

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 15.07.2019

DATED : 24.07.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

W.A.No. 2106 of 2011

And

M.P.No. 1 of 2015

The Management of Maclellan
Integrated Services India Pvt. Limited.,
New No. 27, Dilmas Square,
Shafi Mohamed Road,
Thousand Lights,
rep. by its Deputy Manager-H.R. ... Appellant/Petitioner

Vs.

1. M.Ravi
2. The Management of Ford India Ltd.,
Keelakarani Village Via S.P. Koil Street,
M.M.Nagar, Kancheepuram District.
3. The Presiding Officer
Principal Labour Court,
Chennai - 600 104. ... Respondents/Respondents

Writ Appeal filed under Clause 15 of Letters Patent against
the Judgment dated 23.09.2011 passed in W.P.No. 5976 of 2009 by
the learned Single Judge.

Prayer in WP.No.5976 of 2009:

Writ of Certiorari to call for the records of the third
respondent/Labour Court culminating with its award dated
23/12/2008 passed in I.D.No.480/200 and quash the same.

For Appellant : Mr. Gupta Ravi
For 1st Respondent : Mr. Balan Haridass
For 2nd Respondent : Mr.T.S.Gopalan

J U D G M E N T

(Delivered by C.V.KARTHIKEYAN, J.)

The appellant had filed the present Writ Petition questioning dismissal of the Writ Petition filed in W.P.No. 5976 of 2009 which had come up for consideration before the learned Single Judge of this Court on 23.09.2011, who by order of even date, had rejected the relief sought, namely, to set aside the order dated 23.12.2008 in I.D.No. 480 of 2000 on the file of the Principal Labour Court, Chennai.

2. The first respondent M.Ravi, workman was recruited by the appellant, Management of Maclellan Integrated Services India Pvt. Limited. The workman was appointed and his service was confirmed on 01.08.1999. Alleging that he had stopped reporting to duty, two letters were sent to him on 15.02.2000 and 06.03.2000 and thereafter he was terminated from service by order dated 13.03.2000. Enquiry was not conducted before the said order of termination.

3. The first respondent/workman raised an Industrial Dispute under Section 2-A of the Industrial Disputes Act 1947. Since conciliation failed, the dispute was taken on file as I.D.No. 490 of 2000 by the Principal Labour Court, Chennai. Notices were issued and the parties entered appearance and contested the case, by adducing oral and documentary evidence. On analysis of the evidence, the Labour Court came to a conclusion that the first respondent/Workman was an employee of the appellant/contractor and also that termination was made without any enquiry. The Labour Court specifically held that the termination was covered under Section 2(oo) read with Section 25F of the Industrial Disputes Act 1947 and consequently held that he was entitled to the relief of reinstatement with back wages.

4. Questioning that award, the appellant had W.P.No. 5976 of 2005. The principal contention raised by the appellant before the learned Single Judge was that the first respondent-workman had contended that he was an employee of the second respondent - Ford India Ltd., but during the course of trial had taken a 'U' turn and claimed relief against the appellant herein, who was the Contractor.

5. The learned Single Judge dismissed the Writ Petition and upheld the award granted. The relevant portion of the order of the learned Single Judge is extracted below:-

"14. If it is seen in this context
then the petitioner/management has

miserably failed to satisfy the Labour Court on the so-called unauthorised absence of the first respondent/workman. Though Mr.Ravi contended by referring to the cross-examination of the first respondent that out of the two letters he was in receipt of one, a close examination of the said evidence would show that the first respondent has stated that the first letter was received by him beyond time and there was no scope for reporting for work and the second letter was never received by him. Therefore, even if the Labour Court was erroneous in not taking note of the same, but yet the other evidence, namely the evidence of M.W.2, as noted above, wherein he did not even produce the attendance register to show that there was unauthorised absence and the termination was not preceded by any specific charge sheet would go to show that no fault can be found with the impugned award.

15. Though the management contended about the burden of proof of the worker not being employed during the pendency of the dispute based upon the judgment of the Supreme Court, referred to above, in this case, after the writ petition was filed, the workman filed an application for grant of wages under Section 17-B of the ID Act and the same was also granted by this Court. The condition precedent for grant of last drawn wages is that the worker will not be gainfully employed elsewhere. Proviso to Section 17-B of the ID Act provides for variation of the order granting wages in case the workman is gainfully employed. Since the management did not raise any such objection, this Court is not inclined to consider the said objection in the light of the finding rendered above.

16. The other decisions cited by the counsel for the petitioner, referred to above, are not apposite or appropriate in this case. On the contrary, the decision of the Supreme Court in Harjinder Singh case, reported in (2010) 3 SCC 192 : AIR

2010 SC 1116, is more applicable and in that view of the matter, this Court does not think that any case is made out to interfere with the impugned award.

17. In view of the above, the writ petition stands dismissed. However, there will be no order as to costs. In view of the dismissal of the writ petition, the first respondent is entitled to withdraw the amount lying in deposit with the Labour Court and claim the balance from the employer."

6. Questioning that Judgment and the reasons given, the appellant had filed the present Appeal.

7. Mr.S.Ravi, learned counsel for the appellant again canvassed the same grounds which had been raised before the learned Single Judge. The counsel primarily submitted that the first respondent/workman had filed the claim petition contending that he was an employee of second respondent/Ford India Limited., but however during the course of trial had taken a different stand and had sought the relief against the appellant, who was only the Contractor. The learned counsel further pointed out that the first respondent/workman had stopped reporting for duty and two letters were sent to him on this regard. It was also stated even then, the workman that had continued to remain absent. The learned counsel justified the order of termination.

8. On the other hand, Mr.Balan Haridas, learned counsel for the first respondent/workman supported the order of the learned Single judge and contended that the workman was terminated without any enquiry and the letters relied on by the appellant were actually sent by the certificates of posting and there was no proof of delivery. It was also pointed out that the first letter was received belatedly and that the second letter was not received at all. As a matter of fact, the Labour Court disbelieved the fact that the letters were actually sent.

9. Having considered the arguments advanced, we are of the view that the order of the learned Single Judge does not warrant any interference.

10. It is an admitted fact that the first respondent workman was actually employed only by the appellant, who was a Contractor. The services of the first respondent workman was

offered by the appellant to the second respondent, Ford India Limited. However, the contract of employment was only between the appellant and the first respondent. The first respondent, who had put in continuous service with the second respondent had naturally raised an Industrial Dispute questioning termination. He had impleaded both the appellant and the second respondent as parties to his lis. It had been clearly found by the Labour Court, which finding had also been affirmed by the learned Single Judge, that the workman had been terminated without any enquiry. The assertion that two letters were issued prior to termination was also disbelieved by the Labour Court which was a fact finding authority. The appellant was not able to produce any acknowledgement of service of the two letters. Even otherwise, once the employment of the workman had been confirmed, terminating him without any enquiry covered under Section 2(oo) read with Section 25F of the Industrial Disputes Act.

11. The learned Single Judge had also pointed out that the appellant, during trial, had not produced the attendance register to show that there was unauthorised absence and also that the termination was not preceded by any specific charge sheet. Naturally when the appellant was found to be the employer, and when termination was found to be illegal, the appellant would have to suffer the burden of the award passed by the Labour Court.

12. In AIR 1950 SC 188 [Bharat Bank Ltd., Vs. Employees of the Bharat Bank Ltd.,], a Constitution Bench of the Hon'ble Supreme Court of India had occasion to examine and pronounce on the process by which an Industrial Tribunal comes to its decision. The Constitution Bench held as follows:-

"We would now examine the process by which an Industrial Tribunal comes to its decisions and I have no hesitation in holding that the process employed is not judicial process at all. In settling the disputes between the employers and the workmen, the function of the Tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It has not merely to interpret or give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace. An industrial dispute as has been said on many occasions is nothing

but a trial of strength between the employers on the one hand and the workmen's organization on the other and the Industrial Tribunal has got to arrive at some equitable arrangement for averting strikes and lock-outs which impede production of goods and the industrial development of the country. The Tribunal is not bound by the rigid rules of law. The process it employs is rather an extended form of the process of collective bargaining and is more akin to administrative than to judicial function. "

[Emphasis supplied]

13. In the instant case, having found that the order of termination was wholly unjustifiable and illegal, the Labour Court had granted reinstatement with back wages. The learned Single Judge had thought it fit not to interfere with the said award of the Labour Court. We also hold that there is no infirmity in the order of the learned Single Judge. We uphold the same and accordingly, the Writ Appeal is dismissed. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS VIII)

//True Copy//

Sub Assistant Registrar

vsg

To:

The Presiding Officer,
Principal Labour Court,
Chennai - 104.

+2ccs to Mr. Balan Haridas, Advocate, S.R.Nos. 63118 & 63028
+1cc to M/s. T.S. Gopalan and Co, S.R.No. 63025

W.A.No. 2106 of 2011
And
M.P.No. 1 of 2015

RV (CO)

RRS (29/08/2019)