

THE HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.24278 of 2009

ORDER:

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Heard Sri K.Someswara Kumar for petitioner
and Sri V.Sudhakar Reddy for 1st
respondent.

2. With the consent of learned counsel appearing for the parties, at interlocutory stage the writ petition is heard and disposed of.

3. The petitioner challenges award dated 22-08-2009 in I.D.No.124 of 2005 on the file of the Industrial Tribunal-cum-Labour Court, Visakhapatnam.

4. The parties are referred as 'Management' and 'Workman'.

5. The workman admittedly was working as Twister in the Management of petitioner.

6. The circumstances leading to filing of I.D. and the writ petition are as follows:-

7. According to workman, his initial appointment was on 26-05-1998 and worked continuously till the Management did not permit him to attend the duties w.e.f. 20-05-2005. The name of petitioner was struck off from the muster rolls with effect from 01-06-2005. According to workman, the striking off his name from the muster rolls and physically preventing him from attending the duties are illegal and contrary to the procedure stipulated by the Industrial Disputes Act, 1947.

8. The Management, before the 2nd respondent, filed counter

and justified striking off the name of workman from the rolls or terminating his service as Twister w.e.f. 1.6.2005. According to Management what is complained is not a case of termination simplicitor for any reason but a case of abandonment of employment by the workman and contended that due to voluntary abandonment of service the prayers are unavailable and prayed for dismissal of I.D. The 2nd respondent framed following points for consideration :-

- “1. Whether the petitioner is terminated from service of the respondent ? If so, whether such termination is in contravention of the procedure laid down by law ?
2. Whether the petitioner is entitled to reinstatement and back wages ?
3. To what relief ?”

9 . The oral and documentary evidence was adduced by workman and management examined MW-1.

10. The findings recorded by 2nd respondent on point No.1 read as follows:-

“A reading of the evidence alongwith the copy of attendance register Ex.M1 shows that upto 30th May, 2005 it was shown that the petitioner is absent to duty. Thus, he was on rolls upto 30.05.2005, but even according to MW1 from 1.6.2005 onwards the petitioner's name was removed from the rolls. Invariably it would amount to termination of his services. In the own words of MW1,

“It is true, as per the procedure if any worker absents from duty a notice will be given and an enquiry will be conducted. It is true we have not issued such show cause notice to the petitioner..... It is true before removing his name form the rolls we have not issued notice, notice pay and retrenchment compensation.”

His explanation given in the re-examination that, because the workman did not turn up to duty, they have

omitted to mention his name in the rolls from June 2005, is a lame excuse. Thus, it is established from the evidence of management that they have terminated the services of workman from 1.6.2005 onwards without issuing a notice or without following the procedure laid down by Sec.25-F of the I.D.Act, 1947.

The evidence of WW1 supported by the evidence of WW2 to WW4 would show that he had participated in a Relay Hunger Strike on 19.5.2005 and reported to duty on 20.5.2005, but he was prevented at the gate. Even if it is taken that it is not a true statement of fact, the fact remains that on the ground of his unauthorized absence, the management did not serve any show cause notice and did not initiate any disciplinary action against him, but unilaterally removed his name from the rolls with effect from 1.6.2005.

In **Nicks (India) Tolls Vs. Ram Surat and another, 2004 (4) LLN 720**, the Supreme Court held that whenever the management contends that the workman had abandoned the service voluntarily, the burden of proving that fact is on the management only. The Delhi High Court held in **Sushil Kumar Vs. University of Delhi, 2009 Vol.122 FLR 67** that when the service of the workman were put to an end without following the provisions under sec.25-F, the labour court is correct in ordering reinstatement with full back wages. However, in that case, his Lordship did not order reinstatement but directed the management to pay a sum of Rs.1.5 lakhs as compensation. But in **Nicks (India) Tolls** case, the Supreme Court observed that the reinstatement ordered by the Labour Court shall be followed by payment of back wages in full, thereby enhanced 25% of back wages awarded by the labour court. Considering the facts and law referred above, this court is of considered opinion that the services of the petitioner are terminated by the respondent illegally by resorting to remove his name from the rolls with effect from 1.6.2005, which amounts to termination of service, and violated the provision of Sec.25-F in that respect. Therefore, the petitioner is entitled for the relief.”

11. So far as point No.2 is concerned, it is held by 2nd respondent that the workman is entitled to full back wages as the management failed to prove that the case is one of abandonment by workman. The petition was allowed directing the Management

to reinstate workman with full back wages together with continuity of service within 30 days from the date of publication of award. Hence, the writ petition.

12. Sri K.Someswara Kumar, counsel for petitioner has fairly submitted that having regard to the plea taken by the Management viz., one of abandonment of service by workman and the failure of management to discharge the burden fastened on it, he may be permitted to persuade this Court to challenge award of full back wages by 2nd respondent. He contends that grant of full back wages in the case on hand is illegal and unsustainable for the workman failed to plead or establish that he is not engaged in any gainful employment from 2005 till the date of award. Therefore the consequential direction to pay back wages is liable to be interdicted and set aside.

13. Sri V.Sudhakar Reddy vehemently opposes the limited challenge of Management by contending that the 2nd respondent is entitled to exercise its discretion under Section 11-A of the Industrial Disputes Act, 1947, as the Management was unsuccessful in convincing the 2nd respondent that the case of abandonment pleaded by it is correct and supported by evidence. In the case on hand, the discretion is rightly exercised and more particularly when the challenge of findings recorded on point No.1 is not canvassed before this Court in exercise of its jurisdiction under Article 226 of the Constitution of India, the quantum of award of back wages ought not to be interfered with by this Court and he prays for dismissal of the writ petition. According to him, the workman both pleaded and stated in oral evidence about his

unemployment after illegal termination and this contention is not based on record.

14. I have taken note of the submissions of the learned counsel appearing for the parties and carefully perused the plea taken by the Management, its failure in discharging the basic plea and the consideration of issues between the parties by the 2nd respondent. This Court does not wish to reiterate what is reasonably and objectively considered by 2nd respondent. Suffice it to note that the application is allowed by 2nd respondent primarily on the ground that the Management failed to discharge its burden of abandonment of service as required by law. The consequence of such a finding is that the workman was stopped by Management for a reason not acceptable by law from working as Twister in the company of petitioner. Once by choice the Management prevents the workman from attending duties and a finding against the Management is recorded, I am of the view that the award of back wages cannot independently be considered or grant lesser back wages in the facts and circumstances of the case.

15. Adverting to the contention of Sri K.Someswara Kumar that the workman nowhere pleaded that he is not gainfully employed or adduced any evidence, it is to be noted that it is only a contention made without reference to the specific pleas taken by workman and rejected.

16. Both the contentions fail and the writ petition dismissed. No order as to costs.

Miscellaneous petitions, if any, pending in this writ petition

shall stand closed.

S. V. BHATT, J

Dt: 06-06-2016
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THE HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.24278 of 2009

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06-06-2016

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THE HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.8856 of 2015

28-04-2016

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