

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23-10-2019

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.15197 of 2013

And

M.P.No.1 of 2013

Manali Petro Chemicals Ltd.,
Technical Employees Union,
Represented by its General Secretary S.Thomas,
Sathankadu Village,
Manali,
Chennai-600 068.

... Petitioner

vs.

1. The Presiding Officer,
III Additional Labour Court,
High Court Buildings,
Chennai-600 104.

2. The Management of Manali Petro Chemicals Ltd.,
Ponneri High Road,
Manali,
Chennai-600 068.

.. Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records from the first respondent pertaining to the impugned order passed by the first respondent made in I.D.No.505 of 2004 dated 21.12.2012 and quash the same.

For Petitioner : No Appearance

For Respondent-1 : Labour Court

For Respondent-2 : Mr.Anand Gopalan for
M/s.T.S.Gopalan and Co.

O R D E R

The Award of the Labour Court dated 21.12.2012 passed in I.D.No.505 of 2004, is under challenge in the present writ petition.

2. The writ petitioner is the Manali Petro Chemicals Ltd., Technical Employees Union represented by its General Secretary. The writ petitioner-Union raised an industrial dispute before the Joint Commissioner of Labour, Chennai and that a reference has been made by the State of Tamil Nadu, Labour Department to the first respondent-Labour Court and it was numbered as I.D.No.505 of 2004 in respect of the transfer of 14 employees of Manali Petro Chemicals Limited.

3. The writ petitioner-Union filed claim statement before the first respondent and a counter-statement was filed by the second respondent-Management. On behalf of the writ petitioner-Union Exs.W-1 to W-15 were marked and the General Secretary of the writ petitioner-Union had given evidence on behalf of the writ petitioner-Union. On behalf of the second respondent-Management, Exs.R-1 to R-18 had been marked and one witness was examined.

4. The industrial dispute raised by the writ petitioner-Union was dismissed by the Labour Court on the ground that the transfer orders issued by the second respondent-Management was in order and there is no infirmity

5. The writ petitioner-Union states that as per the Standing Orders, the job related transfer orders are to be issued and the Labour Court failed to consider Ex.W-14, which is the Standing Order. The transferred place appointing the unqualified and unrelated persons in hazardous nature of work is against the provisions of Sections 41(c) and 41(H) and 87(a)iii (A) of the Factories Act. The contention of the writ petitioner-Union is that the Labour Court failed to consider all these aspects.

6. The learned counsel for the second respondent-Management states that 14 employees were transferred within the Factory premises i.e., from one Department to another Department. The details of the transfer of the employees are stated in the Award itself and the same reads as under:-

S.No.	Names found in the reference	Transfer from	To	Present Position
1.	J.Selvin Shayaraj	MPL Unit I	MPL Unit II	Retained in Unit I
2.	S.Thomas	Boiler	P.G.Plant	P.G.Plant (under suspension)
3.	A.Parameswam Pillai	Boiler	P.G.Plant	P.O.Plant.

S.No.	Names found in the reference	Transfer from	To	Present Position
4.	K.T.P.Tholkappian	Utility	Tank Form	Tank Form
5.	J.A.Shahayaraja	Utility	Utility	Utility (condition of service altered)
6.	K.Suresh Kumar	Boiler	P.O.Plant	P.O.Plant
7.	S.Saravanakumar	Utility	Utility	Utility
8.	G.Rajendran	Boiler	Clorine Plant	Clorine Plant
9.	P.Krishna Babu	Utility	Promoted Engineer (Tr)	
10.	k.Natarj	Utility	Promoted Engineer (Tr)	
11.	P.Sathish Kumar	Utility	Promoted Engineer (Tr)	
12.	S.Thillai Govindarajan	Boiler	P.G.Plant	P.G.Plant
13.	E.J.Williams	Utility	P.G.Plant	P.G.Plant
14.	Suresh Babu	Utility [Promoted as Engineer (Tr)]		

7. Out of 14 employees, 13 employees had joined in the transferred Department and continuing their job responsibility. The one workman alone refused to join in the transferred place and the Union raised a dispute on behalf of that one employee, who refused to join in the transferred Department, within the same premises of the Factory. Originally the Union raised a dispute on behalf of seven employees and during the pendency, six employees had joined and the industrial dispute was continued only in respect of one employee.

8. The findings of the Labour Court in paragraph-12 is clear that there was no victimisation for transfer of these 14 employees. There was no termination or otherwise or retrenchment. The transfer was imposed within the same Factory premises i.e., from one Department to another Department on administrative reasons. The Factory itself is a Chemical Factory and therefore, there may not be any difference

in atmosphere or working condition within the same premises of the Factory. Thus, the ground raised in this regard is frivolous and unsustainable.

9. All the 14 employees were transferred within the same premises of the Factory and in accordance with the Standing Orders. When all the 13 employees had already joined, a dispute was continued in respect of one employee. The Labour Court categorically arrived a conclusion that there is no infirmity or any violation of the provisions of the Standing Orders or the Industrial Dispute Act in respect of the administrative transfer issued by the second respondent-Management.

10. Accordingly, the Labour Court found that Mr.Thomas, Senior Technician, in favour of whom an industrial dispute was continued by the writ petitioner-Union, was serving with the second respondent-Management for about 14 years and he is aware of the Standing Orders and other Regulations of the second respondent-Company. Even in case that he was not aware of these aspects, the second respondent-Management expressed its willingness to provide training in this regard. Thus, the employee ought to have joined in the transferred Department that too in the same premises of the Factory. Contrarily, he declined to accept the transfer order and the Labour Court considering all these aspects, rejected the industrial dispute.

11. On perusal of the entire findings of the Labour Court, this Court has no hesitation in coming to a conclusion that there is no perversity or infirmity, as such and the scope of adjudication in respect of those administrative transfers within the same premises of the Factory are limited and therefor, the Award of the Labour Court dated 21.12.2012 passed in I.D.No.505 of 2004 is confirmed. Consequently, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

s/d-

Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

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To

The Presiding Officer,
III Additional Labour Court,
High Court Buildings,
Chennai-600 104.

+1 CC to Mr.T.S. Gopalan & Co, sr 88824

W.P.No.15197 of 2013

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