

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

WRIT PETITION No.2438 OF 2004

ORDER:

This writ petition is filed by the petitioner-Management challenging the award passed by the Industrial Tribunal-cum-Labour Court, Visakhapatnam in I.D.No.201 of 2000, dated 09.05.2003.

2. Heard the learned counsel appearing for the petitioner and the learned Counsel appearing for the respondents.

3. Brief facts of the case of the 1st respondent are as under:

The 1st respondent herein joined the petitioner Company as a Lathe Operator in the Mechanical section on 11.07.1997 and worked till 14.08.2000. He was enrolled by the Management to the Provident Fund Scheme. He could not attend to duty on 15.08.2000 due to high fever and thereafter he attended the duty on 16.08.2000, but he was not allowed by the Management. Thereafter, he was retrenched from service with effect from 16.08.2000. Aggrieved by the same, the 1st respondent-workman raised industrial dispute before the 2nd respondent-Tribunal in I.D.No.201 of 2000. The 2nd respondent-Tribunal, on a consideration of the entire material available on record, passed an award dated 09.05.2003 directing the petitioner-Management to reinstate the 1st respondent/workman into service with full back wages and continuity of service. Aggrieved by the same, the present writ petition has been filed by the Management.

4. On behalf of the 1st respondent-workman, WW 1 and WW 2 were examined and Ex.W1 was marked. On behalf of the petitioner-Management, MW 1 was examined and Exs.X1 and X2 were marked before the 2nd respondent-Tribunal.

5. The 1st respondent-workman was examined as WW 2. His

services in the petitioner-Management is not in dispute. However, his entry date and date of last service are in dispute. WW 2-workman claimed to have joined duty on 11.07.1997 and thereafter disengaged from service on 16.08.2000 on account of his absence on 15.08.2000 and that he did not resign his job on 01.06.2000. However, the Accounts Officer of the petitioner-Management, who was examined as MW 1, deposed that the WW 2-workman worked from 01.05.1998 to 31.05.2000 and thereafter he disengaged by submitting resignation on 01.06.2000.

6. The writ petitioner-Management submitted that Ex.X1 is the Form-19 Employees Provident Fund Scheme submitted by the 1st respondent-workman to the Commissioner, Provident Fund and the same was filled by the workman himself. Ex.X2 is the Form-10C Employees Pension Scheme 1995. A perusal of Exs.X1 & X2 disclose that the date of leaving service was on 01.06.2000. However, in Column No.6 the reason for leaving service was originally written as 'retrenched' and subsequently it was struck off and separately written as 'resigned'. Further, in the column 'contribution' at page-2 of Ex.X1, it was mentioned that P.F. Contributions were made only till June, 2000. It is also noticed that in "Declaration of Non-Employment Certificate", which was appended to Ex.X1, the 1st respondent-workman declared that he has 'resigned' and not employed in any factory/establishment to which the E.P.F Scheme applies for continuous period of not less than two months immediately preceding the date of his application for final withdrawal of his provident fund money. This declaration was made by the workman on 14.09.2000 and as such it implies that he was out of service from June, 2000.

7. The 1st respondent-workman has also produced a Scheme Certificate dated 18.10.2000 issued by the Assistant Provident Fund Commissioner (Pensions), Visakhapatnam, which clearly shows that the 1st respondent-workman joined the petitioner Company on

01.05.1998 and that he ceased to be a member with effect from 01.06.2000.

8. The learned counsel for the 1st respondent/workman submits that Exs.X1 and X2 were not filled by the workman, it is the representative of the Management who has filled the same after making corrections in Column No.6 thereof to the effect that the workman has resigned to his job on 01.06.2000.

9. As already noticed, the controversy lie in narrow compass, viz., whether the workman himself resigned with effect from 01.06.2000 as alleged by the Management or whether he has been retrenched with effect from 16.08.2000 in view of his unauthorized absence on 15.08.2000.

10. On behalf of the workman, WWs 1 and 2 are examined. WW 1 is the then Provident Fund Enforcement Officer, Visakhapatnam. She deposed that the workman has filed an application before the Commissioner-II, Regional Provident Fund Commissioner, Visakhapatnam directly before the Provident Fund Authorities. In pursuance to the instructions of the Commissioner, she visited the office of the petitioner/Management and obtained the signatures of the authorized representative of the Company. She further deposed that Form-19 and Form-10C should be filled in by the employee and the employer is required to check up the same and transmit to the Provident Fund Commissioner. The said Forms-19 and 10C are marked as Exs.X1 and X2 respectively.

11. On behalf of the petitioner/Management, its Accounts Officer was examined as MW 1. It is in his evidence that the workman has resigned to his job on 01.06.2000 and he denied the claim of the workman that he has been retrenched from the employment on 16.08.2000.

12. From the evidence of the witness that is produced by the workman itself, it is evident that the two Forms Exs.X1 and X2 were

filled by the workman and they were counter-signed by the Management. A perusal of Exs.X1 and X2 falsify the claim of the workman, both in respect of his joining the establishment and his ceasing to be a workman. It is mentioned in the Form Ex.X1 that the workman joined the petitioner company on 01.05.1998 and left the service on 01.06.2000. According to the workman, he joined the establishment on 11.07.1997 and was retrenched on 16.08.2000.

13. A perusal of Ex.X1 shows that the contents therein are filled by the workman himself, but not by the representative of the Management, as alleged. The 1st respondent/workman is a Lathe Machine Operator and is able to read and write, as seen from the writings and contents of Ex.X1. The Form requires the workman to fill up his S.B Account number in words. In that column, he mentioned as "*one for eith jiro (1480)*". If really it is the representative of the Management, who filled up the Form, it would not have written in the manner, indicated above.

14. A perusal of Ex.X1 further shows that the 1st respondent/workman has contributed to the Provident Fund only till June, 2000 i.e., salary for the month of May payable in June. There are no contributions in the month of July, August and September. If really the 1st respondent/workman was in employment till 14.08.2000, as claimed and if he was paid his wages for the months of June, July and part of August, there would have been contributions to the Provident Fund which is mandatory. The contributions were stopped with effect from June, 2000 itself, which establishes that no wages were paid to the 1st respondent/workman for the months of June, July and part of August.

15. On behalf of the 1st respondent/workman, along with reply affidavit, he has also furnished a Scheme Certificate dated 18.10.2000 issued by the Employees Provident Fund Organization, which clearly shows that the workman has joined the petitioner/Management on

01.05.1998 and ceased to be a member with effect from 01.06.2000. The document issued by a statutory authority clearly shows that the claim of the workman that he joined the organization on 11.07.1997 and worked till 14.08.2000 is not correct.

16. Much emphasis is placed upon the correction made in Column No.6 in Ex.X1 by the workman, which is to the effect that the word 'retrenched' has been struck off and it is written as 'resigned'. Whether it is the workman who made the corrections or whether it was made by the Management is not established. As already stated, Ex.X1 Form was directly submitted by the workman before the Provident Fund Commissioner and its Officer WW 1 brought the said Form to the petitioner/Management for the purpose of verification, as spoken to by WW 1.

17. WW 1 being an independent and responsible Officer of the Provident Fund Commissioner would not have allowed the petitioner/Management to make the material correction in Ex.X1 Form, which was submitted by the workman. WW 1 has specifically stated that she obtained the signature of the employer at the authorization place of the application Form Exs.X1 and X2.

18. In view of the above, I see no substance in the contention of the workman that even though he has been retrenched and arbitrarily removed, the Management has given a colour as if the workman himself has voluntarily resigned to his job on 01.06.2000. The evidence of the Officer of the Provident Fund Commissioner and the Forms, the authenticity of which cannot be doubted, clearly shows that with effect from 01.06.2000 the 1st respondent/workman ceased to be an employee of the petitioner/Management.

19. The learned 2nd respondent-Tribunal has not taken into consideration the above aspects in proper perspective and has erroneously held that the 1st respondent/workman is entitled to the relief of reinstatement and back wages with continuity of service.

Therefore, the impugned award cannot be sustained and the same is liable to be set aside.

20. The Writ Petition is accordingly allowed setting aside the impugned award of the 2nd respondent-Tribunal, dated 09.05.2003. In the circumstances, there shall be no order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.S.K.JAISWAL,J

Date:30.12.2015

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