 73, 75, 78, 80, 81, 82, 83, 87, 88, 93, 94, 95, 98 and 104 of 2013 passed by the Learned Additional Labour Court, Coimbatore. The Writ petition in W.P.No.500 of 2020 is filed challenging the said Award dated 06.06.2019 in so far as its relates to grant of 25 % of back wages for a limited period and denial of full back wages from 11.05.2010 till the date of reinstatement.

6.The respondents are the workers of the petitioner company. There was a settlement under ID Act, 1947 between the petitioner and the respondent covering the period between 01.04.2005 and 31.03.2008, but the petitioner failed to pay the bonus as agreed for the year 2008- 2009. While so, the petitioner announced lay off from September 2008 and it was recalled on 31.06.2009, and thereafter the



petitioner again declared layoff from July 2009. Further, the petitioner orally terminated the respondents on the ground of unauthorized absence from 11.05.2010. The respondents raised the disputes U/s. 2A (2) of the I.D. Act and the same was contested by the petitioner mainly on the ground of delay in raising the dispute and also on the basis of the settlement entered into with 97 workers. The first respondent examined himself as W.W1 besides marking Ex.W1 to Ex.W39. The petitioner examined M.W1 besides marking Ex.M1 to Ex.M5. After trial, the Labour Court passed an Award on 06.06.2019 directing reinstatement of the respondents with 25 % back wages from the date of oral termination till 25.01.2017. The Labour Court held that the respondents were not entitled to claim back wages from 25.01.2017. Aggrieved by the Award of the Labour court, both the petitioner as well as the respondents have preferred the above writ petitions.

7.It is submitted by both the learned counsels that in pursuance of the Award, the petitioner reinstated the respondents and therefore the only issue that survives for adjudication is on the backwages payable to the respondents.

8.The learned Senior counsel for the petitioners submitted that the finding of the Labour Court on the illegal oral termination is challenged for the limited



purpose of showing that the respondents are not entitled to backwages. The

learned Senior counsel raised the following issues.

- 1.The Claim Petition ought to have been rejected as it was filed beyond the period of three years from the date of the alleged oral termination.*
- 2.The finding of the Tribunal on oral termination was perverse as it failed to note that the respondents voluntarily abandoned service in spite of note to report for duty.*
- 3.The respondents were not eligible for backwages because they failed to plead and prove that they were not gainfully employed.*

9.The learned counsel for the respondents on the other hand submitted that the Labour court having returned a factual finding on the basis of the evidence on record, this Court should not interfere with the same while exercising jurisdiction under Article 226 proceedings. According to the learned counsel, the plea of limitation cannot be sustained because the Hon'ble Division Bench of this Court has held that the period of three years should be reckoned from the date of Amendment and as the claim petition was filed within three years of the



W.P.Nos.30080 of 2019 & 500 of 2020

Amendment the plea should fail. The learned counsel on backwages submitted that the Labour Court having found that the termination was illegal ought to have awarded full backwages.

10.I have heard both the learned counsels and have perused the materials placed on record.

11.Point No.1 – Limitation:

It is the case of the learned counsel for the petitioner that claim petition ought to have been rejected as the same was filed beyond three years from the date of alleged oral termination dated 11.05.2010. According to the learned counsel, the respondents approached the Conciliation Officer on 19.06.2012 and thereafter raised the dispute only on 17.05.2013, which was beyond three years from the date of oral termination dated 11.05.2010. The learned counsel referring to Section 2(A) of the I.D. Act submitted that the dispute filed beyond three years was not maintainable.

12.The learned counsel for the respondents on the other hand relying on the Division Bench Judgment of this Court in W.A.No.3107 of 2021 dated 23.01.2023



W.P.Nos.30080 of 2019 & 500 of 2020

contains that the period of three years should be reckoned from the date of amendment i.e. 15.09.2020. The Hon'ble Division Bench of this Court in the said case held as follows:

“10..... It is no doubt true that if any order is passed prior to 15.09.2010, the Industrial Dispute must have to be raised within a period of 3 years i.e., the date of coming into effect of amendment provision to Section 2 A of the Act, which is not the case herein and the dispute herein was raised on 29.05.2013.”

13.In the light of the said Division Bench Judgment of this Court, I am of the view that the contention of the learned counsel cannot be sustained. I am bound by the Judgment of the Division Bench and therefore the plea of limitation raised by the petitioner is rejected.

14.POINT No.2 -

Whether it was an oral termination or abandonment of service

The petitioner submits that the finding of the Labour Court that there was



W.P.Nos.30080 of 2019 & 500 of 2020

oral termination of the respondents was perverse in as much as the Labour Court failed to consider the vital documents Ex.M1 and M2 and also the evidence of the first respondent, who was examined as W.W.1 on behalf of all the respondents.

15.The learned counsel for the respondents on the other hand submitted that the finding is a finding on facts based on the evidence and therefore this Court should not interfere with the same as an Appellate Court while exercising the jurisdiction under Article 226 of the Constitution of India. The learned counsel relied on few judgments in support of his submission. It is trite that this Court while exercising jurisdiction under Article 226 of the Constitution does not act as an Appellate court, but when perversity is proved or apparent error is established then the finding of the Labour Court can be interfered with.

16.According to the learned counsel for the petitioner the Labour Court over looked the vital documents Ex.M1 and Ex.M7 and the admission of the first respondent and therefore, the finding is perverse. Ex.M1 and Ex.M2 are the copies of the show cause notices dated 13.05.2010 displayed on the notice board of the petitioner company relating to Motor Division and Textile Division. Under Ex.M1



W.P.Nos.30080 of 2019 & 500 of 2020

and Ex.M2, the petitioner called all its employees to report for work, who had abstained from work without any justification since 11.05.2010. The said showcause notices were admitted by the first respondent in his cross examination.

The relevant portion of the cross examination is as follows:

“நிர்வாகம் மோட்டார் பிரிவில் பணி புரியும் சில தொழிலாளர்கள் 11.05.2010 முதல் எவ்வித முகாந்திரமும், முன்னறிவிப்புமின்றி வேலைக்கு வராமல் இருப்பதால் அவர்களை வேலைக்கு ஆஜராகும் படி 13,05,2010 அன்று அறிவிப்பு பலகையில் போட்டுள்ளார்களா என்றால் சரி. அது நி.வா.ஆ.1 ஆகும். நிர்வாகம் டெக்ஸ்டைல்ஸ் டிவிஷனில் பணிபுரியும் சில தொழிலாளர்கள் 11.05.2010 முதல் எவ்வித முகாந்திரமும், முன்னறிவிப்புமின்றி வேலைக்கு வராமல் இருப்பதால் அவர்களை வேலைக்கு ஆஜராகும் படி 13,05,2010 அன்று அறிவிப்பு பலகையில் போட்டுள்ளார்களா என்றால் சரி. அது நி.சா.ஆ.2 ஆகும். வழக்கு தாக்கல் செய்த தொழிலாளர்கள் மோட்டார் டிவிஷன் மற்றும் டெக்ஸ்டைல்ஸ் டிவிஷனைச் சேர்ந்த தொழிலாளர்கள் 24 மனுதாரர்களில் 2



W.P.Nos.30080 of 2019 & 500 of 2020

WEB COPY

மனுதாரர்களை தவிர மற்ற அனைவரும் மோட்டார்

டிவிஷனைச் சார்ந்தவர்கள் அவர்கள்."

17.It is the respondents case that they were prevented from reporting for work from 11.05.2010, therefore, the burden was on the respondent to establish that the petitioner prevented them from reporting for work. On this aspect, the evidence of W.W.1 is as follows:

“அறிவிப்பை பெற்றுக் கொண்டு 14.05.2010
தேதியில் நாங்கள் வேலைக்கு சென்றோம். ஆனால்
எங்களுக்கு வேலை கொடுக்கவில்லை என்று
நிர்வாகத்திற்கு கடிதம் எழுதவில்லை. தொழிலாளர்
துறை அலுவலரிடமும் அங்கு தாக்கல் செய்த 2 A (1)
மனுவில், பிரமாண வாக்குமூலத்திலும் 14.05.2010
தேதியில் நாங்கள் வேலைக்கு சென்றோம் ஆனால்
எங்களுக்கு வேலை கொடுக்கவில்லை என்று
தெரிவிக்கவில்லை என்றால் சரி. நிர்வாகம் என்ன
காரணத்திற்காக அல்லது எந்த நோக்கத்திற்காக
எங்களை பணி மறுப்பு செய்தார்கள் என்றால் எனக்குத்



W.P.Nos.30080 of 2019 & 500 of 2020

WEB COPY

18.From the aforesaid admission it is clear that the contention of the respondents that the petitioner prevented the respondents from reporting for work is not true. If really the respondents were prevented the respondents would have atleast raised the issue before the Conciliation Officer. Admittedly no such issue was raised before the Conciliation Officer. It is to be noted here that the Labour Court relying on Ex.W19 to Ex.W21, Ex.W23, Ex.W28, Ex.W34 found that the Union immediately responded to the oral termination and made a complaint to the Police, Labour Department. The Labour Court found that the aforesaid documents raised a strong presumption in favour of the petitioner's claim on oral termination. The Labour Court failed to note that in spite of the petitioner's show cause notice dated 13.05.2010 under Ex.M1 and Ex.M2, the respondents instead of reporting for work sent letters under the aforesaid Exhibits relied by the Labour Court. The respondents have not given any explanation as to why they did not report for duty. The conduct of the respondent in not reporting for duty in spite of knowledge of the notices dated 13.05.2010 clearly shows that the respondents were not illegally terminated, but they had voluntarily abandoned the work. It is further pertinent to



W.P.Nos.30080 of 2019 & 500 of 2020

note that the petitioner during the pendency of the Conciliation proceedings and in the counter to the claim petition/additional counter filed by it before the Labour Court called the respondents to report for duty. The Labour Court failed to refer to the vital evidence of W.W.1 in cross examination which is as follows:

"நிர்வாகம் எங்களுக்கு வேலை எதுவும் மறுக்காத காரணத்தினால் தற்சமயமும் வேலைத் தர தயாராக உள்ளது. ஆனால் பின்சம்பளம் மற்றும் தொடர்ச்சியான சம்பளம் வழங்க இயலாது என்றால் நாங்கள் மனுவில் கோரியுள்ள அனைத்து பரிகாரங்களுக்கு கொடுத்தால் பணிக்கு செல்ல தயாராக இருக்கிறோம்."

19.It is therefore clear that the respondent has admitted that the offer of employment was given only because there was no termination. These vital aspects were over looked by the Labour Court and therefore the finding of the Labour Court in rejecting the above vital evidence has led to erroneous conclusion that the termination of the respondents was illegal. It is further seen that at several stages of the proceedings, the petitioner offered to take back the respondents, but it was the respondents who refused to report for work. Though the Labour Court accepted the above evidence, it strangely confined it to denial of full backwages



W.P.Nos.30080 of 2019 & 500 of 2020

only. The above facts are relevant not only for the purpose of deciding the claim for backwages, but also for deciding the validity of the termination. One more aspect which needs to be highlighted here is that even in the reply statement filed before the Conciliation Officer under Ex.W37 dated 28.08.2012 the petitioner asked the respondent to report for work but they failed to report for work. Another aspect which needs to be highlighted is here that there is no explanation by the respondents as to why they waited for two years from the date of alleged oral termination to raise a dispute before the Conciliation Officer. If really the respondents were concerned about their non-employment they should have immediately raised the dispute.

20.All the above aspects were not considered by the Labour Court while deciding the issue on the validity of the oral termination. I therefore find that the finding of the Labour Court on issue Nos.1 to 3 is unsustainable and therefore the same is set aside.

21.The Hon'ble Supreme Court in the case of ***Vijay S. Sathaye Vs. Indian Airlines Limited and Others*** reported in (2013) 10 SCC 253, while considering



similar issue of termination of services viz-a-viz the abandonment of services held that the termination entails positive action on the part of the employer while abandonment of service is a consequence of unilateral action of the employee. The Hon'ble Supreme Court held as follows:

“12.It is a settled law that an employee cannot be termed as a slave, he has a right to abandon the service any time voluntarily by submitting his resignation and alternatively, not joining the duty and remaining absent for long. Absence from duty in the beginning may be a misconduct but when absence is for a very long period, it may amount to voluntarily abandonment of service and in that eventuality, the bonds of service come to an end automatically without requiring any order to be passed by the employer.

13.In M/s.Jeewanlal (1929) Ltd., Calcutta v. Its Workmen, AIR 1961 SC 1567, this Court held as under:

“6. ... there would be the class of cases where long unauthorised absence may reasonably give rise to an inference that such service is intended to be abandoned by the employee.”



W.P.Nos.30080 of 2019 & 500 of 2020

(See also: *Shahoodul Haque v. The Registrar, Co-*

WEB COPY *operative Societies, Bihar & Anr.*, AIR 1974 SC 1896).

14. *For the purpose of termination, there has to be positive action on the part of the employer while abandonment of service is a consequence of unilateral action on behalf of the employee and the employer has no role in it. Such an act cannot be termed as 'retrenchment' from service. (See: State of Haryana v. Om Prakash & Anr., (1998) 8 SCC 733).*

15. *In Buckingham and Carnatic Co. Ltd. v. Venkatiah & Anr., AIR 1964 SC 1272 while dealing with a similar case, this Court observed :*

“Abandonment or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf.” A similar view has been reiterated in G.T. Lad & Ors. v. Chemicals and Fibres India Ltd., AIR 1979 SC 582.”

22. From the facts of the present case and the law laid down in the aforesaid Judgment, it would be clear that there is absolutely no explanation by the



W.P.Nos.30080 of 2019 & 500 of 2020

respondents as to why they did not report for work pursuant to the notices dated

13.05.2010. Further as the respondents failed to prove that they were prevented by the petitioner from reporting for duty, the only conclusion that can be drawn is that the respondents abandoned the service.

23.POINT No.3 – On backwages

In view of my finding that the respondents abandoned the services and there is no oral termination by the petitioner, the question of backwages does not arise and therefore, the Award of the Labour Court granting 25% of the backwages to the petitioners from the date of oral termination till 25.01.2017 is set aside. The Judgment relied by the respondents are therefore not relevant.

24.In view of the above discussions, the W.P.No.30080 of 2019 is allowed and the W.P.No.500 of 2020 is dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions stand closed.

15.04.2024

Index : Yes / No

Internet : Yes / No

Speaking Order/Non-speaking order



W.P.Nos.30080 of 2019 & 500 of 2020

WEB COPY

To

- 1.The Additional Labour Court,
Coimbatore.
- 2.The Management
Elgi Electric and Industries Limited,
(Formerly known as L.G. Electricals and
Industries Limited)
Rep. by its Senior Manager HR,
Mullupadi Village,
Thamaraikulam (Post),
Pollachi,
Coimbatore – 642 109.

N.MALA, J.

ah



WEB COPY



W.P.Nos.30080 of 2019 & 500 of 2020

**PRE-DELIVERY ORDER IN
W.P.Nos.30080 of 2019 & 500 of 2020**

15.04.2024