

In the High Court of Judicature at Madras

Dated: 25.09.2018

Coram

THE HONOURABLE MR .JUSTICE SATRUGHANA PUJAHARI

W.P.No.13518 of 2014 and
M.P.No.1 of 2014 and
W.M.P.No.7612 of 2017

G.Ravichandran

... Petitioner

Vs.

1.The Presiding Officer,
I Additional Labour Court,
Labour Court,
Chennai

2.The Management of
T.I.Diamond Chains,
Ambattur,
Chennai - 53

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order passed in I.D.No.819 of 2001 on the file of the First Respondent on 28.02.2014 and thereby consequently direct the second respondent company to reinstate the petitioner with full backwages.

For Petitioner : Mr.R.Gopinath

For Respondents: Mr.Anand Gopalan,
for M/s.T.S.Gopalan & Co. for R2

: R1 - Court

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O R D E R

This writ petition has been filed by the petitioner, seeking a writ of certiorarified mandamus, to quash the order dated 28.02.2014 passed in I.D.No.819 of 2001 on the file of the first respondent and direct the second respondent company to reinstate the petitioner in his service as Operator with full backwages.

2. The case of the writ petitioner is that he was working in

the second respondent company as an operator and carrying on his work unblemishedly with efficiency and also carefully and continuously from the date of his appointment i.e. 23.04.1980. However, during the course of his employment, there was some ill feeling and dispute of him with the Works Manager namely, Mr.A.Ravichandran. Said Ravichandran as such was always threatening the petitioner to remove him from service, or sent him to police custody before the date of his termination. On 27.07.2001, on his dictation on threat and coercion, the petitioner wrote a letter of resignation and consequently, the petitioner was terminated from service acting on such letter. The petitioner however, disowned the letter through his lawyer vide a letter dated 07.08.2001 (Ext.W.7) and asked the second respondent to allow him to work and as the same evoked no response, challenging the termination of service, the writ petitioner raised an industrial dispute before the Assistant Commissioner of Labour-2, (Conciliation Officer), Kuralagam, Chennai wherein the second respondent did not appear and as such Conciliation Officer submitted a failure report of the conciliation under Section 12(4) of the Industrial Disputes Act, 1947 (herein after referred to as the Act). In such premises, the writ petitioner filed industrial dispute in question before the Respondent No.1 under Section 2-A(2) of the Act, with a prayer to declare such termination to be illegal, arbitrary and as such hold the same to be inoperative and direct the Respondent No.2 to reinstate the writ petitioner in service with backwages, continuity of service and all other benefits, which was allowed. However, the second respondent challenged the same in W.P.No.25270 of 2010, wherein the award of the first respondent was set aside and the matter was remitted back to the first respondent to decide all the issues afresh. In such proceedings, the first respondent passed an order dismissing the prayer. The petitioner came to file this writ petition challenging such award of the first respondent inter alia on the grounds that the award was perverse inasmuch as the first Respondent, in the impugned award, failed to take note of the evidence on record indicating the fact that the letter of resignation was obtained on threat and coercion and not voluntary one, so also, the applicability of the cooling off period to such resignation as provided in the standing order governing employee and the employer relationship between petitioner and the second respondent ignoring the evidence of such letter of resignation. Therefore, the same is vulnerable in exercise of the writ jurisdiction of this Court.

3. The second respondent who is the contesting respondent in this case has filed the counter / reply affidavit. The second respondent in its reply affidavit did not dispute the fact that the petitioner's efficiency as a worker but questions his integrity and loyalty to the second Respondent. According to

Respondent No.2, the petitioner though efficient and skillful worker and working with the second Respondent, however during May 2001, he started rendering service to one L.G.Balakrishnan Brothers limited, Coimbatore, a rival company, which was prejudicial to the interest of the second respondent, by taking frequent leave. When the aforesaid matter came to notice of the second respondent, the Works Manager brought to the notice of the workers' union leader the fact that the said act of the petitioner would expose him to disciplinary action which may result in termination of his service. When the aforesaid was brought to notice of the petitioner, the petitioner to save himself from humiliation, suffering and ignominy of facing domestic enquiry, made the application for his resignation and made a request to accept the same forthwith and the same was as such accepted. There was no violation of the standing order as it was not a case of termination but resignation and there was no withdrawal of the same in the eye of law. The same had been impugned before the first respondent to have been obtained by threat and coercion on account of animosity with the Works Manager. However, the first respondent refused to accept the same and held the same to be an afterthought. The said finding is based on evidence on record. This Court not being an appellate authority on such factual finding therefore should not interfere with the same especially when there is no perversity or any jurisdictional error in the award impugned.

4. The learned counsel for the petitioner would submit that when there is ample materials on record, indicating the fact that the petitioner had not resigned voluntarily, but such letter of resignation was obtained from him in exercise of threat and coercion, the award of the Labour Court impugned herein in this writ petition rejecting the prayer of the petitioner appears to be perverse, being contrary to the materials on record and as such suffers from illegality and impropriety and hence, liable to be set aside. Elaborating such submissions, it is submitted by the learned counsel for the petitioner that the first respondent failed to appreciate the fact that the petitioner had not resigned inasmuch as if that would have been so, he could not have reported the authority retracting such resignation vide Ext.W.7 indicating that such resignation was taken on threat and coercion and as such not to be acted upon. The same is more so, in view of the fact that though standing order demands the employee giving one months notice and to dispense with the notice for immediate acceptance, the employee is required to deposit salary of one month along with resignation and one month salary admittedly was not deposited with the resignation, the petitioner could not said to have resigned with immediate effect. However, the second respondent even though the same was not accompanied by the aforesaid amount as indicated in the standing order, accepted the same in hurried

and haste which indicates that the same was accepted with malafide and handiwork of Works Manager with whom, the petitioner was not pulling on well. Therefore, the first respondent could not have held such resignation as voluntary and as such, the petitioner had no case. The award of the first respondent therefore, being perverse inasmuch as the same is contrary to the evidence on record and also the standing order which was purposefully not filed by the management in spite of the direction of the first respondent, the first respondent as such could not have held the prayer of the petitioner to be devoid of merits, moreso holding that Ext.W7 is not retraction of the resignation. In such premises, it is submitted that the impugned award is liable to be quashed. Consequently, the acceptance of the resignation of the petitioner by the first respondent be treated as non-est in the eye of law by setting aside the impugned award. However, in the meanwhile the petitioner having reached the age of superannuation, the second respondent be directed to pay him all the backwages inasmuch as he was illegally thrown out of service and other consequential benefit including CPF.

5. To buttress his submissions, the learned counsel appearing for the petitioner placed reliance in this regard on a decision of this Court, reported in 2014 (IV) LLJ page 198 in the case of M.Abdul Saleem Versus Presiding Officer, II Additional Labour Court, Chennai and another, wherein it has been held that in the absence of compliance of the Standing Order No.21, the Management cannot relieve the petitioner on voluntary retirement on medical grounds. Likewise, the Management is also not entitled to treat the letter as one of resignation and relieve the applicant, especially when such disputed letter was subsequently retracted by him by letter followed by the letter of lawyer's notice. So also, it has been held that Standing Order No.20 contemplates that one month notice should be given by the workmen, who desires of leaving the company and perusal of the letter or acceptance of resignation does not indicate such compliance of the Standing Order No.20. Hence, the Labour Court was not right in rejecting the claim of the petitioner. So also in this regard, reliance has been placed in a decision of the Hon'ble Supreme Court reported in 2006-I-LLJ page 51, in the case of Srikantha S.M. Vs. Bharath Earth Movers Ltd, wherein it has been held that when the company's rule provides in Rule 16 that an employee could resign by giving one month's notice or pay in lieu of notice, but the applicant had not given such notice or pay, the respondent company accepting the resignation prior to expiry of the same, and allowing the respondent to be relieved on 15th January and in the meanwhile the resignation having been withdrawn, the acceptance of resignation did not bring an end on the date of acceptance of the resignation of the employer

employee relationship and as such, the employee can be said to be continuing in service till he attains the age of superannuation. Placing reliance on the aforesaid rationes decidendi, it is contended by the counsel for the writ petitioner to set aside the impugned award and direct the second respondent to pay all the backwages and other benefit to the writ petitioner that accrued to him till the date of superannuation.

6. In response, the learned counsel appearing for the respondent submits that the contention advanced by the learned counsel appearing for the petitioner assailing the award of the first respondent on the aforesaid ground is without any substance. According to him, the allegations that the works manager had animosity with the petitioner and as such, he managed to obtain the letter of resignation by exercising threat and coercion on the petitioner appears to have no leg to stand. Materials on record would go to show that the said Works Manager was very much sympathetic to the petitioner who was doing his work efficiently. Earlier he was also promoted by the same Works Manager. The petitioner's family when in difficulties in the absence of the petitioner sent out of station to do duty, his emergency family difficulties were taken care of by the Works Manager which can be visualised from the evidence in this regard. Therefore, the allegation of the petitioner that the resignation was obtained by the Works Manager on exercise of threat and coercion on him as he bore grudge against the petitioner and he prevailed upon the management for acceptance of the same forthwith to get rid of the petitioner, is nothing but an afterthought. So also though the materials on record are there indicating the fact that the petitioner though a good worker, but later became unfaithful to the second respondent who was his employer and utilised his skill for the service of a rival company and as such the Management decided to proceed against him. The said fact communicated to the petitioner Union, the petitioner as such having no support of the Union, to avoid the humiliation and suffering resigned on his own and insisted for immediate acceptance without insisting any prior notice for acceptance and at his instance, the same was accepted. The petitioner however subsequently, after acceptance of such resignation, changed his mind and deliberately as an afterthought developed the story of the resignation being taken from him exercising threat and coercion and as such not being in his own volition could not have been acted upon, to frustrate such acceptance. The same however did not find favour with the first respondent Labour Court which appreciating the evidence adduced, dismissed his such claim. Admittedly there is no jurisdictional error of the first respondent in rendering the award. The first respondent has also passed the award, considering the facts and the evidence on record. It has not

ignored any evidence or taken into consideration materials which are not there on record. Hence, the award of the first respondent impugned herein, suffers from no perversity. Therefore, the same should not be interfered with in exercise of the writ jurisdiction inasmuch as unless there is jurisdictional error or perversity in the order of the first respondent, this court has always loath in interfering with the same in exercise of the writ jurisdiction.

7. To persuade this Court not to interfere with the award impugned, the counsel for the respondent places reliance on a decision of the Hon'ble Apex Court reported in (2005) 5 SCC page 100 in the case of Manager, Reserve Bank of India, Bangalore Vs. S.Mani and Others, wherein it is held that only in the event, award of the Labour Court is perverse, the court can interfere with its power of judicial review in exercise of the writ jurisdiction and not otherwise and according to the respondent No.2, the same being not so here, this writ petition filed challenging the award to be perverse as such is devoid of merits.

8. So far non compliance of the standing order is concerned, the acceptance of the resignation before the prior notice prescribed in the standing order, it is submitted that though standing order governing the employer and employee relationship, indicates the fact of prior notice from either side for termination or resignation as the case may be or payment of one month salary in lieu thereof to dispense with such cooling off period is required, however when the resignation is made by the employee, such cooling off period being for the benefit of the employer, it can very well waive such notice period on representation of the employee. In this case the writ petitioner having himself requested the respondent to accept the resignation forthwith, waiving such cooling off period, hence acceptance of the resignation before cooling off period, cannot be said to be contrary to the Standing Order and as such illegal. Therefore, it cannot be said that since the Labour Court has failed to take note of such standing order, the order was perverse. It is stated that the decisions i.e. M.Abdul Saleem and Srikantha S.M. cited supra on which reliance has been placed by the petitioner this Hon'ble Court and the Hon'ble Apex Court respectively in the said cases, not dealt with waiver of such notice period, but such a power of waiver being available to the management / employer and accordingly, taking into consideration the request of immediate acceptance, the same having been accepted waiving the cooling off period and thereafter relationship between the employer and the employee having come to end, hence, subsequent request made cannot in any manner impacts the decision of the employer particularly when the employer has not considered the same to take back the

petitioner to service. The Labour Court appreciating the same, having not accepted such a contention and also holding that there was no retraction of the resignation, challenge of the award of the Labour Court on the aforesaid ground to be improper, is also without any substance. The petitioner therefore has no case and as such the writ petition is liable to be dismissed.

9. To buttress the submissions made that the order of the first respondent was not bad on the ground for the reason that it failed to appreciate the non adherence of the standing order as provided in clause 29 (a), counsel for the second respondent places reliance in the case of Management, Pandian Roadways Corporation Ltd. Vs. N.Balakrishnan reported in 2007 II LLJ 196, wherein the Hon'ble Apex Court have held that standing order might be deviated in a given situations, so also in the case of Rajasthan State Road Transport Corporation and Others Vs. Deen Dayal Sharma reported in (2010) 6 SCC 697, wherein it has also been held by the Hon'ble Apex Court that standing orders have no statutory force and are not in the nature of delegated and subordinate legislations. Furthermore reliance in this regard has been placed in the case of Punjab National Bank Vs. P.K.Mittal reported in 1989 Supp (2) SCC 175, wherein the Hon'ble Apex Court have held that the respondent's resignation could take effect either on the date chosen by the respondent and mention in the notice or on the expiry of the three months' period but the bank could not have accepted it on any earlier date. So also in the case of K.Haridas L.Shenoy Vs. Johnson and Johnson, Ltd., and Others reported in 2005 (2) LLN 360, wherein the Bombay High Court have held that when the workman has chosen the right to give up the three month's notice before resignation, thereafter it is not open to him to contend that the letter of resignation could not have been accepted before the expiry of three months. Placing reliance on the aforesaid rationes decidendi of decisions cited supra, it is submitted that when the petitioner resigned on his own and insisted for immediate acceptance and accordingly the resignation letter was accepted, thereafter his changing of mind and giving a notice by minting a story that the same was obtained exercising threat and coercion and also having been accepted before the notice period, as such the same is non est in the eye of law, appears to have rightly been rejected notwithstanding the provisions contained in the standing order prescribing a cooling off period. Hence, the learned counsel for the respondents submits that challenge to the award of the first respondent in this writ petition on the said ground, is devoid of merit.

10. In alternative, it is also submitted that if this Court held that the acceptance of the resignation of the petitioner is non est in the eye of law, then the petitioner in the meanwhile

having reached the age of superannuation, not entitled to reinstatement and any backwages and compensation automatically without any proof that he remained unemployed during these period. Reliance in this regard has been placed on a decision in an unreported case of this Court rendered in the case of Engine Valves, Ltd., Madras Vs. Labour Court, Madras, and another in W.A.No.2311 of 1987, wherein this Court, taking note of an earlier decision of this Court in the case of Madras Fertilisers, Ltd., Madras Vs. First Additional Labour Court, Madras reported in 1990 I LLN 477, have held that a specific finding must be recorded whether it was expedient and proper to reinstate the employee and whether the award of compensation in lieu of reinstatement will meet the requirement of ends of justice of the case concerned. Furthermore, it has also been contended that, if it is held that petitioner has to be paid the compensation, the same should not exceed the salary of 3.33 years of the last wage drawn. In this regard reliance has been placed in a case reported in 1993 Supp (4) SCC 468 (O.P. Bhandari Vs. Indian Tourism Development Corporation Ltd. and Others), wherein the Hon'ble Apex Court has held that when the decretal order does not envisage the payment of arrears of salary from the date of termination of service of the petitioner till the date of the order of the Supreme Court independently of the amount of compensation to be paid in lieu of his reinstatement becomes clear, from the fact that the decretal order specifically states that the amount of compensation equal to 3.33 years' salary including allowances made payable thereunder covers the full period commencing from the date of termination of his service till the date of payment. So also in the case of Senapathy Whiteley Ltd. Vs. Karadi Gowda and Another reported in (1999) 9 SCC 259, wherein the Hon'ble Apex Court have also held that while modifying the order of removal from service to the order of discharge simpliciter subject the same to payment of compensation of Rs.2.5 lakhs.

11. Before appreciating the contention of the parties with regard to the sustainability of the award passed by the first respondent Labour Court, it would be apposite to mention here that this Court is conscious of its limitations with regard to the scope of interference in such an award in exercise of the writ jurisdiction under Article 226 / 227 of the Constitution of India. The Hon'ble Apex Court in a catena of decisions have held when the writ of certiorari in exercise of the power under Article 226 /227 can be issued. Reference in this regard can be made to a decision rendered by the Hon'ble Apex Court in the case of Syed Yakoob Vrs. K. S. Radhakrishnan and others reported in AIR 1964 SC 477, wherein their Lordships have held as follows:-

"7.The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under

Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdictions. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was 'insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised."

12. Reference also can be made to another decision of the

Hon'ble Apex Court in the case of Nagendra Nath Bose v. Commr. of Hills Division reported in AIR 1958 SC 398, wherein dealing the power to issue a writ of certiorari under Article 227 of the Constitution of India, it has been held that "It is thus, clear that the powers of judicial interference under Article 227 of the Constitution with orders of judicial or quasijudicial nature, are not greater than the power under Article 226 of the Constitution. Under Article 226 the power of interference may extend to quashing an impugned order on the ground of a mistake apparent on the face of the record. But under Article 227 of the Constitution, the power of interference is limited to seeing that the tribunal functions within the limits of its authority."

13. Keeping in mind the aforesaid law laid down by the Hon'ble Apex Court, with regard to limitation of the Court in interfering with award in exercise of writ jurisdiction, when the contention advanced with regard to the sustainability of the award is addressed, it appears to this Court that the counsel appearing for the writ petitioner submits that even if ample material is there indicating that the letter of resignation was obtained in exercise of threat and coercion but the first respondent ignored the same and held the same to be voluntary and as such refused the claim of the petitioner. He in this regard has drawn the notice of this Court to the materials on the record i.e. the immediate acceptance of the resignation and letter of resignation as well as Ext.W.7 retracting the same through the notice of his lawyer. Drawing the notice of this Court to the aforesaid materials and also the fact that there was no justifiable reasons for tendering resignation, it is submitted that the Labour Court having failed to appreciate the said evidence on record in proper perspective, the impugned award refusing his claim therefore unsustainable. But the same has been disputed to be a ground of interference inasmuch as there was no perversity in recording the finding appreciating the evidence in this regard. As it appears the Labour Court appreciating the evidence adduced in this regard came to a conclusion that there was no material to indicate that the resignation was the outcome of threat and coercion of the works manager and not a voluntary one. When such finding of fact recorded appears to be based on appreciation of the evidence on record, and not on any surmises or conjecture, therefore the writ jurisdiction of this Court available against such award being not an appellate one, this Court cannot substitute such finding on facts in view of the settled position of law in this regard. However, besides the same, it appears that the writ petitioner also challenges the acceptance of resignation before the expiry of the cooling off period as prescribed in the standing order and the petitioner had already disowned the resignation before expiry of the said period. Placing reliance on rationes decidendi laid down by this Court in the case of

M.Abdul Saleem and the Hon'ble Apex Court in the case of Srikantha S.M. quoted supra, that such acceptance of resignation before the cooling off period prescribed in the standing order does not bring to an end to the employer employee relationship and as such when the petitioner expresses his intendment retracting the same, the Labour Court ought to have held the acceptance was not proper and directed reinstatement of the petitioner into service with all benefits instead of stating that there was no retraction, therefore the standing order is of no assistance. Hence, it is submitted the impugned award of the Labour Court is unsustainable. The same as stated earlier has been controverted to be without any substance, with the submission that standing orders are not statute and can be derivated as held in the case of Deen Dayal Sharma and also Management, Pandian Roadways Corporation(supra) respectively and also as the cooling off period being for the benefit of the employer in this case and on representation of the petitioner, the same having been dispensed with, the petitioner cannot challenge the award on that ground particularly when the employer has not accepted the same, placing reliance rationes decidendi laid down by the Apex Court in the case of Punjab National Bank and the Hon'ble Bombay High Court in the case of K.Haridas L.Shenoy (supra).

14. To appreciate the contention of the parties in this regard, it would be apposite to quote English translated copy of the letter of resignation stated to have been written in Tamil vernacular. The same reads as thus:

From

27.07.2001

Ravichandran,
Block No.1211,
Assembly,
TIDL.,

To

E.R.M.
T.I.D.C.
Ambattur

Sir,

I inform you through this letter that due to my family circumstances, I am unable to continue in service, hence I am resigning my job. I request you to kindly accept my resignation and relieved me from my post.

Yours faithfully
Ravichandran,
27.07.2001

15. The standing order regulating the service condition of the employee of the respondent No.1 in clause 29(a) deals with the termination of employment reads as thus:

"29. Termination of employment and the notice thereof to be given by the employer and the employee:

a) For terminating employment of permanent workman otherwise than by dismissal, notice in writing shall be given either by the employer or the employee-one month's notice in the case of monthly rated workmen and fourteen days notice in the case of other workmen: One month's or fourteen day's pay, as the case may be paid in lieu of such notice.

16. In this case, as it appears from the letter of resignation never indicates a clear notice of one month or the amount of payment of salary of one month in lieu thereof was given. However, the second respondent stated to have accepted the same on 31.07.2018 and intimated the same to the writ petitioner. The petitioner though disputes that he has ever received the same but materials has been produced before the Labour Court intimating the acceptance of the same to the petitioner. However, undisputedly the petitioner thereafter gave a lawyer notice on 07.08.2001 disowning such letter of resignation as according to him the same was taken in exercise of threat and coercion. Therefore, from the undisturbed factual finding of the Labour Court it emerges that the letter of resignation was accepted thereafter Ext.W.7, lawyer notice was given by the petitioner disowning the same. The Labour Tribunal in such premises whether was justified in saying that there was no retraction of the resignation and as such the standing order is of no assistance. But the Ext.W7 clearly indicates that he disowned the resignation and as such be allowed to continue to work. Therefore the refusal of the Labour Court to take the same as retraction of resignation, was perverse. The same therefore being a letter of retraction, the first respondent as such could not have refused to accept the same as a retraction of resignation. The same was undisputedly before the cooling off period. The letter of resignation nothing has been there indicating the fact that the petitioner made request to dispense with the same cooling off period or made the payment in lieu of the same. Nothing is also there in the standing order enabling the employer to dispense with such cooling off period when an employee makes the request to the employer to dispense with such cooling off period or otherwise. Therefore, the contention advanced by the learned counsel for the second respondent that a right is available to the company to dispense with such cooling off period as they are in the interest of the company and hence acceptance of such resignation before expiry of such cooling off period has no impact on the acceptance of the resignation prior to the same and as such the award cannot be found fault with on

the aforesaid ground, cannot be sustained. In such premises till the expiry of the cooling off period therefore, the employer and the employee relationship between the petitioner continues and before the same when the petitioner vide lawyer notice retracted the said letter to be voluntary and made prayer to take back him to service, the Labour Tribunal should have, taking note of the standing order, held that the resignation having been retracted before the expiry of the cooling off period the petitioner was entitled to reinstatement. Reliance in this regard can be placed in the case of M.Abdul Saleem and Srikantha S.M.(cited supra) by the petitioner. So far as the reliance on the decision in the case of Pubjab National Bank (supra) made by the second respondent to defend the award of the first respondent, the same is of no assistance inasmuch as in that case, eventhough in the regulation of the bank dealing with the resignation provides three months advance notice by the employee with the proviso enabling the employee to ask to waive such condition of notice and the employer to accede to such request, it was held that the employer has the choice to dispense with the same and accept the resignation before the cooling off period on such request. But no such enabling provision is there in the standing order in question. The ratio in the said case rather supports the case of the petitioner as it has been held there that when the regulation provides notice period for resignation, waiver of the same by the employer and acceptance of resignation before expiry without the request of the employee in this regard not permissible. In the case of K.Haridas L.Shenoy(supra) wherein as the employee thereof has given up the period of prior notice and insisted for immediate acceptance of the same after acceptance of the resignation therefore withdrawl of the same held not permissible but herein this case nothing is there in the letter of resignation the petitioner insisted for immediate acceptance of the same or had made payment of one month salary in lieu thereof and as such the aforesaid decision rendered in the case of K.Haridas L.Shenoy (supra) on which reliance has been placed by the second respondent is of no assistance to support his case defending the order of the first respondent Labour Court, moreso in view of the ratio laid down in th case of Punjab National Bank (supra). So far the contentions that standing orders are not statute, placing reliance in the case of Deen Dayal Sharma cited supra and also deviation of the standing order is also permissible as held in the case of Management, Pandian Roadways Corporation Limited cited supra are concerned, to persuade this Court that acceptance of the resignation in deviation of the same, has no impact on the award, it appears to this Court that the aforesaid rationes were laid down in different facts and situations and as such do not militate against the case of the petitioner. In the case of Deen Dayal Sharma cited supra, the Hon'ble Apex Court dealing with the question whether a dismissal made of an

employee without adhering to the mandate of the standing order can be questioned in a civil court, have held the same. The Apex court therein have placed reliance on an earlier decision of the Apex Court rendered in the case of The Rajasthan State Road Transport Corporation and another Vs. Krishnakanth and others reported in (1995) 5 SCC 75, wherein it has been held standing orders have no statutory force and are not in the nature of delegated / subordinate legislation, so also in the case of Rajasthan Road Transport Corporation and another Vs. Bal Mukund Bairva reported in (2009) 4 SCC 299, wherein it has been held that where the infringement of the standing order alleged, the civil court jurisdiction may be held to be barred but if the suit is based on the violation of principle of common law or constitutional provisions or on other grounds the civil court jurisdiction may not be held to be barred. However it has been specifically held in that case that a right available on the standing orders can be enforced by the respondent only by raising industrial dispute and not in the civil court. In view of the aforesaid, the ratio laid down in the case of Deen Dayal Sharma cited supra, therefore does not militate against the case of the petitioner inasmuch as the petitioner had enforced his claim in this regard before the first respondent, under the Act. So far as the ratio laid down in the case of Management, Pandian Roadways Corporation Limited is concerned, it appears that the Court dealing with the interpretation the word 'shall' have held the aforesaid inasmuch as even if in the standing order the word 'shall' has been used which prima facie constitute to be imperative in character but in a given situation the same can be treated as directory and as such deviated.

17. Therefore on consideration of the materials available on record as well as the provision of the aforesaid standing order, this Court is of the view that the Labour Court failed to take note of the standing order indicating the cooling off period before acceptance of the resignation and also the retraction of such resignation vide Ext.W.7 disowning the same to be voluntary resignation before the expiry of the cooling off period prescribed in the standing order. Hence in such premises, it can very well said there was employer employee relation between the petitioner and the second respondent during such cooling off period being there and the petitioner having disowned such resignation vide Ext.W7 before expiry of such period, notwithstanding acceptance of the same before Ext.W.7 was tendered, the first respondent ought to have held the resignation and acceptance of the same to be non est in the eye of law and allowed the claim of the petitioner. Since the first respondent ignored to consider the aforesaid provision of the standing order dealing with resignation and ignoring to consider the Ext.W.7 to be letter of retraction and returned the award impugned, the award was perverse. The same exposes the award

impugned for interference in exercise of the writ jurisdiction of certiorari. Accordingly, the award is liable to be quashed inasmuch as this Court treat such resignation of the petitioner after retraction non est one notwithstanding acceptance of the same before the retraction. However, in the meanwhile the petitioner having already reached the age of superannuation, his reinstatement is impermissible and cannot be ordered. But the petitioner in this case during the course of hearing in such facts and situations has made a prayer to direct the respondent to pay all his backwages for the period as he was not allowed to discharge his duty inspite of his willingness illegally on the ground that the resignation tendered by him has been accepted. This Court has also jurisdiction to modulate the relief notwithstanding no specific prayer is there in exercise of writ jurisdiction. But as it appears, the resignation tendered by the petitioner could not be proved to have been obtained on threat and coercion. However, it cannot be lost sight that the petitioner though retracted the same changing his mind was not allowed to join duty on the ground stated that his resignation has been accepted. The petitioner however, has made out no case that he remained unemployed entirely during the said period. In such premises, this Court is not inclined to order entire backwages but in the facts and situation it can be held that he is entitled to payment of compensation for such impermissible action of the second respondent in not taking him back to service. The counsel for the respondent that the same should not exceed more than 3.33 years of last wages. The decision in the case of O.P. Bhandari (supra) on which reliance is placed, was rendered in different facts and situations. Therefore the contention advanced with regard to limiting the compensation to 3.33 years of last wages drawn appears to this Court to be without any substance. The petitioner has stated by the time termination he was drawing an amount of eight thousand and odd and his average salary would have been Rs.35,000/- per month, if he would have continued in service till the age of superannuation. However considering the facts and situations, taking note of the last drawn salary of the petitioner as well as the period which he remained out of service and the enhancement of the wages and other benefits, as well as the receipt of the amount under Section 17-B of the Act as subsistence allowance for certain period, this Court is of the view that the payment of lumpsum amount of Rs.10 lakhs to the petitioner by the respondent as compensation in the facts and situations, shall be just and proper.

18. Therefore for the aforesaid reasons, the writ petition is allowed in part. Consequently the impugned award of the first respondent is quashed and the second respondent is directed to pay compensation of Rs.10,00,000/- to the writ petitioner within a period of three months from the date of

receipt of a copy of this order. However, if the aforesaid compensation is not paid to the writ petitioner within the period stipulated, the same shall carry a simple interest of 8% thereafter till the payment is made, with the liberty to the petitioner to approach the appropriate forum for realisation of the said amount by filing an appropriate petition. Needless to say that the petitioner is entitled to his CPF amount which has not been released with interest as admissible. However in the circumstances there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To

1.The Presiding Officer,
I Additional Labour Court,
Labour Court,
Chennai

2.The Management of
T.I.Diamond Chains,
Ambattur,
Chennai - 53

+1cc to Mr.R.Gopinath, Advocate, S.R.No. 66396

+1cc to Mr.T.S.Gopalan & Co, Advocate, S.R.No. 66393

WEB COPY W.P.No.13518 of 2014 and
M.P.No.1 of 2014 and
W.M.P.No.7612 of 2017

VBA(CO)
GN(25/10/2018)