

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2019

CORAM
THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
W.P.No.16144 of 2004

N.Kannayan

..Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Coimbatore.

2.The Management of Sirikundra Estate
Hindustan Lever Limited,
Tea Estates India Division,
Valparai - 642 127

..Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the entire records connected with the impugned award in I.D.No.280/2002 dated 22.09.2003 passed by the 1st respondent and quash the same and direct the 2nd respondent to reinstate the petitioner with continuity of service with backwages and all other attendant benefits.

For Petitioner : Mr.S.N.Ravichandran

For Respondents : R1 - Labour Court

R2 - Mr.S.Haroon AL.Rasheed
For M/s.T.S.Gopalan & Co

O R D E R

The Award dated 22.09.2003 passed in I.D.No.280 of 2002 is under challenge in the present writ petition.

2. The petitioner states that he was employed as a Tea Green Leaf analyzer in the 2nd respondent Estate on 03.05.1993. Previously, he was working as a Clerk for over 15 years in Stan more group consumer stores and he lost his job because of the closure of the store. An Industrial dispute was raised regarding the closure and finally in the 18(1) Settlement in I.D.No.47 of 1990, the petitioner was offered work in the 2nd respondent Estate. The petitioner states that he served as a Clerk for about 15 years. He was given re-employmnet in the 2nd respondent Estate as Tea Green leaf analyser. The Post is a Grade Non staff post. Though the job comes under the general

workman cadre, it is in the Factory side. The Post offered to the writ petitioner was a mixture of both clerical and technical. The petitioner was granted Rs.1.25 as additional payment to that of the General worker and also got increment for his performances.

3. The grievances of the writ petitioner is that the petitioner claimed salary on par with other similar workers, working in adjacent Estates and the Management stopped the writ petitioner from work and appointed another person in the place of the writ petitioner. No enquiry was conducted and the petitioner was terminated orally. The petitioner raised a Conciliation, which resulted in failure. Subsequently, he filed I.D.No.280 of 2002 before the 1st respondent. The Labour Court dismissed the Industrial Dispute on the ground that the petitioner was not terminated as there is no evidence to establish that he was terminated from service and the Management, all along expressed their willingness to allow the petitioner to work in the 2nd respondent Estate as a General worker. Contrarily, the writ petitioner declined to report for duty and therefore, the Management cannot be held responsible.

4. The main contention of the writ petitioner is that he was employed as a Clerk prior to the employment in the 2nd respondent Estate and on account of the closure of the Factory, he was offered with re-employment in the 2nd respondent Management as a General worker and when he claimed salary on par with other employees, he was orally terminated by the Management. The Labour Court adjudicated the issues with reference to the facts and circumstances as well as the documents filed. The Labour Court with reference to the re-appointment order issued, which was marked as a document, stated that "As per the terms of the settlement, we have decided to offer you fresh employment as a General worker at our Sirikundra Tea Factory with effect from 01.05.1993. With reference to the order of re-appointment, the Labour Court made a finding that the order of re-appointment is clear in its terms. The writ petitioner was offered with the post of General worker in the 2nd respondent Factory. At no point of time, he was engaged as a Supervisor or otherwise and the writ petitioner also had not filed any document to establish that he was appointed as a Supervisor or otherwise as he had stated in his petition. In the absence of establishing any such order of appointment, by way of a document, the Labour Court arrived a conclusion that as per the terms of settlement, the 2nd respondent Management decided to offer a fresh appointment as a General worker in the 2nd respondent Estate.

5. In paragraph 15 of the Award, the Labour Court considered the provisions of Section 2A, which enumerates that "Dismissal etc., of an individual workman to be deemed to be an industrial dispute where any employer discharges, dismissal retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that

workman and his employer connected with, or arising out of such discharge, dismissal retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute."

6. Relying on the said provision, the Labour Court found that the workman / writ petitioner was not terminated from service and he has not established that he was terminated from service by the 2nd respondent Management. Contrarily, the Management contended that the writ petitioner was insisting to engage him in the Post of Supervisor and when it was not offered to him, he left services and under these circumstances, the Labour Court came to the conclusion that the writ petitioner had not established that he was terminated from service by the Management. In view of the fact that the writ petitioner was not terminated by the Management and such a fact was not established by way of a document or otherwise, the petition filed under Section 2A of the Industrial Disputes Act cannot be entertained at all. When the Labour Court categorically found with reference to the documents and evidences that the order of termination by the Management was not established, there is no reason for the Labour Court to entertain a petition under Section 2A of the Industrial Disputes Act. This being the findings of the Labour Court, this Court is of an opinion that there is no infirmity or perversity as such in respect of the Award passed by the Labour Court.

7. When this Court passed orders on 23.10.2019, the respective learned counsels appearing on behalf of the writ petitioner as well as the respondents made a submission that they are willing to settle the issues by negotiating the quantum of amount to be paid to the workman. When the matter is listed today for pronouncing orders, the learned counsel appearing on behalf of the writ petitioner workman made a submission that the workman agreed to receive a sum of Rs.50,000/- (Rupees Fifty Thousand only) in full quit and he will not claim any further amount from the Management. In respect of other dues from the Provident Fund Department, the Management should cooperate with the workman for the purpose of getting the amount of Provident Fund from the Organization.

8. The learned counsel for the Management also agreed that the Management will cooperate for processing the application to be submitted before the Provident Fund Organization. In view of the settlement between the Management and workman that they are ready to settle the matter, this Court is of an opinion that there is no impediment and the said settlement can be implemented both by the Management as well as by the workman. However, the Award of the Labour Court is concerned, this Court has elaborately discussed that there is no infirmity or perversity as such.

9. Accordingly, the writ petition stands disposed of.
However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Presiding Officer,
Labour Court,
Coimbatore.

+lcc to Mr.T.S.Gopalan , Advocate SR.No. 88985
+lcc to Mr.S.N.Ravichandran , Advocate SR.No. 89137

W.P.No.16144 of 2004

A.SK(02/12/2019)