

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2018

CORAM

THE HON'BLE DR.JUSTICE S.VIMALA

Writ Petition Nos.29357 of 2014 & 21442 of 2013

M.P.Nos.1 of 2014 & 1 of 2013

The Executive Engineer, Maintenance Division,  
Tamil Nadu Water Supply and Draining Board,  
Salem - 7

.... Petitioner in W.P.No.29357 of 2014  
& R-3 in W.P.No.21442 of 2013

Vs

1. Baskardoss Prabakaran .... R-1 in W.P.No.29357 of 2014  
& Petitioner in W.P.No.21442 of 2013
2. The Presiding Officer, Labour Court,  
Salem ..... R-2 in W.P.No.29357 of 2014  
& R-1 in W.P.No.21442 of 2013
3. Tamil Nadu Water Supply and Draining Board,  
Rep. by its Managing Director,  
Chennai. .... R-2 in W.P.No.21442 of 2013

Prayer in W.P.No.29357 of 2014:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of the order passed in I.D.No.19 of 2007 dated 15.10.2009 on the file of the Industrial Tribunal, Salem and to quash the said award.

Prayer in W.P.No.21442 of 2013:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus to direct the respondents to reinstate the petitioner back in service with continuity of service by granting all other consequential benefits as directed by the first respondent Labour Court in I.D.No.19 of 2007 dated 08.03.2010 within a time frame fixed by this Court.

In W.P.No.29357 of 2014:-

For Petitioner : M/s. S.Thamizharasi  
For Respondents : Mr. V.Govardhanan, for R-1.

In W.P.No.21442 of 2013:-

For Petitioner : Mr. V.Govardhanan for Row & Reddy  
For Respondents : M/s. S.Thamizharasi, for R-3 & R-2

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## C O M M O N   O R D E R

The workman filed I.D.No.19 of 2007 under Section 2 (8) (2) of the Industrial Disputes Act, 1947, seeking to set-aside the oral termination of the workman / petitioner from 11.03.2003 and to order reinstatement of the petitioner in service with continuity of service, backwages and other attendant benefits.

2. The Labour Court, by the award, dated 15.10.2009, set-aside the oral termination of the services of the workman by the respondents / Board and directed the Board to reinstate the petitioner into service with 50% of the backwages from the date of filing of the petition along with the continuity of service and other attendant benefits. This award was under challenge by the management in Writ Petition No.29357 of 2014. The workman has filed W.P.No.21442 of 2013 seeking enforcement of the award in I.D.No.19 of 2007 stating that he would have obtained super-annuation on 31.12.2013.

3. The list of dates and events, which will be helpful for this Court to understand the problem between the Management and the workman reads as under:-

(i) On 21.03.1997, the workman joined the services of the respondents Board as Maintenance Assistant.

(ii) On 24.01.2000, the second respondent / Board passed an order stating that his pay has been wrongly fixed and sought to recover the excess salary.

(iii) On 30.01.2003, the petitioner gave a letter that he is resigning from his post and will not report for duty on and from 01.02.2013. But, the petitioner thereafter withdrew his letter of resignation and requested the second respondent therein to permit him to work.

(iv) On 05.06.2003, the workman made a similar request to permit him to withdraw his resignation letter.

(v) on 12.03.2004, the third respondent sent a letter to the petitioner stating that they would consider the request after getting suitable instructions from the superior officials.

(vi) Thereafter on 19.03.2004, the petitioner sent a legal notice to the respondents / Board to permit him to report for duty. Thereafter he was not reinstated and alleging oral termination of service, the workman moved the Labour Court by filing the said I.D.

(vii) On 15.09.2009, the Labour Court passed an award directing the respondents 2 and 3 therein to reinstate him with 50% of the backwages, but with continuity of service.

(viii) on 18.03.2010, the award was communicated to the respondents.

(ix) After issuing notice dated 27.03.2010, the petitioner made a representation to respondents 2 and 3 to implement the award passed by the first respondent therein.

(x) Thereafter, on 31.12.2013, the petitioner had attained

superannuation from the services of the Board.

4. The learned counsel appearing for the workman submitted that even though the letter of resignation is submitted by the workman herein, the letter was sought to be withdrawn and the workman has expressed his willingness to join the services and therefore, the writ petition in W.P.No.21442 of 2013 implementing the award of the Labour Court should be allowed by this Court.

5. On the other hand, the learned counsel appearing for the Management / respondents would submit that the voluntary resignation submitted by the workman will indicate his intention not to work any more and therefore, the award of 50% wages by the Labour Court should be set-aside.

6. No doubt, the workman has submitted his resignation letter voluntarily. However, on 11.03.2003 and also on 05.06.2003 the workman has submitted his inclination to withdraw the request. After the submission of the letter on 30.01.2003, twice the workman has expressed his intention that he is not intending to resign and he wanted to work. At that stage, there was an option to the management to pass any orders on the resignation letter submitted by the petitioner on 30.01.2003. Till the resignation letter is accepted, it is open to the workman to withdraw the letter of resignation. The fact remains that even today, there is no order passed by the Management either accepting the resignation letter or rejecting the request of resignation. The only communication sent by the second respondent was that the Board will consider the matter, after discussing the matter with the superiors and this was in the year 2004, i.e., on 12.03.2004. Therefore, in the absence of the Management accepting the letter of resignation, the services of the workman would not come to an end. But the case of the workman is that he was not provided with any employment, but he was merely extending his request to the management. Therefore, as rightly contended by the workman, it would amount to oral termination.

7. So far as backwages are concerned, the learned counsel appearing for the Management relied upon the case of the Andhra Pradesh High Court reported in the case of Smt. Nagaratham K v. Hindustan Fluorocarbons Ltd., Rep. By its M.D. Basheerbagh, Hyderabad, in W.P.No.9697 of 2000, dated 27.06.2012, whereunder backwages was denied to the workman therein on the ground that the letter of resignation has been accepted, though after the offer for withdrawing the letter of resignation. The Court held that payment of backwages is discretionary and even if the delinquent is reinstated it would not automatically make him/her entitled for backwages.

8. So far as the facts of the case are concerned, the letter of resignation was neither accepted nor rejected by the Board, thereby giving a clue to the workman that he is entitled to come for work, so long as the resignation letter is not accepted. In fact when the workman has informed the employer that he is inclined to work and the employer should provide him work. The case on hand is factually different and there is no order accepting or rejecting the resignation.

9. In view of the above reasonings, the award of the Labour Court directing reinstatement with backwages of only 50% is liable to be confirmed. Accordingly, W.P.No.29357 of 2014 filed by the Management is dismissed. The writ petition, in W.P.No.21442 of 2013, seeking enforcement of the award of the Labour Court is ordered. No costs. Consequently, the connected MP and WMP are closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

srk

To

Industrial Tribunal, Salem

+2ccs to Mr.S.Thamizharasi, Advocate, S.R.No.60739

W.P.Nos.29357 of 2014 & 21442 of 2013

M.P.Nos.1 of 2014 & 1 of 2013

RSI (CO)

rrs 26/10/2018

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