

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.12727 of 2010

The Managing Director
The Pondicherry Co-operative
Spinning Mills Limited
Pondicherry.

.. Petitioner

Vs.

1.The President
Puduvai Kooturavu Noorpalai
Thozhilalar Sangam
No.42, Cuddalore road
Bharathi Mills Thittu
Pondicherry-605 004.

2.The Presiding Officer
II Additional District Judge
Labour Court, Pondicherry.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorari calling for the records relating to the order dated 24.12.2009 passed in I.D.No.23 of 2007 on the file of the II Additional Labour Court, Pondicherry, quash the same as illegal and against law.

For Petitioner : Ms.N.Mala

For R1 : Ms.Gopika Nambiar for
M/s.Sai Bharath

ORDER

Writ Petition is filed for issuance of a writ of Certiorari calling for the records relating to the order dated 24.12.2009 passed in I.D.No.23 of 2007 on the file of the II Additional Labour Court, Pondicherry, quash the same as illegal and against law.

2(i).The learned counsel appearing for the petitioner contended that the workman viz., P.A.N.Velumani joined the petitioner's mill on 22.01.1986 and his name was removed from

muster roll for continuous absence. On the request of the workman, on humanitarian ground, he was admitted as a new entrant with effect from 13.04.1988. By the order dated 29.01.1992, his service was regularised in the category of reeler with effect from 01.01.1992. The workman gave a representation on 26.01.1994 requesting the petitioner to allot him light work as he was suffering from heart ailment. The petitioner considered the request of the workman, temporarily changed the work and allowed him to do the work of cleaning gang category, which carries lesser pay in general shift category permanently. As there was no work for cleaning gang in the cone winding section, the workman was directed to report for work of cleaning gang in the preparatory section orally from 06.12.2005 and by the order dated 17.01.2006. The workman did not report for duty. He was suspended by the order dated 04.02.2006. The workman filed two writ petitions in W.P.Nos.3852 and 3909 of 2006 challenging the order of transfer and suspension. This Court by the order dated 28.07.2006 directed the Conciliation Officer to complete the conciliation proceedings within a period of four months from the date of receipt of a copy of that order and directed the petitioner to permit the workman to continue the work in cone winding section. The petitioner filed clarification petition with regard to suspension. The petitioner has revoked the order of suspension on 24.03.2007 and directed the workman to report for duty in cone winding section. The workman was paid subsistence allowance till 25.03.2007 and he is not entitled for subsistence allowance from 26.03.2007. The conciliation proceedings ended in failure. The 1st respondent raised industrial dispute on behalf of the workman before the 2nd respondent in I.D.No.23 of 2007 challenging the order of transfer as well as order of suspension. The 2nd respondent by the award dated 24.12.2009 set aside the order of transfer and directed the petitioner to permit the workman to work in cone winding section and directed the petitioner to calculate the wages payable to the workman from 04.02.2006 i.e., from the date of suspension till reinstatement with all attendant benefits, grant of increment, seniority, promotion etc. Challenging the said award dated 24.12.2009, the petitioner has filed present writ petition.

2(ii).The learned counsel appearing for the petitioner contended that the 2nd respondent failed to consider the petitioner's employment on humanitarian ground, the workman was transferred to do light work even though pay for the said work was lesser than what he was earning. The 2nd respondent failed to consider the service of the workman is needed in preparatory section and it is prerogative of the management to transfer any employee considering the existence of the work. The 2nd respondent failed to see that there was no change in the nature of work in preparatory section. Cone winding section is

modernised and no workers are necessary in the cone winding section. The petitioner revoked order of suspension on 24.03.2007. The 2nd respondent without considering the same erred in directing the petitioner to pay the backwages. The 2nd respondent failed to consider the contention of the petitioner in proper perspective and award of the Labour Court is liable to be set aside and prayed for allowing the writ petition.

3.The learned counsel appearing for the 1st respondent contended that due to heart ailment, the workman sought for light work and the petitioner transferred the workman as cleaner in cone winding section. In the petitioner's mill, they are following the inter departmental seniority and the promotion is based on the seniority in the particular section and not based on over all seniority in the mill. The workman was involved in trade union activities and due to pressure of other union, the petitioner transferred the workman to preparatory section. The 1st respondent filed two writ petitions challenging the order of transfer as well as order of suspension. In spite of the order passed by this Court in those writ petitions to permit the workman to continue the work in the cone winding section, the petitioner failed to comply the said direction. Cone winding section is modernised with eight number of new machines and 21 number of old machines. The petitioner is even now employing the cleaners in the said section. The 2nd respondent has considered all the materials available on record in proper perspective and passed the award. There is no error in the said award and prayed for dismissal of the writ petition. In support of her contentions, the learned counsel relied on the following judgment of the Hon'ble Apex Court reported in (2004) 11 SCC 402 (State of Uttar Pradesh and others vs. Gobardhan Lal);

"7. ... Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. ... "

4.Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the 1st respondent and perused the materials available on record.

5. From the materials available on record, it is seen that the workman has challenged the order of his transfer from cone winding section to preparatory section alleging that due to pressure of other trade union members, he was transferred to the preparatory section and order of suspension in this Court by filing writ petitions. The petitioner contended that due to modernisation of the cone winding section, there is no work for cleaning gang in the cone winding section. On the other hand, it is the contention of the learned counsel appearing for the 1st respondent that still there are 21 old machines at the time of transfer in the cone winding section and the petitioner employs temporary workers for cleaning the machines. The petitioner has challenged the award of the 2nd respondent directing the petitioner to permit the workman to work in cone winding section and ordering to calculate the wages payable to the workman and to pay him from 04.02.2006 i.e., from the date of suspension till reinstatement with all attendant benefits like grant of increment, seniority, promotion etc. The 1st respondent filed application for vacating the interim stay granted in this writ petition i.e., payment of last drawn salary as per Section 17B of the Industrial Disputes Act. This Court while considering the petition filed under Section 17B of the Industrial Disputes Act for payment of last drawn salary as per Section 17B of the Industrial Disputes Act, recorded the statement of the learned counsel appearing for the petitioner that there is no work in the cone winding section, directed the workman to report for duty to the preparatory section. The said order has become final as the 1st respondent has not filed any appeal against the said order. The contention of the learned counsel appearing for the petitioner that cleaning work in the cone winding section as well as preparatory section is one and the same, is not denied by the 1st respondent. The 1st respondent has challenged the transfer of workman to the preparatory section on the ground that the same is due to pressure of other trade union members. The 1st respondent has not produced any material to substantiate the same. In view of the above, the judgment relied on by the learned counsel appearing for the 1st respondent is not applicable to the facts of the present case.

6. From the order of this Court dated 12.08.2010 made in M.P.Nos.1 to 3 of 2010 in W.P.No.12727 of 2010, it is clear that there is no cleaning work in cone winding section. In view of the same, award of the 2nd respondent directing the petitioner to permit the workman to work in the cone winding section is set aside. The petitioner has revoked the order of suspension on 23.04.2007 and directed the workman to report for duty in the preparatory section. Due to pendency of the industrial dispute, the workman will be entitled to backwages from the date of

transfer. Both the petitioner and 1st respondent have admitted that the workman was paid subsistence allowance till 25.03.2007.

7. In view of the order of this Court dated 12.08.2010 made in M.P.Nos.1 to 3 of 2010 in W.P.No.12727 of 2010, this writ petition is partly allowed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

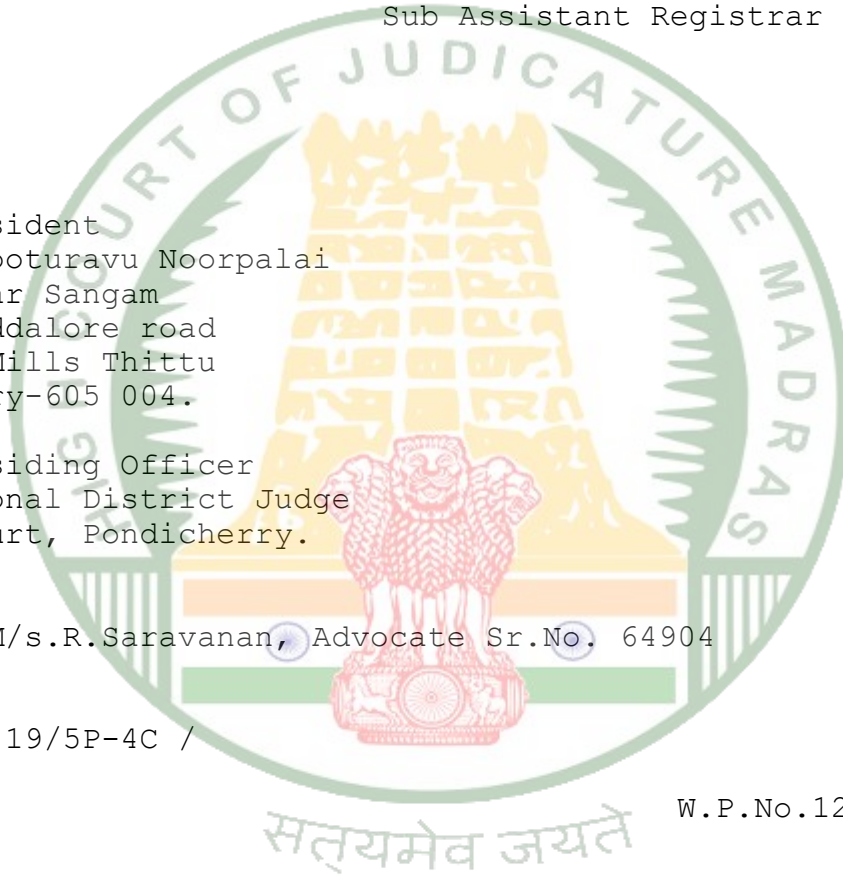
To

1.The President
Puduvai Kooturavu Noorpalai
Thozhilalar Sangam
No.42, Cuddalore road
Bharathi Mills Thittu
Pondicherry-605 004.

2.The Presiding Officer
II Additional District Judge
Labour Court, Pondicherry.

+1 cc to M/s.R.Saravanan, Advocate Sr.No. 64904

AKM/17.09.19/5P-4C /



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