

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2016

CORAM :

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH

and

THE HONOURABLE MR.JUSTICE V. PARTHIBAN

Writ Appeal No.623 of 2016

and

C.M.P. No.8179 of 2016 in Writ Appeal No.623 of 2016

and

Contempt Petition No.1841 of 2016

K. Thiruthanikumaran

.. Appellant/
Petitioner in

Cont.P.1841/2016

Vs.

1. The Assistant Labour Commissioner (C)-1
Office of the Deputy Chief Labour
Commissioner (Central)
No.26, Haddows Road
Shasthri Bhavan
Chennai – 600 006.

2. The General Manager-Operations
Chennai Container Terminal Pvt.Ltd.
Chennai Port Trust
Rajaji Salai
Chennai – 600 001.

.. Respondents 1 & 2/
Respondents 1 &

3. The General Manager
 Human Capital / IR & Admin.
 Chennai Container Terminal Pvt.Ltd.
 Chennai Port Trust
 Rajaji Salai
 Chennai – 600 001.

.. 3rd Respondent/
 Sole Respondent in
 Cont.P.1841/20

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PRAYER IN Writ Appeal No.623 of 2016:

Writ Appeal under Clause 15 of the Letters Patent to set aside the order dated 15.04.2016 passed in W.P No.14938 of 2015 on the file of this Court.

PRAYER IN Cont.P. No.1841 of 2016:

Contempt Petition filed praying to punish the respondent for having disobeyed the order passed by this Court dated 11.05.2016 made in CMP No.8179/2016 in W.A. No.723 of 2016 and pass further orders.

For Appellant/
 Petitioner : Mr. V. Prakash, Senior Counsel
 for Mr. N. Kolandaivelu

For Respondents : Mr.Sanjay Mohan
 for M/s. S.Ramasubramanian &
 Associates

for R1 to R3 and
for R3 in Cont.P.No.1841 of 2016

J U D G M E N T

(Judgment of the Court was made by **HULUVADI G. RAMESH,J.**)

Heard learned counsel for the parties. We have noted the presence of Mr. R.Chandrasekaran, General Manager-HC/ IR & Administration, who is voluntarily present before this Court, on the basis of the bailable warrant issued. The warrant is re-called.

2. This Writ Appeal is preferred to set aside the order dated 15.04.2016 passed by the learned Single Judge in W.P No.14938 of 2015. The Contempt Petition is filed by the petitioner, due to non-compliance of the order passed by this Court dated 11.05.2016 made in CMP No.8179/2016 in W.A. No.723 of 2016.

3. It appears that way back in the year 2007, the appellant sustained injuries while operating the Crane, by which he is stated to have suffered 40% temporary disability. It is stated that the matter is pending before the Conciliation authorities. The learned Single Judge had dismissed the Writ Petition, with an observation that if the appellant subjects himself to the disciplinary proceedings, then the

Management shall refer the appellant for assessment of his health condition and based on the medical report and the charges framed against him, the case of the workman will be considered by the Management.

4. In paragraph 4 of the order, learned Single Judge has noted that the appellant has failed to do the work, which was assigned to him. Being a RTG Crane Operator, the nature of job requires him to work in the crane, for lifting the container boxes, for which purpose the appellant has to climb the crane, which is more than 60 feet in height. On account of the injuries sustained in the year 2007, the appellant has suffered posterior horn tear of medial and lateral meniscii of left knee and partial tear of ACL on left knee, which prevents him from operating the Crane. It appears that the appellant also finds it difficult to climb the ladder of the Crane, for which the learned Single Judge has opined that he should have been subjected to medical examination. However, without subjecting himself for medical examination, the petitioner has refused to report for work. Therefore, referring to the past conduct of the workman, the Management issued a charge memo cum suspension order dated 17.02.2015 and the said order of suspension has been challenged by the appellant before the City Civil Court. In such view of the matter,

learned Single Judge has directed the Management to refer the appellant for medical examination and further if the appellant subjects himself to the disciplinary proceedings, based on the medical report and the charges framed against him, the case of the workman shall be considered by the Management.

5. In the course of argument before this Court, learned counsel appearing for the respondent Management submitted that the appellant was subjected to medical examination by a Doctor, for assessment of the disability and his capability to discharge the work, entrusted on him and a report has been received stating that the appellant cannot discharge the work of a Crane Operator.

6. It appears that during the pendency of the appeal, the workman was kept under suspension. He has been served with two orders, viz., one is an order of termination and another is discharge from service on medical grounds. Regarding suspension, the matter is still pending before the City Civil Court for consideration. However, by the second order, the appellant has been discharged from duty.

7. These aspects cannot be looked into, by this Court now, under Article 226 of the Constitution of India, since the subject

matter is pending before the City Civil Court and so it should be dealt with, there itself. However, at present, since the Management considers that the workman is unfit to discharge the duty entrusted on him, on the basis of the medical examination report and depending upon his health condition, the Management can take him on duty, if the City Civil Court revokes the order of suspension. Even otherwise, the parties shall approach the appropriate forum to adjudicate the matter, either before the Labour Court or Conciliation Officer and work out their remedy, since the cause of action has been changed, by issuance of termination order and discharge of the appellant on health grounds.

8. Having regard to the submission made before this Court, the Management is directed not to protract the proceedings for the present. The appellant shall be subjected to medical examination before the Government Doctor in the Government General Hospital, within a period of 15 days from the date of receipt of a copy of this order and if he is found capable to discharge his duty, the Management should take the appellant back to duty. Based on the order of the Conciliation Officer, Labour Court and the Industrial Tribunal, the Management shall confirm the reinstatement of the appellant.

9. With the above direction, the Writ Appeal is disposed of. However, the appellant if aggrieved, can very well file an application before the City Civil Court or Labour Court, challenging the order of discharge and also seek for suitable compensation/ reinstatement, if so advised. No costs. Consequently, the connected Miscellaneous Petition is closed.

10. Learned counsel for the respondent submitted that the cheque given to the appellant towards payment of salary till the date of discharge, has been returned. The respondent, however undertakes to make the payment. Recording the said undertaking given by the Management, the Contempt Petition is closed, subject to the payment of salary, forthwith to the appellant.

(H.G.R., J.) (V.P.N., J.)
03.11.2016

Index: Yes/No

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RAMESH,J.

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