



W.P.No.34756 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	22.08.2024
Pronounced on	30.08.2024

CORAM

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

W.P. No. 34756 of 2024

and

W.M.P. Nos.34727 of 2023, 12002 & 12004 of 2024

Casa Grande Civil Engineering Pvt. Ltd.,
NPL Devi, No.111/59, 5th Floor,
L.B.Road,
Thiruvanmiyur,
Chennai 600 041.
Rep. By its Managing Director.

... Petitioner

Vs.

Moorthy

.. Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records pertaining to the impugned award dated 27.02.2023 passed by the I Additional Labour Court, Chennai in O.P.No.4 of 2022 and quash the same.

For Petitioner : Mr.K.V.Shanmuganathan

For Respondent : Mr.C.Venkatesan



W.P.No.34756 of 2023

ORDER

WEB COPY

The Writ Petition is filed challenging the order passed by the I Additional Labour Court, Chennai in O.P.No.4 of 2022 dated 27.02.2023.

2. The case of the petitioner is that the respondent joined the services of the petitioner company as an Office Assistant on 01.04.2011 and he was working as an Assistant Manager (Safety) when he decided to quit work from 03.04.2019 and thereafter, he did not report to the office of the petitioner. A letter was sent by the petitioner on 06.04.2019, 10.04.2019 and 15.04.2019. The respondent though did not give any reply to the letters sent by the petitioner, raised an Industrial Dispute before the Assistant Commissioner of Labour-III, (Conciliation), Kuralagam, Chennai-108, alleging that he was orally denied employment from 13.02.2019. The further case of the petitioner is that during the conciliation proceedings, the respondent was directed to report to duty. The respondent did not make any attempt to resume to his work. Per contra, he insisted for settlement of his dues with the petitioner. The



W.P.No.34756 of 2023

petitioner management had made an attempt to settle the dues of the respondent for which the respondent was initially agreeing, but thereafter he denied accepting the settlement offer made by the petitioner. The conciliation proceedings initiated by the Assistant Commissioner of Labour ended in failure and the failure report was submitted to the Government of Tamil Nadu on 24.06.2019.

3. The further case of the petitioner is that the respondent filed a Claim Petition after a period of 2 years and 10 months from his alleged oral termination. The Additional Labour Court has passed an award in O.P.No.4 of 2022 giving a direction to the petitioner management to reinstate the respondent with all other benefits. The main contention raised by the writ petitioner is that the respondent will not fall under the category of Section 2(s) of the Industrial Disputes Act, 1947 (hereinafter referred to as, 'the Act' in short). For the sake of convenience, Section 2(s) of the Act is extracted hereunder:-

***“Section 2(s): “workman” means any person
(including an apprentice) employed in any industry to***



WEB COPY



W.P.No.34756 of 2023

do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person -

(i) who is subject to the Air Force Act, 1950, or the Army Act, 1950, or the Navy Act, 1957 or

(ii) who is employed in the police service or as an officer or other employee of a prison, or

(iii) who is employed mainly in a managerial or administrative capacity or

(iv) who, being employed in a supervisory capacity, draws wages exceeding (ten thousand rupees) per



WEB COPY



W.P.No.34756 of 2023

mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.”

4. The next contention raised by the writ petitioner is that the respondent did not report for duty on the basis of the advise given by his Advocate. The other contention of the writ petitioner is that the respondent neither pleaded nor argued that he falls under the category of Section 2(s) of the Act, which establishes that he was not a 'workman'. The respondent did not plead and prove that he was discharging his duties as a workman as contemplated under Section 2(s) of the Act.

5. The next contention of the writ petitioner is that the respondent himself has admitted that he was working as an Assistant Manager (Safety) and this fact of admission was made by the respondent before the Labour Court. The Labour Court has not followed the evidence adduced in favour of the writ petitioner to sustain that the respondent was



W.P.No.34756 of 2023

working as an Assistant Manager (Safety) and hence, the respondent will not fall under the category of workman as per Section 2(s)(iv) of the act, which is extracted hereunder:-

“Section 2(s)(iv) - who, being employed in a supervisory capacity, draws wages exceeding (ten thousand rupees) per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.”

6. The other contention of the writ petitioner is that when the evidence shows that the respondent was drawing a salary of more than Rs.10,000/-, then the Labour Court has to consider that he does not fall under the definition of “workman” as contemplated under Section 2(s) of the Act. The learned counsel for the petitioner would contend that the respondent while working as an Assistant Manager (Safety) was drawing a salary of Rs.29,348/- till April 2019. The respondent had admitted that he did not respond to the communication from the petitioner to report to



W.P.No.34756 of 2023

duty on the advise given by his Advocate and had chosen not to give reply to the communication to join the duty.

7. The Labour Court ought to have considered that in the absence of any order of termination, either oral or by way of a communication, such termination claimed by the respondent cannot be treated as a termination, even as oral termination. Learned counsel appearing for the petitioner contends that there would be no violation or non-compliance to Section 2(a)(ii) of the Industrial Disputes Act since there was no termination order passed against the respondent and such an allegation is only a baseless allegation made without any evidence or substance. The learned counsel for the petitioner has taken the cross examination of the respondent before the Labour Court which is extracted hereunder:-

“Ex.M3 ஆவணத்தில் 08.04.2019க்குள் எதிர்மனுதாரர் நிறுவனத்திற்கு அறிக்கை செய்யவேண்டும் என்று குறிப்பிடப்பட்டுள்ளது என்றால் ஆவணத்தில் உள்ளது. என்னிடம் காண்பிக்கப்படும் ஆவணம் 10.04.2019 தேதியில் எதிர்மனுதாரர் நிறுவனம் எனக்கு அனுப்பிய 2வது கடிதம் என்றால் சரி சாட்சி ஆவணத்தை



WEB COPY



W.P.No.34756 of 2023

ஏற்றுக்கொண்டதால் ஆவணமாக குறியீடு
செய்யப்படுகிறது. அது Ex.M4 ஆகும். மேற்படி Ex.M4
ஆவணம் 13.04.2019 தேதியில் சுமார் 12.15
மணியளவில் எனது கைக்கு வந்தது. மேற்படி Ex.M4
ஆவணத்தில் 14.04.2019 தேதிக்குள் அறிக்கை
செய்யவேண்டும் என்று குறிப்பிடப்பட்டுள்ளது என்றால்
சரி அவ்வாறு நான் எதிர்மனுதாரர் நிறுவனத்திடம்
அறிக்கை செய்தேனா என்றால் நான் போகவில்லை.
எனது வழக்கறிஞர் அறிவுறுத்தினார். 15.04.2019
தேதியிட்ட 3வது கடிதமும் எதிர்மனுதாரர்
நிறுவனத்திடமிருந்து எனக்கு வந்தது என்றால் சரி
அந்த ஆவணம் Ex.M5 ஆகும். மேற்படி Ex.M5
ஆவணம் 16.04.2019 அன்று சுமார் 11.15 மணியளவில்
எனக்கு வந்தது. மேற்படி Ex.M5 ஆவணத்தில்
18.04.2019 தேதிக்குள் அறிக்கை செய்யவேண்டும்
என்று குறிப்பிட்டுள்ளார்கள் என்றால் சரி 03.04.2019
தேதிக்கு பிறகு எதிர்மனுதாரர் நிறுவனத்திற்கு
வந்ததை காண்பிக்க ஆதார ஆவணம் தாக்கல்
செய்துள்ளேனா என்றால் ஆவணம் தாக்கல்
செய்யவில்லை. நான் conciliation officer முன்பாக



WEB COPY



W.P.No.34756 of 2023

வழக்கு தாக்கல் செய்தேன். என்னிடம்
காண்பிக்கப்படும் ஆவணம் conciliation officer
முன்பாக நான் தாக்கல் செய்திருந்த மனுவின் நகல்
என்றால் சரி. சாட்சி ஆவணத்தை ஏற்றுக்கொண்டதால்
ஆவணமாக குறியீடு செய்யப்படுகிறது. அது Ex.M6
ஆகும்.”

8. The respondent raised I.D before the Assistant Commissioner of Labour – III, (Conciliation), Chennai 108 and the Assistant Commissioner Labour department vide his proceedings in மு.மு.எண்.ஆ/149/2019 dated 24.06.2019 referred it as a negative report under Section 12(4) of the Act. The respondent challenged that negative report by filing a Claim Petition before the Labour Court, Chennai, which was taken on file in C.P.No.127 of 2019. The Labour Court has come to the conclusion by taking note of the fact that the respondent did not report to duty from 19.03.2019 to 25.04.2019 and gave a finding that the respondent is not entitled for salary during that relevant period. The respondent did not give any explanation with regard to leave salary and how he has calculated or arrived to claim that leave salary. The I



W.P.No.34756 of 2023

Additional Labour Court after taking note of all the relevant facts and the evidence of the respondent and cross-examination, had passed the following order:-

“9. During the course of argument, it was argued by the learned counsel for the petitioner that the petitioner had raised an Industrial Dispute in I.D.No.4/2022 and it is pending before this Court for service of notice to the respondent. Perusal of records in the above Industrial Dispute reveals that the petitioner has claimed reinstatement with back wages, continuity of service and other attendant benefits. It is open to the petitioner to work out the reliefs claimed by him in this application, in I.D. itself by adducing sufficient evidence. Hence, this Court is of the considered view that the claim petition is not maintainable at this stage and the petitioner is at liberty to work out his remedy in the Industrial Dispute. Hence it is decided that in this claim petition



WEB COPY



W.P.No.34756 of 2023

the petitioner is not entitled to get any relief.

In the result, this claim petition is dismissed. No costs.”

9. Per contra, the learned counsel appearing for the respondent would contend that though he was designated as an Assistant Manager (Safety), at the time of oral termination, he was only working as a Managerial cadre and only to preclude the respondent herein, the petitioner management in order to keep the respondent out of I.D. Act, had described the respondent as the Assistant Manager. The respondent has admitted that his last drawn pay was Rs.33,884/-. The respondent had taken a defence that he did not tender his resignation because of the torture given by the HR people attached to the writ petitioner organization.

10. The petitioner organization has deactivated the sim card of the respondent from 03.04.2019 and by deactivating the sim card in the mobile phone which he was using, the respondent was removed from the



W.P.No.34756 of 2023

office from 04.04.2019. The respondent was not aware of the action or evidence taken by the petitioner herein. The respondent primarily contended that no domestic enquiry was conducted before passing of oral termination to the respondent.

11. The respondent initiated proceedings before the Conciliation Officer, Assistant Commissioner of Labour, who has given a failure report after recording that the petitioner as well as the respondent were sticking to their stand and either of them were willing for any conciliation. Therefore, the Conciliation Officer was forced to give a negative report. The other objections raised by the respondent is that the petitioner did not follow Sections 25(f) and 25(g) of the Act. This stand taken by the respondent under Section 25(f) is relating to the conditions precedent to retrenchment of workman and Section 25(g) is procedure for retrenchment. The respondent has taken a ground that procedure was not followed in case of retrenchment which is applicable to this respondent. The retrenchment is defined under Section 2(oo) of the Act, which is extracted hereunder:-



WEB COPY



W.P.No.34756 of 2023

“Section 2(oo) - “retrenchment” means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

[(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or]

(c) termination of the service of a workman on the ground of continued ill-health;] ”



W.P.No.34756 of 2023

WEB COPY

12. The 'retrenchment' as explained in *P.Ramanadha Aiyar's The Law Lexicon - The Encyclopedia Law Dictionary* is as follows:-

“Retrenchment. Reduction of expenses; inner trench or parapet provided against loss of outer defences.

The definition makes 'retrenchment' a termination of service. A service cannot be said to be terminated unless it was capable of being continued. If it is not capable of being continued in the same manner in which it had been going on before, and it is, therefore, brought to an end, that is not a termination of the service. Workmen of the Bangalore Woollen Cotton and Silk Mills Co. Ltd., Vs. Management of the Bangalore Woollen Cotton and Silk Mills Co. Ltd., AIR 1962 SC 1363, 1366.

Discharge from service of an employee, consequent



WEB COPY



W.P.No.34756 of 2023

upon the transfer of an undertaking in which he was employed, is not retrenchment. Surajmal Mehta V. Authority, Payment of Wages Act 1936, AIR 1964 MP 312, 315.

The discharge of a workman on the ground that the workman did not pass the test which would have entitled the workman to be confirmed is 'retrenchment'. Santosh Gupta Vs. State Bank of Patiala, AIR 1980 SC 1219, 1223.

The term 'retrenchment' does not apply to a case of bona fide closure of business. Ram Hari De V. Official Liquidator, AIR 1965 Cal 552, 554.

Termination of the service of workman on the ground of continued ill-health does not amount to retrenchment. Burra Kur Coal Co. Ltd., Vs.



W.P.No.34756 of 2023

Azimuddin Ashraff, AIR 1960 Pat 554, 556.”

WEB COPY

13. From the above it is seen that the respondent though pleads that he was retrenched from service and there was no enquiry conducted before he was orally terminated, the learned counsel for the respondent submits that the Labour Court has rightly passed the award that the respondent is reinstated with backwages, continuity of service and other attendant benefits.

14. The Labour Court had extended the benefits for the respondent to workout his relief claimed in his application in the present I.D. by adducing sufficient evidence. The Labour Court had considered that the Claim Petition is not maintainable at this stage and a liberty was given to raise the dispute under the I.D. Act.

15. The learned counsel for the respondent in his counter affidavit has contended that he did not work in the Supervisory Cadre and therefore, he will fall under the definition of Section 2(s) of the Act as a



W.P.No.34756 of 2023

workman and hence, he is entitled to raise a dispute before the Industrial Disputes Act as a 'workman' defined under Section 2(s) of the Act.

Another contention of the respondent in the counter affidavit states that the management witness in the cross-examination has admitted that no settlement was made either through cheque or draft to the respondent and in the absence of any settlement, the order of oral termination is *per se* illegal.

16. The next contention in the counter affidavit filed by the respondent is that he was only working in the field and not in the office and therefore, he will fall under the definition of Section 2(s) of the Act. To substantiate the stand of the respondent, he has marked Ex.E5, salary slip where a sum of Rs.1,800/- was deducted towards PF from his bank Account No.TN/MAS/0085574/0009.

17. Heard the learned counsel on both sides and perused the entire materials available on record.



W.P.No.34756 of 2023

18. It is seen from the records that the petitioner though was employed as an Office Assistant in the year 2001, he was designated as Assistant Manager and drawing a sum of Rs.33,884/- as salary when he failed to report to his job. It is the specific case of the writ petitioner that the respondent did not report for work on 06.04.2019, 10.04.2019 and 15.04.2019, which is admitted by the respondent himself that he did not attend on that specific dates and the respondent also admits that he did not give any reply for the communications received by the respondent from the petitioner to resume to his work.

19. The respondent makes a specific admission that he did not reply to the communications to report to his work that he has taken the advise of his Advocate and he did not resume to work. The failure report under the conciliation proceedings would show that the petitioner as well as the respondent were sticking to their stands and therefore, the failure report was passed under Section 12(4) of the Act. Section 2(s) of the Industrial Disputes Act which deals with the definition of 'workman', and the definition makes it clear that the dispute cannot be raised by certain



W.P.No.34756 of 2023

persons which are enumerated under Section 2(s)(i), (ii), (iii) & (iv) of the Act. As per Section 2(s)(iv) of the Act, a person who was employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature does not fall under the category of the workman specified under Section 2(s) of the Act. The last drawn salary of the respondent herein is Rs.33,884/-, which is admitted by the respondent himself before the Labour Court in his Claim Petition itself.

20. The learned counsel for the petitioner had relied upon the judgment of the Constitutional Bench of the Supreme Court of India in ***(1994) 5 SCC 737 [H.R.Adyanthaya and others Vs. Sandoz (India) Ltd and others]***, wherein it has been held as follows:-

“A. Labour Law – Industrial Disputes Act, 1947 – S.2(s) (as amended by Act 46 of 1982 w.e.f. 21-8-1984) – 'Workman' – Medical representatives if covered – In order to fall within the definition, a



WEB COPY



W.P.No.34756 of 2023

person must be employed to do any of the categories of work mentioned in the main body of the definition (viz. Manual, unskilled, skilled, technical, operational etc.) and it is not enough that he is not merely covered by any of the four exceptions of the definition.....”

As held by the Hon'ble Supreme Court in the above case, that if the respondent did not fall under the category of Workman as defined under Section 2(s) of the Act, the respondent is not entitled to raise a dispute under the Act.

21. The last drawn salary of Rs.33,884/- and the specific admission of the respondent that he did not attend the duty on 06.04.2019, 10.04.2019 and 15.04.2019 and failed to reply to the communications sent by the petitioner on three occasions on the advise of the counsel for the respondent, would only show, that the respondent was not inclined to agitate his right in the manner known to law.



W.P.No.34756 of 2023

22. It is also clear from the evidence that the respondent was never retrenched as a defence taken by the respondent by invoking Sections 25(f) and 25(g) of the Act. The admitted evidence of the respondent would clearly show that the respondent was never terminated, neither by way of any termination order or oral termination as pleaded by him. The claim of the respondent that no enquiry was conducted before he was orally terminated is only a stand taken by the respondent without basis of any material.

23. In view of the above discussion, the order dated 27.02.2023 passed by the I Additional Labour Court, Chennai in O.P.No.4 of 2022 is set aside and the Writ Petition is allowed. Consequently, connected Miscellaneous Petitions are closed. There is no order as to costs.

30.08.2024

Index :Yes
gsa

To

Page 21 of 23



W.P.No.34756 of 2023

The I Additional Labour Court,
Chennai.

WEB COPY



WEB COPY



W.P.No.34756 of 2023

N.SENTHILKUMAR, J.

Gsa

W.P. No. 34756 of 2023
and W.M.P. Nos.34727 of 2023, 12002 & 12004 of 2024

30.08.2024