

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:11.12.2015

Date of Reserving the Order	Date of Pronouncing the Order
07.12.2015	11 .12.2015

Coram

The Hon'ble Mr. Justice T.S. SIVAGNANAM

W.P.No.19268 of 2003

M/s.Rane Brake Linings Ltd.,
48, 49 & 50, Sanyasikuppam Village,
Thirubuvanai Post,
Rep., by DGM.,
Pondicherry - 605 107.

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Pondicherry.

2.Mr.P.Pandian

... Respondents

Prayer :-Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari, to call for the records and quash the award dated 16.04.2003, in I.D.No.1 of 2002 on the file of the first respondent, Presiding Officer, Labour Court, Pondicherry.

For petitioner

.. Mr.Ravi for
M/s.Gupta & Ravi

For Respondents

.. Mr.S.Rajanikanth for R2
R1 - Labour Court

O R D E R

The petitioner being a Management of a manufacturing company has filed this Writ Petition challenging the award passed by the Labour Court, Pondicherry in I.D.No.1 of 2002, dated 16.04.2003, in a dispute raised by the second respondent

workman. The parties shall be referred to as the 'Management' and 'Workman'.

2. The Workman was recruited as Apprentice in the petitioner Management for a period of two years from 30.04.1999 and reported for training with effect from the said date. While he was undergoing his training, the Thirubuvani Police arrested the workman on 11.09.2000, with regard to a case registered against him and others in Crime No.114 of 2000. The workman was remanded to judicial custody and therefore, did not report for work. The Management is stated to have sent a communication dated 15.09.2000, calling upon the workman to report for duty immediately and also submit his explanation for unauthorised absence from 12.09.2000. The case of the Management is that despite receipt of the said letter, the workman did not submit his explanation nor did he take steps to continue the training in the petitioner company. It is admitted by the Management that the second respondent came to the factory on 16.09.2000 and he was called upon to submit his explanation for his unauthorised absence. However, he failed to do so and after waiting in the premises for some time, he left from the place and continued to remain unauthorisedly absent. Therefore, the Management took a stand that the workman was not interested in obtaining training in the petitioner Management and determined the apprenticeship on 30.09.2000 in terms of contract of the apprenticeship entered into between the parties. Subsequently, the workman raised a dispute through the Union which ended in a failure report and the Government vide order dated 27.12.2001, referred the dispute for adjudication before the Labour Court. The Labour Court ultimately passed an award directing the reinstatement of the workman with half backwages and continuity of service.

3. The learned counsel appearing for the petitioner after elaborately referring to the factual matrix submitted that the terms and conditions of the apprenticeship training are very clear and the apprenticeship was determined in terms of clause 12 of the offer letter dated 29.04.1999 and the question issuing show cause notice before issuing such an order does not arise. Further, it is submitted that the Labour Court misconstrued the termination of apprenticeship to be one under clause 5 of the offer letter dated 29.04.1999, and held that opportunity should have been granted to him. Further, it is submitted that after 16.09.2000, the workman did not report for duty and the workman being only an apprentice, the Management is entitled to take into account the over all conduct of the workman and the Labour Court erroneously directed that the workman should be reinstated in service with half backwages from the date of non-employment

till reinstatement. The learned counsel for the petitioner further submitted that the Labour Court exceeded the scope of reference and proceeded to expand the scope for which the Labour Court has no jurisdiction. In support of his contentions, the learned counsel placed reliance on the decision in the case of Kalyani Sharp India Ltd., vs. Labour Court No.1, Gwalior & Anr., reported in (2002) 9 SCC 655.

4. Per contra, the learned counsel appearing for the respondent sought to sustain the impugned award contending that the workman reported for duty on 16.09.2000 and the show cause notice which is said to have been issued to the workman on 15.09.2000, was not received by the workman and the Labour Court considered all the aspects and after taking note of the documentary evidence placed before the Court, passed the award. Therefore, it is submitted that the award passed by the Labour Court is perfectly legal and valid.

5. Heard the learned counsels appearing for the parties and perused the materials placed on record.

6. It is not in dispute that the respondent workman was only an apprentice, who was given an offer to under go apprenticeship training for a period of two years from the date on which he reports for training. The termination of the apprenticeship was by communication dated 30.09.2000, which states that in accordance with the clause 12 of the offer of apprenticeship dated 29.04.1999, the apprenticeship is terminated on the close of office hours on 30.09.2000, The accounts will be settled by the Accounts Department after clearance from the concerned department. Thus, the termination of apprenticeship was in terms of clause 12 of the offer letter, dated 29.04.1999, which reads as follows:-

12. At any time during the period of your apprenticeship, your contract with us is liable to be terminated at the discretion of the Management on payment of legal dues, without assigning any reason therefor.

7. In terms of the above clause, at any time during the period of apprenticeship, the contract is liable to be terminated at the discretion of the Management on payment of legal dues, without assigning any reason therefor. One other clause which would be relevant in the offer of Apprenticeship is clause No.5, which states that the Apprentice shall not absent for training on any day without prior permission and if he remains absent without permission or approval for more than 10 working days, he will be deemed to have terminated from apprenticeship and thereafter, shall not have any claim for further apprenticeship or employment.

8. The order of reference passed by the Government, dated 27.12.2001 is as follows:-

1. Whether the non-employment of Thiru P.Pandiyan by the Management of M/s.Rane Brake Linings Limited, Thirubuvanai, Pondicherry is justified or not?
2. To what relief the said workman is entitled to?
3. To compute the relief, if any, awarded in terms of money if it can be so computed?

9. Thus, the Labour Court was required to consider whether the non-employment of the workman is justified or not and to what relief he is entitled to. However, the Labour Court framed the points for consideration as to whether the non-employment of the workman without conducting any domestic enquiry as against him is justified or not and whether the workman has abandoned his service.

10. Prima facie it appears that the Labour Court had expanded the scope of reference, while framing the points for consideration as it was not whether a domestic enquiry should have been conducted, but what was referred to the Tribunal was whether non-employment of the workman was justified or not in the light of the termination of apprenticeship by letter dated 30.09.2000.

11. Be that as it may, the Labour Court proceeded to consider the case as if it is a case of a permanent workman and by referring to the decisions relating to unauthorised absence in such cases and proceeded to order reinstatement. Further, the Labour Court opined that the workman was terminated for unauthorised absence as a punishment without adhering to the principles of natural justice.

12. After hearing the learned counsel for the parties and perusing the materials placed on record, it has to be noted that the jurisdiction of this Court while examining the correctness of an award of the Labour Court is not as if, it is acting as a second appellate authority. A Writ of Certiorari will issue to interfere with an award of the Labour Court/Tribunal, if there is an error of law apparent on the face of the record or when the Labour Court erroneously admitted inadmissible evidence. Therefore, unless and until these parameters are satisfied, this Court cannot substitute its views to the findings recorded by the Labour Court on appreciation of the documents placed before it. On a perusal of the impugned award, it is clear that the Labour court proceeded to examine the case, as if relating to a case of a permanent workman while the undisputed fact remains

that the workman was an apprentice who was offered training for a period of two years. Therefore, the workman was bound by the terms and conditions of the offer letter. Unfortunately this aspect of the matter had been overlooked by the Tribunal and has not been dealt by the Tribunal. This is undoubtedly is an error which is apparent on the face of the record.

13. The Management in their counter statement filed before the Tribunal raised a specific contention that the apprenticeship training was terminated taking into account the over all conduct of the workman. There was no evidence available before the Tribunal that the termination of apprenticeship training was a malafide exercise of power and the Labour Court was solely influenced by the fact that the workman reported for duty on 16.09.2000 and therefore his conduct was not wilful and he had not abandoned the service. This finding rendered by the Labour Court is without reference to the letter dated 30.09.2000 in and by which the apprenticeship training was terminated. The termination of apprenticeship is simplicitor with no stigma attached and in accordance with clause 12 of the letter of offer. Therefore, if the Labour Court had to render a finding that the termination of apprenticeship was for other malafide reasons, then there should have been evidence to the said effect. However, there was no such evidence before the Labour Court to come to such conclusion.

14. In my view, the fundamental error had occurred while framing the points for consideration which was not in-consonance with the order of reference made by the Government. The Management is entitled to take into consideration the overall performance of an apprentice who has offend himself for training and in the given facts and circumstances of the case, no error could have been attributed to the Management in exercising its power under clause 12 of the offer of apprenticeship, which attaches no stigma to the workman's character and conduct.

15. In the case of Kalyani Sharp India Ltd., vs. Labour Court No.1, Gwalior & Anr., (supra), was referred by the petitioner Management before the Labour Court. In the said decision, the second respondent therein was a Trainee Technician and the letter of appointment also contained a similar clause as that of clause 12 in the present case. While considering the order of employment, the Hon'ble Supreme Court pointed out that the order of employment itself clearly sets out and training could be put to an end at any time without assigning any reason whatsoever and services could be regularised only on satisfactory completion of training and the services having been terminated before expiry of the probation period, the question

of issuing notice before terminating the service does not arise. The Hon'ble Supreme Court also placed reliance on the decision in the case of Escorts Ltd., vs. Presiding Officer reported in (1997) 11 SCC 521., wherein it was held that the services of the workman were terminated as per the terms of the contract of employment, it does not amount to retrenchment under Section 2 (oo) of the I.D., Act and the Labour Court was in error holding that it constituted retrenchment and was protected by Sections 25F and 25G of the ID Act. However, the Labour Court brushed aside the decision of the Hon'ble Supreme Court by merely observing that it is not applicable to the case.

16. In the light of the above discussion, this Court has no hesitation to hold that the impugned award suffers not only from error apparent on the face of the record, but the Labour Court failed to address the proper question that should have been addressed while adjudicating the dispute and failure to take note of the correct legal position on the subject and rendered findings based on no evidence. Hence, the impugned award calls for interference.

17. Accordingly, the Writ Petition is allowed and the impugned award is quashed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/
ASSISTANT REGISTRAR (CO)

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

pbn

To

The Presiding Officer, सत्यमेव जयते
Labour Court,
Pondicherry.

+1 CC to MR.S.Rajanikanth Advocate. SR.NO.67008
+1 CC to M/s.Gupta & Ravi Advocate. SR.NO. 66663

Pre-Delivery O r d e r in
W.P.No.19268 of 2003

CO-SR
JD 22/12/2015