

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.07.2016

Delivered on : 26.07.2016

CORAM:

THE HON'BLE MR.JUSTICE A.SELVAM

AND

THE HON'BLE MR.JUSTICE P.KALAIYARASAN

Writ Appeal No.1971 of 2012

& M.P.No.1 of 2012

R.Ramasubramanian ..Appellant/Petitioner

Vs.

1 The Presiding Officer
Labour Court,
Vellore 4.

2. The Management of Sundaram
Fasteners Ltd.,
Harita, Hosur 635 109. ..Respondents/Respondents

WRIT APPEAL filed under Clause 15 of Letters Patent against the order passed in W.P.No.12075 of 1997 dated 30.6.2008.

W.P.No.12075 of 1997:- This Writ Petition filed under Article 226 of the Constitution of India, seeking for issuance of Writ of Certiorari calling for the records and papers from the files of the First Respondent in I.D.NO.448/94 and quash its impugned Award Dated 31.10.96 in so far as the First Respondent has negatived the claim of the petitioner for re-instatement in service, with backwages with continuity of service and with all attendant and consequential benefits.

For Appellant : Mr.R.Shanmugham
For Respondents : Mr.Anand Gopalan for
M/s.T.S.Gopalan & Co for R2
R1- Court

J U D G M E N T

(Judgment of the Court was delivered by
A.SELVAM, J)

This Writ Appeal has been directed against the common order dated 30.6.2008 passed in W.P.Nos.12075 and 14314 of 1997 by the learned Single Judge of this Court.

2. The appellant herein, as petitioner, has filed Industrial Dispute No.448 of 1994 on the file of the Labour Court, Vellore, wherein, the present second respondent has been shown as sole respondent.

3. The material averments made in the petition are that the petitioner has been appointed as Operative Trainee by the respondent on 9.9.1991 and his initial probation has been fixed for a period of six months. After a lapse of six months, his probation period has been extended periodically. The petitioner has evinced good result during probation period. The probation of the petitioner has been extended periodically with oblique motive and also against the Tamil Nadu Industrial Establishments (Conferment of Permanent Status of Workman) Act, 1981. All of a sudden, the service of the petitioner has been terminated on 31.3.1994 without notice. No charge has been framed against him. Under such circumstances, present petition has been filed for getting the relief sought therein.

4. In the counter filed on the side of the respondent, it is averred that the averments made in the petition with regard to appointment as well as probation of the petitioner are correct. The probation of the petitioner has been extended mainly on the basis of assessment report from the Department in which the petitioner has served. The work done by the petitioner during probation period is found unsatisfactory, despite several opportunities given to him. Since the petitioner has not completed his probation successfully, the respondent has had no option except to issue a termination order dated 31.3.1994. Along with the termination order, a cheque for a sum of Rs.5038.50 has been annexed. It is false to aver that against the Standing Orders, the probation of the petitioner has been extended. It is also false to aver that the period of probation of the petitioner has been extended against the provisions of Tamil Nadu Industrial Establishments (Conferment of Permanent Status) Act, 1981 and there is no merit in the petition and the same deserves to be dismissed.

5. The Labour Court, Vellore, after considering the rival evidence adduced on either side, has confirmed the termination order dated 31.3.1994 and awarded a compensation of Rs.30,000/-. Against the award passed by the Labour Court, Vellore, the appellant herein, as petitioner, has filed W.P.No.12075 of 1997 and the respondent, as petitioner, has filed W.P.No.14314 of 1997 on the file of this Court.

6. The learned Single Judge, after considering the divergent contentions put forth on either side, has dismissed Writ Petition No.14314 of 1997 and also confirmed the termination order and at the same time, raised the compensation to the tune of Rs.50,000/- and to that extent, W.P.No.12075 of 1997 has been disposed of. Against the order passed in Writ Petition No.12075 of 1997, the present Writ Appeal has been preferred at the instance of the petitioner, as appellant.

7. The learned counsel appearing for the appellant/petitioner has strenuously contended that the appellant/petitioner has been appointed as Operative Trainee on 9.9.1991 by the second respondent herein and his probation has been fixed for a period of six months and subsequently, on various occasions, probation of the petitioner has been extended periodically and in all reports, it has been initially stated that the work done by the appellant/petitioner during his probation period is satisfactory and subsequently, the words "un" and "not" have been included and the same has been proved with the aidance of the Forensic Science Department. The learned Single Judge, without considering the so-called alteration/inclusion of the words "un" and "not", has erroneously confirmed the award passed by the Labour Court and therefore, the order passed by the learned Single Judge is liable to be set aside.

8. As a repartee to the contentions put forth on the side of the appellant/petitioner, the learned counsel appearing for the second respondent/respondent has befittingly contended that the work done by the appellant/petitioner during his probation period has been assessed in various stages and since he has not done his work in probation period satisfactorily, the words "un" and "not" have been included and apart from the review report, various documents are filed for the purpose of showing that the appellant/petitioner has not successfully completed his probation period and after considering the documents filed on the side of the second respondent/respondent, both the Labour Court as well as the learned Single Judge of this Court have uniformly found that the termination order is quite correct and therefore, the concurrent orders passed by the Labour Court as well as by the learned Single Judge of this Court, are not liable to be set aside and therefore, the present Writ Appeal deserves to be dismissed.

9. It is an admitted fact that the appellant/petitioner has been appointed as Operative Trainee on 9.9.1991 and it is also equally an admitted fact that his probation has been fixed for a period of six months. Further, it is admitted even on the side of the appellant/petitioner that periodically probation period of the petitioner has been extended on several occasions.

10. The entire contention put forth on the side of the appellant/petitioner is based upon the so-called alteration/inclusion of the words "un" and "not" in review reports.

11. It is true that during pendency of the present Writ Appeal, this Court has directed Forensic Science Department to find out the so-called inclusion/alteration of the words "un" and "not" in review reports. Accordingly, the Forensic Science Department has analyzed review reports and ultimately found that those words have been subsequently added.

12. The main contention put forth on the side of the second respondent/respondent is that since the work done by the appellant/petitioner during his probation period is not satisfactory, the said words have been subsequently added.

13. For the purpose of analyzing the above aspect, the Court has to look into the entire proceedings emanated in respect of the probation of the appellant/petitioner. In fact, this Court has perused the entire proceedings, wherein in some places, the words "un" and "not" have been subsequently added. But, at the same time, a primordial duty is cast upon the Court to look into the proceedings relating to probation period of the appellant/petitioner. In July 17, 1992, an order has been passed in respect of probation period of the appellant/petitioner, wherein it has been stated that "your probationary service is extended for a period of six months upto 30.9.1992. Other terms and conditions as detailed in the above order remain unchanged". On August 16, 1993 another proceeding has been passed in respect of probation period of the appellant/petitioner, wherein it is stated that "your probationary service is extended for a further period of six months upto 30.9.1993. Other terms and conditions as detailed in the above order remain unchanged". On 12.10.1993, another proceeding has been passed in respect of probation of the appellant/petitioner, wherein it is stated that "your performance continues to be unsatisfactory and to give you another opportunity to improve, your probationary period is extended for a further period of six months upto 31.3.1994. Other terms and conditions as detailed in the above order remain unchanged".

14. From a close reading of the proceedings emanated in respect of probation period of the appellant/petitioner, the Court can easily deduce that since the appellant/petitioner has not done his work during the probation period satisfactorily, his probation period has been extended periodically. Therefore, it is quite clear that only on the basis of unsatisfactory work done by the appellant/petitioner, the words "un" and "not" have been included by the competent authority. Further, in the

counter filed on the side of the second respondent/respondent, it has been clearly stated that the work done by the appellant/petitioner during his probation period has been assessed on various stages and therefore, the mere inclusion/alteration of the said words, would not lead to come to a conclusion that the appellant/petitioner has done his work during the probation period satisfactorily.

15. The main defence taken on the side of the second respondent/respondent is that since the appellant/petitioner has not done his duty properly/satisfactorily, he has been terminated from service by virtue of the order dated 31.3.1994, wherein also it has been clearly stated that the work done by the appellant/petitioner during probation period is not satisfactory. Since the appellant/petitioner has not done his work satisfactorily during his probation period, the second respondent/respondent is having unfettered right of termination and accordingly, the termination order dated 31.3.1994 has been passed. In view of the discussions made earlier, this Court has not found any error in the termination order passed by the second respondent/respondent. The Labour Court, Vellore as well as the learned Single Judge of this Court have uniformly/elaborately discussed the termination order passed against the appellant/petitioner and ultimately found that the same is quite correct and further the Labour Court, Vellore has awarded a compensation of Rs.30,000/-. The learned Single Judge, by way of considering the period during which the appellant/petitioner has done his duty, has increased quantum of compensation to an extent of Rs.50,000/-. Therefore, viewing from any angle, the contentions put forth on the side of the second respondent/respondent is really having acceptable force and altogether, the present Writ Appeal deserves to be dismissed.

In fine, this Writ Appeal is dismissed without cost. The order dated 30.6.2008 passed in W.P.No.12075 of 1997 by the learned Single Judge of this Court, is confirmed. Consequently, connected Miscellaneous Petition is closed.

ajr

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1. The Presiding Officer, Labour Court, Vellore 4.

+ 1 cc to Mr.R.Shanmugham, Advocate Sr 42433

+ 1 cc to Mr.T.S.Gopalan & Co, Advocate Sr 42048

KR/3/8/16

W.A.No.1971 of 2012