

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2017

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

W.P. No.14410 of 2003 & W.P.M.P. No.40483 of 2005

A. Arden

Petitioner

vs.

1 The Management of S.J. Property Development Ltd.
"Park Way"
No.122, Marshalls Road
Egmore
Chennai 600 008

2 The Presiding Officer
Hon'ble I Additional Labour Court
Chennai 600 104

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari, calling for the records relating to the order passed by the second respondent in I.D. No.357 of 1999 dated 25.07.2002 to quash the portion of the order directing the petitioner to join duty at Bangalore without backwages and without all other attendant benefits.

For petitioner :Ms. R.Sangeetha
for Ms. A. Vasanthi

For R2 :Mr. S. Pattabiraman
Government Advocate

ORDER

This writ petition is filed challenging the order dated 25.07.2002 passed by the second respondent in I.D. No.357 of 1999 insofar as it directs the petitioner to join duty in Bangalore, without backwages and without all other attendant benefits.

2 It is the specific case of the petitioner that he joined the first respondent company as Attender in the year 1968 and later, he was promoted as Despatch Clerk and further promoted as Supervisor on a monthly salary of Rs.2,200/-. It is his contention that he was transferred to Bangalore without authority and jurisdiction and therefore, he did not join duty at Bangalore. He issued a legal notice dated 01.02.1996 to the

first respondent seeking reinstatement. Since the first respondent did not give employment, he raised an industrial dispute and on the failure of the conciliation proceedings, the matter was referred to the First Additional Labour Court in I.D. No.357 of 1999.

3 In the said case, the petitioner examined himself as a witness and marked 15 exhibits. On behalf of the first respondent Management, one witness was examined and 11 documents were marked. The Labour Court, after considering the evidence adduced by both the parties, passed the following order:

"12 In the result, award is passed in reinstating the petitioner with continuity of service to join duty at Bangalore without backwages and without all other attendant benefits. No costs."

4 Challenging the award passed by the Labour Court directing the petitioner to join duty in Bangalore and for denying backwages, the present writ petition has been filed.

5 Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the second respondent.

6 The learned counsel for the petitioner submitted that the petitioner ought not to have been transferred to Bangalore by the first respondent company and therefore, the petitioner did not report to duty in Bangalore. He also contended that the petitioner was working as Attender and persons holding Class IV post should not be transferred.

7 This Court perused the evidence on record. The fact remains that the petitioner joined as Attender, but, later, he was promoted as Supervisor. At that juncture, the first respondent Management transferred him to Bangalore. Though there are no specific provisions in the Standing Order, yet, the Management can transfer a person to another place owing to exigency of situation. In Caravan Goods Carriers Pvt. Ltd. vs. Labour Court, Madras and another [1977 (II) LLJ 199], this Court has held as under:

"It might well have been so, due to the exigencies and it is not for the Labour Court to sit in appeal over those exigencies and find out whether they demanded this course. As to how best to secure efficiency of service and as to whether it would be desirable in the interests of administrative convenience to effect transfers are all matters which the Management alone could decide.

I am unable to accept the argument of the learned counsel for the respondent that since the Management relied upon the Standing Orders for transferring the workman, unless there are standing orders to that effect, it could not do so. It is well settled that so long as the management has got the power, the power in the instant case being power inherent in the nature of employment as has been repeatedly laid down by this Court, it does not matter whether the Management resorts to that power or the standing orders. This is on the basis that there are no standing orders to that effect and on that score, the order does not become illegal."

8 That apart, it is not the case of the petitioner that he was transferred on account of mala fide intention. Even according to the first respondent Management, they had transferred him to Bangalore on 24.07.1996 and after accepting the transfer order, he had been giving leave letters without reporting to duty. These letters have been marked as Exs.M.3,4 and 7. M.W.1 has admitted categorically in the witness box that the Management is willing to take back the petitioner to duty provided he joins in Bangalore.

9 In Syndicate Bank Ltd. vs. its workmen [1996 (1) LLJ 440, the Supreme Court has held as under:

"7. . . . We are, therefore, of opinion that the Industrial Tribunals should be very careful before they interfere with the orders made by the Banks in discharge of their managerial functions. It is true that if an order of transfer is made mala fide or for some ulterior purpose, like punishing an employee for his trade union activities, the Industrial Tribunals should interfere and set aside such an order of transfer, because the mala fide exercise of power is not considered to be the legal exercise of the power given by law. But the finding of mala fides should be reached by Industrial Tribunals only if there is sufficient and proper evidence in support of the finding. Such a finding should not be reached capriciously or on flimsy grounds as the Industrial Tribunal has done in the present case."

10 The Labour Court has relied upon the aforesaid judgment while passing the award. This Court does not find any infirmity in the award passed by the Labour Court warranting interference.

In the result, this writ petition is dismissed as being devoid of merits. No costs. Connected W.P.M.P. is closed.

sd/
Assistant Registrar(CO)

/true copy/

Sub Assistant Registrar

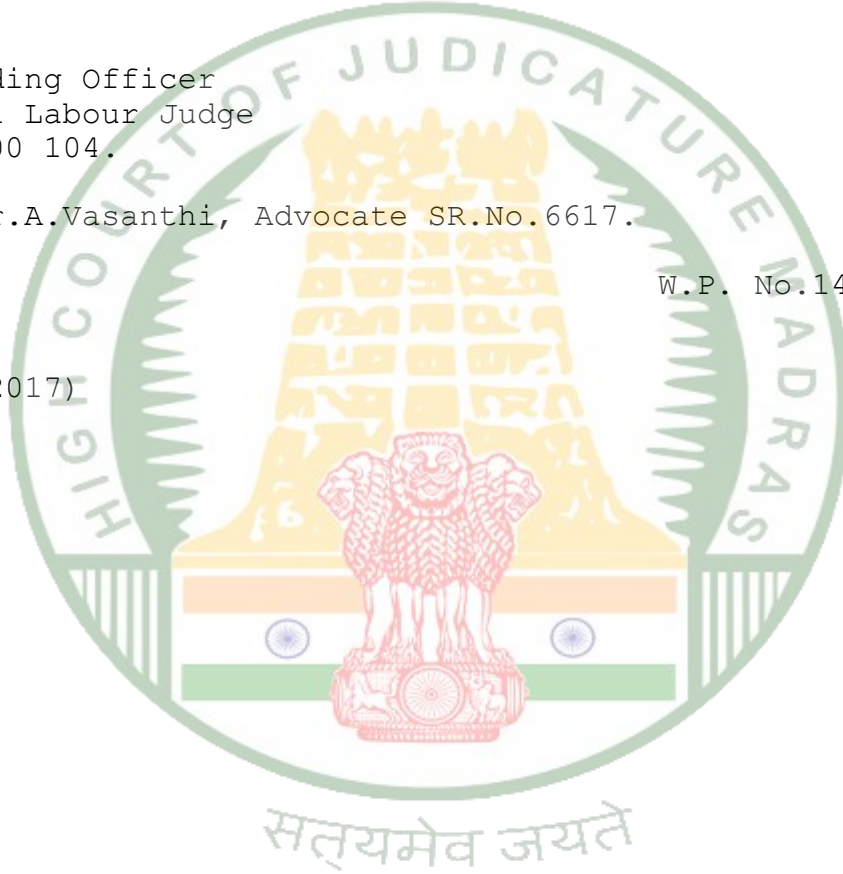
gms

To
The Presiding Officer
Additional Labour Judge
Chennai 600 104.

+1cc to Mr.A.Vasanthi, Advocate SR.No.6617.

W.P. No.14410 of 2003

LRS (CO)
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