

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:04.02.2016

Date of Reserving the Order	Date of Pronouncing the Order
20.01.2016	04.02.2016

Coram

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

W.P.No.6445 of 2013

The Management of Esab India Ltd.,
Plot No.13, III Main Road,
Ambattur Industrial Estate,
Chennai - 600 058,
Rep., by S.Venkatakrishnan

... Petitioner

Vs.

1.The Presiding Officer,
I Additional Labour Court,
Chennai.

2.M.Raji

... 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 04.01.2013, passed in I.D.No.289 of 2009 by the first respondent, I Additional Labour court, Chennai.

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

For Respondents .. Mr.K.Gopalakrishnan for
M/s.J.Muthukumaran for R2

O R D E R

The petitioner is the Management and the second respondent is the Workman. The challenge in this Writ Petition is to an award passed by the I Additional Labour Court, Chennai in I.D.No.289 of 2009, dated 04.01.2013.

2. The Workman was engaged as a Machine Operator in the Ambattur plant of the petitioner company. The Workman joined in

the petitioner company during 1991 and during May 2008, he was working in Batching Plant and according to the Management due to business reasons, the number of employees in the Batching Plant was reduced to two and the respondent Workman was found to be surplus and he was transferred to the Packing Section. The Workman is said to have accepted the order of transfer and commenced working in the Packing Section. Subsequently, he demanded that he should be reposted to the Batching Plant and he will work only in the said plant. This request was not accepted by the Management and it is stated that the workman started indulging in various indirect forms of protest. This lead to issuance of show cause notice on 04.12.2008, to which the Workman submitted his reply on 06.12.2008 denying the charges framed against him and demanded that he should be posted in the Batching Plant. Subsequently from February 2009, the Workman refused to do any work which resulted in issuance of four show cause notices dated 04.02.2009, 23.02.2009, 24.02.2009 & 25.02.2009. Since the workman was sitting idle and refused to do any work and this affected the working atmosphere in the plant the Management called upon the Workman to execute an undertaking at the factory gate that he will do the work assigned to him and not remain idle and this was intimated to the Workman by notice dated 25.02.2009. The allegation is that the Workman stopped coming to the factory from 26.02.2009, and he refused to give an undertaking as insisted by the Management and stopped reporting for duty. During March 2009, the Workman raised a dispute before the Conciliation Officer alleging that the Management had terminated his services on 02.03.2009. The Management appeared before the Conciliation Officer and set out the facts and informed the Conciliation Officer that the Management has not terminated the services of the Workman and he can resume work any time by giving an undertaking before the Conciliation Officer that he will do the work assigned to him. However, there appears to have been no workable solution arrived at in the process of conciliation and the conciliation proceedings were concluded on 29.04.2009. The Management thereafter filed a petition to re-open the conciliation proceedings by letter dated 02.07.2009, in which it was stated that the Management offered to give work without insisting on any undertaking, which offer the Workman was not inclined to accept and therefore, the conciliation proceedings were closed and a failure report was submitted. Pursuant thereto, the Workman raised the dispute before the Labour Court which was taken on file as I.D.No.289 of 2009. It is further submitted that pursuant to the show cause notices issued the Management imposed a punishment of seven days suspension and informed the Workman that he could resume duty for which the Workman sent a reply on 27.10.2009, stating that he is not interested in settling the case, but he will agitate the same before the Labour Court. Before the Labour Court, the Management raised a preliminary issue with regard to the maintainability of the

dispute under Section 2A of the Industrial Disputes Act, 1947, (I.D.Act) on the ground that the services of the Workman was never terminated. Ultimately the Labour Court passed the impugned award directing the petitioner Management to reinstate the Workman with continuity of service and 50% backwages and all other attendant benefits. The Workman has been reinstated in service and he is working till date and the challenge in this Writ Petition is confined only to the direction to pay 50% backwages.

3. The learned counsel for the petitioner after reiterating the above facts referred to the documents, which were placed before the Labour Court to substantiate his plea that the Management at no point of time had denied employment to the Workman and therefore there was no termination of service and the dispute was not maintainable. It was contended that the communications/replies sent by the Workman to the notices would amply prove that he had rejected the offer made by the Management to report for duty and therefore, the Labour Court ought to have held that there was no termination of employment. Further, it is submitted that the Labour Court without considering the evidence of the Workman, erroneously concluded that the dispute raised under Section 2A of the I.D.Act was maintainable and this finding is clearly erroneous as it is without materials available on record and therefore, the Labour Court erroneously passed the impugned award and the same suffers from perversity and therefore, calls for interference.

4. The learned counsel for the Workman reiterated the facts, which were placed before the Labour Court and submitted that the Labour Court on a careful appreciation of the factual and legal contentions raised, passed the award which is reasonable and fair. The Labour Court has only awarded 50% of the backwages and since the Workman has already been reinstated, this Court should confirm the award and direct the Management to pay the backwages.

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

6. The Labour Court framed three questions for consideration namely, (i) whether the petition filed under Section 2A of the I.D.Act, is maintainable on the grounds raised by the petitioner Management; (ii) whether the service of the Workman was terminated without notice or enquiry from 02.02.2009 and if so, whether it is arbitrary and unjustified; (iii) whether the Workman is entitled to claim reinstatement, continuity of service, backwages and other benefits. The Workman examined himself as WW-1 and marked 36 documents as Exhibit W-1 to W-36.

There was no oral evidence on behalf of the Management, but they have marked nine documents with consent as Exhibits M1 to M9.

7. Firstly it has to be pointed out that transfer is not only an incidence of service, but a condition of service. In the instant case, the order of transfer is not to a different establishment, but within the same establishment to a different area. Thus, under normal circumstances, a Workman cannot question an order of transfer that too within the same establishment unless and until he establishes that the order of transfer was tainted with malafide. Therefore, a Workman who had been issued an order of transfer was bound to comply with the same, as it is one of the service conditions. The case of the Management is that on account of the restructuring of the work force in the Batching Plant, the respondent Workman became surplus and he was accommodated in the Packing Section. The Workman is said to have joined the Packing Section, but subsequently, took a stand that he should be put back in the Batching Section. There are allegations against the Workman of non-cooperation and remaining idle, resulting in issuance of four show cause notices for which replies have been sent and ultimately an order of punishment of suspension for seven days had been imposed. This order of punishment has not been questioned by the Workman. Thereafter, the Management had made an offer to the Workman to report for duty and while doing so, they clearly stated that they are not insisting upon any undertaking from the Workman as was insisted by them earlier as well as before the Conciliation Officer.

8. The Labour Court though took note of the stand taken by the Management, did not accept the same stating that nobody was examined on the side of the Management. However, the evidence placed by the Management was in the nature of documents and there was no denial by the Workman to those documents. In response to the offer made by the Management calling upon the Workman to report for duty as an order of suspension for seven days has been imposed as substantive punishment, the Workman took a stand by reply dated 27.10.2010, stating that the order of suspension imposed as a punishment will not bind him, as he has already raised a dispute before the Labour Court. Thereafter, by letter dated 27.10.2009, the Workman stated that he will report for work only if he is accommodated in the Batching Plant. In such factual scenario, the Labour Court was required to decide as to whether there was a clear cessation of employment or that the Management orally terminated the Workman from service. The Labour Court disbelieved the stand of the Management by solely relying upon the stand taken by the Workman that though he came to work on 02.03.2009, the Security Guard refused to allow him to enter the factory. Thus, on considering the factual matrix, this Court finds that the Labour Court did not endeavour to record a specific finding as to how he was

terminated from service, in the light of the letters written by the Workman that he will refuse to report for work unless and until he is accommodated in the Batching Plant. The endeavour of the Labour Court ought to have been as to whether the Management in exercise of its right as an employer could call upon the Workman to work in a different section.

9. Admittedly, there is no change of emoluments or service conditions. Initially, it appears that the Workman cited certain health reasons, but he did not stick to such a stand nor there is any medical evidence to establish that on account of his health condition, he cannot work in the Packing Section.

10. Thus, the findings rendered by the Labour Court ignoring the documents filed by the Management and by observing that there was no rebuttal evidence, cannot be accepted in the facts and circumstances of the case. It is well open to the party to a litigation not to get into the witness box. However, in the instant case, though there was no oral evidence on the part of the Management, documentary evidence was produced and nine documents have been marked. Exhibit M.7 is the re-open petition filed by the Management before the Conciliation Officer in which a categorical stand has been taken that the Management was ready and willing to reinstate the Workman and their only request was that he should do the work assigned to him and not remain idle. This appears to have been the purpose for which an undertaking letter was sought for, which was subsequently not insisted. Thus, the finding rendered by the Labour Court that there was a termination from service is a finding rendered without properly appreciating the documentary evidence placed by the Management before the Labour Court.

11. Having held so, the consequence would be that the award of backwages is not tenable. It is settled legal position that though there may be an award for reinstatement, the award for backwages is not automatic. The Labour Court ought to have recorded reasons, more so as in the instance case when the Labour Court thought fit to deny 50% backwages to the Workman. Thus, the award to that extent is a non speaking award and devoid of merits.

12. For all the above reasons, this Court is inclined to interfere in the impugned award insofar as it relates to the award of 50% backwages. Since the Workman has already been reinstated, and there was no challenge to that portion of the award, the same is confirmed and the Workman is also entitled to continuity of service, but without backwages as awarded by the Labour Court.

13. In the result, the Writ Petition is partly allowed and the impugned award is set aside only in respect of the award of 50% backwages and the remaining portion of the award is confirmed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

The Presiding Officer,
I Additional Labour Court,
Chennai.

+1cc to M/S.R.Rajmohan, Advocate, S.R.No.7718

+1cc to Mr.Gupta & Ravi, Advocate, S.R.No.7857

Pre-Delivery Order in
W.P.No.6445 of 2013

vd(CO)
srg(15/02/2016)

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