

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.11.2019

Coram

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.27706 of 2010

and

M.P.No. 1 of 2010

Gopal Metal Containers (P) Ltd.,
Plot No.8 (NP) Developed Plot,
Guindy Industrial Estate,
Ekkattuthangal, Chennai - 97
Presently at
No.12/19, Lotus Ramasamy Street,
Royapuram, Chennai - 600 013,
Represented by its Director G.Sekar.

.. Petitioner

vs.

1. The Presiding Officer,
II Additional Labour Court,
Chennai - 104.

2. D.Jayapal

.. Respondents

PRAYER : Writ Petition filed under Article 226 of the
Constitution of India praying for issuance of a Writ of
Certiorari, call for the records in I.D.No.369 of 2006 on the
file of II Additional Labour Court the 1st respondent herein,
quash the award dated 29.7.2010 passed therein.

For Petitioner : Mr.M.R.Raghavan

For Respondents : R1 - Labour Court

Mrs. A.Sumathy

WEB COPY
O R D E R

The award dated 29.07.2010 passed in I.D.No369 of 2006 is
under challenge in the present writ petition.

2. The writ petitioner Management states that they are
manufacturing drums used for storing paint, chemical, oil etc.,
The second respondent was employed in the petitioner's
establishment and he was employed as Assistant Supervisor.

During the year 2004 and 2005 he was not attending duty regularly. He remained absent himself from attending duty without any prior permission or intimation. The writ petitioner Management issued a memo seeking the explanation of the second respondent. The second respondent promised that he will report duty on 25.01.2006. However, he did not report for duty as promised. Without reporting for duty, he raised an Industrial Dispute on 14.02.2006 stating that he was de-promoted from the post of Assistant Supervisor to Machine Operator and he was removed from service from 23.01.2006.

3. The contention of the learned counsel for the writ petitioner is that right from the beginning before the conciliation officer, the stand of the writ petitioner Management was that they have not terminated the service of the second respondent and the second respondent is at liberty to report for duty at any point of time in the post of Assistant Supervisor. The stand of the Management was made clear even before the Labour Court by stating that all along the Management was willing to permit the second respondent to work and he had not reported for duty for which the Management is not responsible.

4. The learned counsel appearing on behalf of the writ petitioner states that even in paragraph 8 of the affidavit filed in support of the writ petition, the Management has stated that even at the time of filing of the writ petition, the petitioner was willing to provide the same work without prejudice to the writ petition filed. It is contended that the second respondent was gainfully employed. Under these circumstances, the Labour Court without considering the grounds raised by the writ petitioner, allowed the Industrial Disputes with a direction to reinstate the second respondent herein with back wages.

5. The learned counsel for the petitioner produced a letter dated 04.04.2006 stating that the letter was addressed to the Labour Officer clearly stating that the writ petitioner Management is prepared to allow the second respondent to join in the post of Assistant Supervisor. However, the second respondent at his own volition not joined duty and therefore he is not entitled for any relief.

6. To substantiate the said ground, the learned counsel for the petitioner cited the judgment of the High Court of Madras in the case of Management of RAS Theater Vs. Presiding Officer, Salem[reported in 2004 III LLJ 511]. The relevant paragraphs are extracted hereunder:

"6. Even in the counter filed by the management before the Labour Court, the

management had made the offer of reinstatement. In the counter also, the management had taken a stand that on March 11, 1983, during the conciliation proceedings an offer was made by the management to provide him alternate employment with the same salary and without affecting his service and that the employee did not accept it and he was adamant that he should go only to the operator post.

7. It is also seen that immediately after the award was answered in favour of the employee, again the management had sent a letter to the employee on April 24, 1997, directing the employee to report to duty. The said communication has been duly received and acknowledged by the second respondent on April 24, 1997. The learned counsel for the management states that till date, he has not joined the duty.

8. The above stated facts will clearly disclose that in spite of the repeated offers before the Conciliation Officer and before the Labour Court and this Court, directing the petitioner to come and join duty, the employee had deliberately refrained from joining duty and has not accepted the offer of the management.

9. The attitude of the employee cannot at all be appreciated. He cannot claim any right over particular post. As long as the pay, allowances and other conditions of service are not affected, it is always open to the management to assign any work or to transfer the employee from one post to the other. Such an offer has been made by the management from the beginning. Apparently, the employee seeks to obtain unfair gain of backwages without even working. The provisions of I.D. Act are not intended for such exploitation in an unfair manner.

10. In the said background, the employee is not entitled to any relief and the writ petition is allowed. No costs."

7. In the judgment cited supra, the facts are also similar wherein, the Court arrived at a conclusion that in spite of repeated offers before the Conciliation Officer and before the Labour Court and before the High Court directing the workman to come and join duty, the employee had deliberately refrained from joining duty and has not accepted the offer made by the Management. Thus, the attitude of the employee cannot be

appreciated. As long as the pay and allowances and other conditions of service are not affected the workman has to work with the employment. Accordingly, the Court held that the employee is not entitled to any relief.

8. In respect of the present writ petition also, the second respondent had not established that he was terminated from service. Contrarily, he was a habitual absentee and the Management issued a memo thereafter he refrained himself from attending duty. When the employee raised an Industrial Dispute even before the Conciliation Officer, the Management expressed its willingness to permit the second respondent to report for duty. In spite of written letter, the second respondent had not joined duty, therefore the Labour Court had committed an error in granting an order of reinstatement with back wages. Even in such cases, the reinstatement may be ordered however the back wages cannot be ordered.

9. The learned counsel appearing on behalf of the second respondent states that on account of certain allegations, the second respondent was unable to perform the duty. This apart, the Management had not offered the same post. The writ petitioner was working as a Supervisor and they had offered the post of Assistant Supervisor and therefore the writ petition is liable to be rejected. The learned counsel for the second respondent further informed that the second respondent is now crossed the age of superannuation and therefore the backwages granted is to be confirmed.

10. This Court is of the considered opinion that undoubtedly if any change in the conditions and services then the workman is entitled to claim the same benefits. In the present case, yet another point raised by the petitioner is that the second respondent engaged as Assistant Supervisor, which is a Supervisor cadre and therefore he is not a workman under Section 2(s) of the Industrial Disputes Act. When the second respondent himself has admitted the fact that he was performing duties and responsibility of a Supervisor then he could not be treated as a workman under the provisions of the Industrial Disputes Act. The learned counsel for the second respondent mainly placed reliance on the ground that the second respondent was a Supervisor and the documents now filed before this Court reveals that the second respondent signed certain documents as Supervisor.

11. This being the factum, the second respondent cannot be a workman within the definition of Section 2(s) of the Industrial Disputes Act. Thus, this Court has no hesitation in coming to the conclusion that the second respondent is not a

workman and further the Management offered to report for duty and in spite of the offer made, second respondent refrained from attending duty, for which, the petitioner cannot be made responsible or liable.

12. This being the factum, the award passed by the Labour Court is perverse and not in accordance with legal principles.

13. Accordingly, the award dated 29.07.2010 passed in I.D.No.369 of 2006 is quashed. Writ petition stands allowed. Connected miscellaneous petition is closed.

14. It is made clear that any statutory dues or liability payable to the second respondent, the Management should co-operate for the settlement of the statutory dues by following the procedures contemplated. The writ petitioner states that at the time of admission they have deposited 50% amount as backwages before the Labour Court. The writ petitioner is permitted to withdraw the deposited amount with accrued interest. The Labour Court is directed to pay the deposited amount with accrued interest to the writ petitioner within a period of four(4) weeks from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

mp

To

The Presiding Officer,
II Additional Labour Court,
Chennai - 104.

+1cc to Mr.M.R.Raghavan, Advocate, S.R.No. 92904

W.P.No.27706 of 2010
and M.P.No. 1 of 2010

BS (CO)
GN(27/12/2019)