

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2015

CORAM :

THE HONOURABLE MR. JUSTICE T. RAJA

W.P.NOs. 3469 to 3473 of 1999

The Management of
Kalapatti Spinning Mills Pvt. Ltd.
Kalapatti
Coimbatore - 35.

... Petitioner in all W.Ps.

Vs.

1. The Presiding Officer
Labour Court
Coimbatore.

... 1st Respondent in all WPs

2. M. Kumudham

... 2nd respondent in
W.P. No.3469 of 1999

3. C. Gopalraj

... 2nd respondent in
W.P. No.3470 of 1999

4. K. Ramaswamy

... 2nd respondent in
W.P. No.3471 of 1999

5. P. Maheswari

... 2nd respondent in
W.P. No.3472 of 1999

6. P. Kavithamani

... 2nd respondent in
W.P. No.3473 of 1999

PRAYER in all W.Ps.: These Writ Petitions have been filed under Article 226 of the Constitution of India to issue an order of Writ of Certiorari, to call for the records connected with I.D. Nos. 27, 24, 25, 28 and 29 of 1996 dated 29.01.1999 on the file of the first respondent and to quash the same.

For Petitioners : Mr. C. Manohar Gupta
in all Wps for M/s. Gupta & Ravi

For Respondents : Mr. Govardhan
in all Wps for M/s. Row & Reddy for R2

R1- Court.

C O M M O N O R D E R

The Management of Kalapatti Spinning Mills Pvt. Ltd., has filed these Writ Petitions against the impugned award passed in I.D. Nos. 27, 24, 25, 28 and 29 of 1996 dated 29.01.1999, to quash the same on the ground that the Management ought to have conducted a detailed enquiry into the matter. When it is the case of abandonment of service, in order to decide the issue the learned Labour Court ought to have examined the probability of the case and ought not to have kept in mind the case of abandonment of service, there should be an enquiry by the Management.

2. Mr. C. Manohar Gupta, learned counsel appearing for the petitioner submitted that the petitioner company, which is engaged in the manufacture of Spinning Cotton Yarn has a recognised union namely, National Labour Organization (NLO). Although, now and then, the petitioner Management has been discussing and negotiating settlements with the Union, in the year 1994 a new Union namely, Kamaraj National Labour Organization (KNLO) came into existence and to make its presence in the petitioner's company, the said Union started indulging in strike from 21.09.1994. As the petitioner company is a Public Utility Undertaking, the strike continued for a number of days and after bilateral negotiations, the strike was resolved. Even after the strike was called off, the respondents/employees did not come for duty from 20.08.1994, 21.09.1994, 31.10.1994 and 04.01.1995 on their own. When they stayed away from work without any intimation to the petitioner Management, they took it for granted that there has been an abandonment of service by resignation of conduct because nothing was heard from the workmen or their Union. However, all of a sudden a notice was received from the Conciliation Officer on 10.05.1995, calling upon the petitioner Management for conciliation. As the respondents/ employees claimed that they have been orally terminated from service and sought for reinstatement into service, the petitioner Management also filed a detailed counter before the Conciliation Officer making clear that there was no termination of service as alleged by the respondents employees but only abandonment of service or resignation by conduct.

It was also made clear that the petitioner Management was willing to take back them for duty. Finally, the conciliation ended in failure. Thereafter, the respondents employees raised Industrial Disputes before the first respondent.

3. Learned counsel appearing for the petitioner contended that before the Lower Court the petitioner Management categorically denied that there was no any victimisation or interference in the union activities. The learned Labour Court forgetting that the respondents had abandoned their services on their own, wrongly came to a conclusion that there should have been an enquiry conducted by the petitioner Management. It was a specific case of the petitioner Management that in all cases of abandonment of services, all that is required to be made is that there was a resignation of services by conduct or abandonment of service by conduct. Learned counsel for the petitioner Management further pleaded that the learned Labour Court had failed to consider the important significance of workmen, the failure to report for duty even after a specific offer was made, thus had seriously committed an error of jurisdiction observing that the Management in December 1996 was not willing to reinstate. It is also the case of the petitioner Management that in the case of abandonment of duty by workmen, there was no requirement in law for the Management to take back the workmen, while they have not even reported for duty, which offer was made even in 1996.

4. Adding further, it has been contended that the first respondent has passed a common award only on 29.01.1999 whereas the original award has not been published in the gazette, however, from the date of passing of the impugned award. When the Writ Petitions have been filed before this Court, they were paid with 17-B wages at the rate of Rs.800/- per month. However, one of the respondents workmen Mr. K. Ramaswamy had reached the age of superannuation on 09.02.2004. Therefore the question of reinstatement does not arise in that case. However, as the other respondents workmen have been paid with a sum of Rs.1.7 lakhs till now, due to passage of time, there cannot be any justification to accept the findings of reinstatement of the Labour Court.

5. Taking support from the judgment of the Hon'ble Apex Court in the case of Haryana State Electronics Development Corporation Ltd. vs. Mamni, reported in 2006 (3) LLN 802, learned counsel appearing for the petitioner Management would submit that since the respondents workmen have been terminated as far back as in the year 1994, they have not been taken into service. In the peculiar facts and circumstances of the case, interests of justice would be subserved if in the place of reinstatement with backwages, a

lumpsum amount is directed to be paid by way of compensation. Taking strength of the observation made in paragraph 20, wherein the Hon'ble Apex Court has directed the Management to pay Rs.25,000/- instead of the order for reinstatement with backwages, prayed for a similar order. Again taking support from another judgment of the Hon'ble Apex Court in the case of Vijay S. Sathaye vs. Indian Airlines Limited and Ors. Reported in (2013) 10 SCC 253, it was pleaded that a person who fails to attend the office has to be presumed that such workmen had voluntarily abandoned the service of the Management. Therefore, there was no requirement on the part of the Management to pass any order whatsoever, even on his application, since it is a clear cut case of voluntary abandonment of service. Again placing reliance on paragraph 16 of the said judgment, it was pleaded that the Hon'ble Apex Court has held that if a person is absent beyond the prescribed period for which leave of any kind can be granted, he should be treated to have resigned and ceased to be in service. In such a case, there is no need to hold an enquiry or to give any notice as it would amount to useless formalities. Since this aspect is clearly overlooked by the learned Labour Court, he prays for setting aside the same.

6. Opposing the above prayer, Mr. Govardhan learned counsel appearing for the respondents workmen, would submit that so far as the award passed in favour of Mr. K. Ramaswamy is concerned, as he has already reached the age of superannuation on 09.02.2004 and since no legal heir application has been filed, his Writ Petition, he pleaded, may be dismissed, giving liberty to the legal heirs to work out their legal remedy before appropriate court. However, in respect of other writ petitions, he argued that it is a clear case of oral termination indicating victimisation of the workmen who had rendered long service with the petitioner Management. The learned Lower Court considering the case of both the workmen and the Management has rightly come to the conclusion that there was no oral or documentary evidence produced from the side of the petitioner Management to prove the voluntary abandonment of service by the workmen. Even the counter filed by the Management before the Lower Court has not whispered about holding of enquiry against any one of the workmen as legally required, therefore, it will be unreasonable to presume that there has been abandonment of service by the workmen. On this basis the learned Labour Court rightly disbelieving the case of the Management, ordered reinstatement with continuity of service along with all attendant benefits, hence, it is necessary and incumbent for the petitioner Management to obey the award of the Labour Court. But till date they are paying to the workmen only a pittance at the rate of Rs.800/- and are successfully denying reinstatement. Therefore, the lumpsum compensation as advocated by the learned counsel

appearing for the petitioner Management should not be accepted and this Court accepting all the reasons and conclusions given by the learned Labour Court in the common award should dismiss all the writ petitions, he pleaded.

7. Nodoubt, it is a case where the respondents workmen after joining the service of the petitioner Management had served till 20.09.1994. In the meanwhile, it appears, the union by name Kamaraj National Labour Organization came into existence in the year 1994 and the said Union started to indulge in strike from 21.09.1994. In furtherance thereof negotiations took place and ultimately the strike was resolved. But thereafter, dispute arose between the petitioner Management and the respondents workmen on the ground that they were orally terminated by the Management without following any of the norms. Subsequently, the respondent workmen approached the Conciliation Officer, as a result a notice was issued on 10.05.1995 calling upon the petitioner Management for conciliation. On receipt of the said notice, the petitioner Management submitted a written representation stating that they have not been orally terminated as alleged by the workmen but they only abandoned the service by themselves which means that there was resignation by conduct of the workmen themselves resignation by conduct of the workmen themselves. In the counter, the petitioner Management had stated that they were willing to take back the respondents workmen on duty. However, the dispute could not be amicably conciliated and as a result, an Industrial Dispute was raised. The Labour Court finding that there was no documentary evidence from the side of the petitioner Management to prove that there was abandonment of service by the workmen, ordered reinstatement along with continuity of service. Aggrieved by the impugned Award the petitioner Management has filed these writ petitions, during the pendency of these writ petitions, all the workmen were paid with Section 17B wages in lieu of reinstatement of service. Now in view of huge gap of about 20 years, it was pleaded by the petitioner Management that they may be paid with reasonable compensation in lieu of reinstatement.

8. In this context it is pertinent to refer to the case of the Apex Court in Vijay S. Sathaye vs. Indian Airlines Limited and Ors. Reported in (2013) 10 SCC 253, wherein it has been held clearly that absence from duty in the beginning may be a misconduct but when absence is for a very long period, it may amount to voluntary 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. In paragraph 16 of the aforesaid judgment, taking note of the previous view laid down in Syndicate Bank vs. Staff Association and other cases, it has been held as follows :-

" ... this Court ruled that if a person is absent beyond the prescribed period for which leave of any kind can be granted, he should be treated to have resigned and ceases to be in service. In such a case, there is no need to hold an enquiry or to give any notice as it would amount to useless formalities."

Finally accepting the offer from the Management, for payment of lumpsum amount, a direction was given to the petitioner Management to pay the same by way of compensation. Similarly, in the case of Haryana State Electronics Development Corporation Ltd. vs. Mamni, as referred above, in paragraph 13, it is given as under :-

" We, therefore, are of the view that in the peculiar facts and circumstances of this case, interests of justice would be subserved if in the place of reinstatement with backwages, a lumpsum amount is directed to be paid by way of compensation. This order is being passed keeping in view the fact that the respondent has not worked since 1992. The post on which she may have been working must have also been filled up."

A mere reading of the above observations clearly shows that the Hon'ble Apex Court has come to the conclusion that in any peculiar circumstances, interest of justice would be subserved if in the place of reinstatement with backwages, a lumpsum amount can also be paid by way of compensation.

9. In the light of the above, this Court taking note of the long passage of time, is of the view that the workmen who are all not in touch with the working environment may not be in a position to work after 20 years, accordingly to meet the ends of justice, the petitioner Management is directed to pay Rs.5,50,000/- after deducting Rs.1.07 lakhs.

10. Accordingly, the writ petitions are disposed of. The above said exercise shall be carried out within a period of three weeks from the date of receipt of a copy of this order. No order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

avr

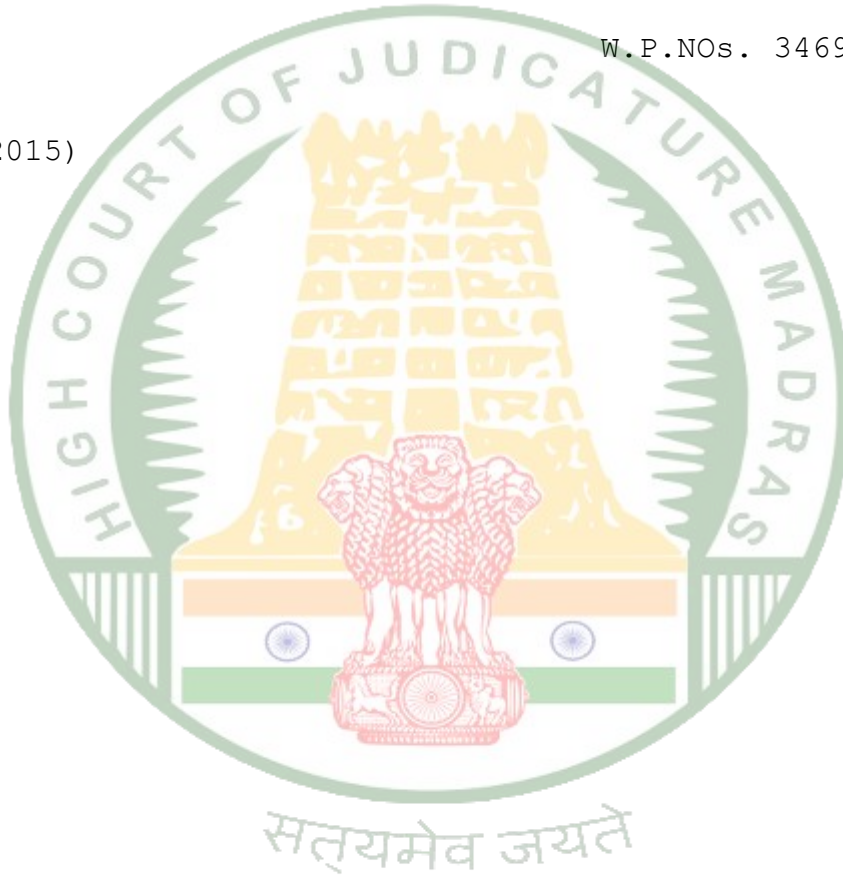
To

1. The Presiding Officer
Labour Court
Coimbatore.

+5cc's to M/s.Row & Reddy, Advocate, S.R.No.9712, 10379
+5cc's to M/s.Gupta & Ravi, Advocate, S.R.No.9660 to 9664

W.P.NOs. 3469 to 3473 of 1999

BR(CO)
CA(23/04/2015)



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