

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.09.2018

CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALA

Writ Petition No.44271 of 2016
& W.M.P.No.38114 of 2016

M/s. Manjushree Plantations Ltd.,
Ouchterlony Valley, New Hope Post 643 226,
Gudalur, The Nilgiris,
Represented by its Director,
Mr. Mallangada Annaiah Appanna ... Petitioner

Vs.

1. The Presiding Officer, Labour Court, Coimbatore
2. Mr. Lingaraj ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records connected with I.D.No.680 of 2008 and to quash the award dated 17.06.2016 of the first respondent.

For Petitioners : Mr. S.Raveekumar

For Respondents : Mr. K.Lavan, for R-2

O R D E R

The workman / second respondent herein has filed a petition under Section 2(A) (2) of the Industrial Disputes Act, 1947 before the first respondent seeking reinstatement in service with continuity and backwages. The said petition was taken on file and after contest, the Tribunal below has ordered continuity of service with 30% backwages. Aggrieved against the said order, the Management has filed this writ petition.

Brief facts:-

2. The second respondent / workman was employed in the petitioner / company on and from 01.10.1980, as a permanent employee and was getting the wages of Rs.76.80

per day. The workman / second respondent, while working as Gardener in the petitioner company, on 11.05.2006, has submitted his resignation letter seeking discharge from service. On the same day itself, based on the representation, a discharge order was issued to the workman and the application for gratuity was signed by the workman. On 31.07.2016, the workman has submitted another letter, in which, he has stated that he wanted to withdraw his resignation letter dated 11.05.2006.

3. While that be so, on 16.04.2008, a petition was filed before the first respondent / Labour Court by the second respondent in I.D.No.680 of 2008. On 05.05.2010, counter was filed by the respondent therein (petitioner herein) in the said I.D. On 08.05.2015, chief and cross examinations of the second respondent were conducted, in which he admitted his change of mind on the resignation letter. On 17.06.2016, the first respondent has passed the order directing reinstatement of the second respondent. Aggrieved over the same, the Management has preferred this writ petition.

4. Heard both sides.

5. The learned counsel appearing for the Management (petitioner) submitted that the workman failed to produce any proof for service of the letter dated 11.05.2006, withdrawing his resignation. The learned counsel further submitted that the Tribunal erred in giving an observation that in the letter dated 31.07.2006 itself, it was mentioned with regard to the previous letter dated 11.05.2006 and requested for withdrawal; hence, the Tribunal exceeded the jurisdiction in allowing the I.D., which is contrary to the evidence and facts.

6. The learned counsel appearing for the petitioner / management submitted that once the company accepted the resignation of the workman and discharged him from service and to that effect, discharge order was issued, withdrawal of such resignation will not arise for consideration. In support of the said contention, the following decisions are relied upon:-

(i) M.Mohammed Akbar Basha vs The Registrar General in W.P.No.12670 of 2016, dated 05.04.2016, is relied upon, wherein it has been held as follows:-

"9.The relinquishment of one's own right meaning 'Resignation' is conveyed by the Latin

maxim 'Resignation est juris propii spontanea refutatio'. In relation to the office, resignation connotes 'to lose hold of the office' or 'to leave the job'. Indisputably, the resignation of an employee from a particular office when it was accepted by the authorities, then terminates the status of 'Master and Servant'. In Law, an employee had no Locus Paenitentiae to withdraw his offer of resignation after it was accepted."

(ii) K.Vikramathitan v. Central Social Welfare Board (2014) SCC Online Mad 10677:-

"6. It is trite law that once the resignation has been accepted, the employee is not permitted to withdraw the offer of resignation. The Supreme Court in Chand Mal Chayal Vs. State of Rajasthan [(2006) 10 SCC 258] held as under :

...7. The Supreme Court in Modern School Vs. Shashi Pal Sharma and others [(2007) 8 SCC 540] held as under :

16. Resignation submitted by the first respondent could be withdrawn by him before its acceptance....."

7. The learned counsel appearing for the petitioner further submitted that when the workman / employee tendered resignation with immediate effect and the employer had accepted the same on the same day, but communicated the acceptance to the employee after some days; however, during the intervening period, the employee withdrawn his resignation; such delay of mere 13 days, held, not an undue delay so as to infer that resignation had not already been accepted; even the continued attendance to duty and signing of attendance register by the said employee during the intervening period held, of no assistance to claim that the resignation had not taken effect; hence, the acceptance of resignation subsequent to withdrawal of the resignation by the employee had become redundant and held improper. In support of this contention, the learned counsel relied upon the decision reported in (2003) 5 SCC 455 (North Zone Cultural Centre and another v. Vedpathi Dinesh Kumar).

8. The learned counsel for the petitioner Management further submitted that the resignation tendered under mental tension due to effect of medication as the resignor was ill, the employer asking the employee to justify his stand by producing proof of ailment and documents and making it clear that in the event of failure to submit the documents, he would be relieved from service from the date indicated in the resignation letter and held that the employer action should be justified. In support of this contention, the learned counsel relied upon the decision reported in (2005) 3 SCC 88 (State Bank of Patiala v. Phoolpati).

9. Per contra, the learned counsel appearing for the workman submitted that the acceptance of the resignation must be communicated to the employee in express and specific terms. The fact that the employee himself had stipulated the date on which his resignation would take effect in his resignation letter is immaterial; the resignation withdrawn by the employee before communication of its acceptance, withdrawal is perfectly valid; in view of the fact that a new person was appointed in the place of the workman instead of reinstating him, the court should direct that the workman be accommodated in service as early as possible. In support of this contention, the learned counsel relied upon the decision of the Calcutta High Court in W.P.No.1756 of 1999 (Indrajit Mondal v. State of West Bengal).

10. The learned counsel for the workman further submitted that when the employee seeking permission for withdrawal of resignation under depression, refusal of permission alleging it to be already accepted, required to be adjudicated on the basis of evidence; the refusal to make reference of such dispute without assigning any reasons is not proper. In support of this contention, the learned counsel relied upon the decision of the Madhya Pradesh High Court reported in Mukesh Singh v. Union of India (M.P) reported in 2004 (5) SLR 717 : 2004 (3) SCT 483 : 2004 (3) LLJ 465.

11. The case on hand is one such case, in which the workman has suffered an accident. The injuries sustained in the accident warranted allotment of alternative duty

of a light nature, even as per the provisions of the statute. It is the case of the workman that he was not allotted light duty despite the recommendation by the concerned Doctor. Frustrated over the working condition, the workman was driven to the extent of submitting his resignation. Therefore, the resignation is not voluntary and it is not as if that the workman wanted to relax after getting resignation. Without being able to get a comfortable working condition, he was compelled to resign. The compulsion need not be external, physical or open and the compulsion may be created by circumstances, which may be silent, subtle or invisible. Forced by circumstances, which was created by the Management, the workman was compelled to submit his resignation letter. As the letter suffered an element of involuntariness, the letter of resignation is not a valid one. Therefore, the acceptance or the non-acceptance does not matter. As the letter of resignation is not voluntary, the question of withdrawal is unnecessary, but the workman has chosen to withdraw the same also later.

12. No doubt, there are alterations in the letter of withdrawal giving an impression that as if the letter of withdrawal was submitted on the date of resignation itself. But it is not so.

13. The Management claims that the letter of resignation has been accepted on the very same day. There are circumstances indicating that it could not have been on the same day. The following are the two reasons:-

1. The acceptance of the resignation has not been communicated on the same day of acceptance and not even within a reasonable time, but only belatedly.
2. Benefits payable on account of acceptance of resignation has not been paid so far. If really the resignation had been accepted, the payment of service benefits should have been contemporaneous and it is not so.

14. In view of the above reasonings, the award of the Labour Court directing reinstatement with backwages of 30% is liable to be confirmed. Accordingly, the writ

petition filed by the Management is dismissed, confirming the award passed by the Tribunal, though for different reasons. No costs. Consequently, the connected WMP is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

srk

To

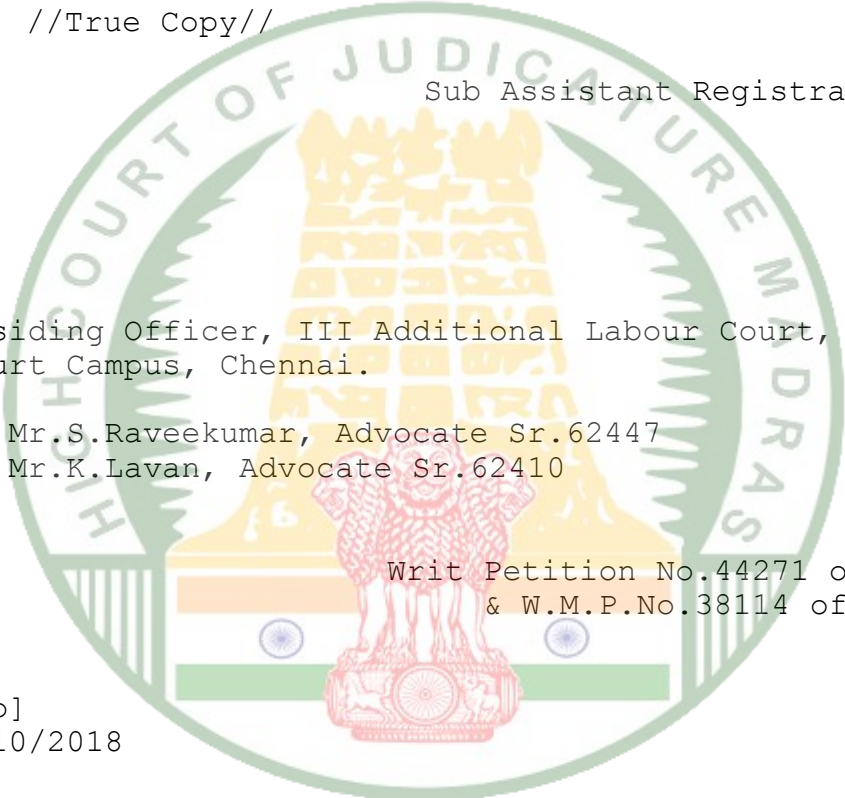
The Presiding Officer, III Additional Labour Court,
High Court Campus, Chennai.

+1cc to Mr.S.Raveekumar, Advocate Sr.62447

+1cc to Mr.K.Lavan, Advocate Sr.62410

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