

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02.01.2019

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

WA.No.309/2018

M.Arumugam

..Appellant / Writ
Petitioner

Versus

- 1 The Secretary to the Government
Ministry of Surface Transport
Government of India, New Delhi.
- 2 The Management of Indian Maritime University
Uthandi, Chennai 600 119.
- 3 The Presiding Officer
Central Government Industrial
Tribunal cum Labour Court
Chennai.

... Respondents /
Respondents

Prayer:- Writ Appeal filed under Clause 15 of the Letter Patent
against the order dated 03.10.2017 made in WP.No.25864/2017.

Prayer in W.P.No.25864/2017: Writ petition filed under article
226 of the Constitution of India, for issuance of Writ of
Certiorarified Mandamus to call for the records relating to the
impugned award passed by the 3rd Respondent in I.D. No.78/2014
dated 14.01.2016 and quash the same and further direct the 2nd
respondent to reinstate the petitioner in service with full back
wages, continuity of services and other all attendant benefits
with promotion and regularization.

For Appellant : Mr.A.Ilangovan

For R1 : Mr.P.Ayyaswamy

For R2 : Mr.K.R.Thamizh Mani

For R3 : Labour Court.

JUDGMENT

[Judgment of the Court was delivered by M.SATHYANARAYANAN, J.,]

By consent, the writ appeal is taken up for final disposal and is disposed of by this judgment. Mr.P.Ayyaswamy, learned counsel appears on behalf of the 1st respondent and Mr.K.R.Thamizh Mani, learned counsel appears on behalf of the 2nd respondent.

2 The appellant herein is the writ petitioner and he raised an Industrial Dispute under section 2A[ii] of the Industrial Dispute Act, 1947, [in short 'the Act'] before the 3rd respondent, stating among other things that he joined the services of the 2nd respondent as a Driver from 11.03.2009 and the nature of the work is permanent and perennial in nature and ever since he joined the duty, he is discharging his duties and responsibilities to the utmost satisfaction of his superiors and also to the best of his ability and his entire Service Record was unblemished. The appellant/writ petitioner expressed his grievance that acting on the alleged letter of resignation dated 24.09.2013, which has been forcefully obtained from him, he has been illegally terminated from service and the same is in violation of the Standing Orders of the 2nd respondent read with Rule 2[ra] - 5th Schedule Serial No.5[a],[b],[d] and [f] of the ID Act and it also amounts to unfair labour practice and as such, the respondents, more particularly, the 2nd respondent is liable to be punished under section 25U read with 25T of the Act. It is also the claim of the appellant/writ petitioner that since his work is permanent and perennial in nature and that he has put in more than 480 days in a continuous period of 24 Calendar months, he is deemed to be a workman u/s.3 of the Tamil Nadu Industrial Establishments [Conferment of Permanent Status to Workmen] Act, 1981 and therefore, the alleged letter of resignation said to have been submitted by him, assuming has been obtained compulsorily, the fact remains that immediately, he has submitted a letter of withdrawal of the resignation and subsequently, on 24.09.2013, the 2nd respondent, once again offered him the post of Driver on contract basis and the same would disclose that his termination based on acting on the alleged letter of resignation, is wholly illegal and prayed for appropriate directions, directing the respondents to reinstate him with full back wages and continuity of service and consequential service and all attendant benefits.

3 The respondents 1 and 2 had filed the counter affidavits and the 1st respondent took a stand that the appellant/writ petitioner admittedly, was not employed under them and as such, they are not the necessary party in the claim petition. The 2nd respondent in the counter statement, took a

stand that the appellant/writ petitioner know pretty well that his employment was contractual for a period of one year and his services were periodically extended for every six months and on 24.09.2013, he has submitted his resignation and it was accepted and he was relieved from duty and he has also vacated the Quarters on the same day and therefore, the allegation made by him that the resignation letter was forcefully obtained from him, based on which, he was terminated from duty, is per se false. The 2nd respondent also disputed the fact that the appellant/writ petitioner has subsequently submitted the letter of withdrawal, withdrawing his earlier resignation letter and that he is also not entitled to permanent status u/s.3 of the Tamil Nadu Industrial Establishments [Conferment of Permanent Status to Workmen] Act, 1981, and prayed for dismissal of the claim petition.

4 The 3rd respondent / Tribunal, upon consideration of the averments made in the Claim Petition and counter affidavits, framed the following points for consideration:-

[1] Whether the petitioner was retrenched from service?

[2] Whether the petitioner is entitled to be reinstate in the service of the second respondent? If not, what if any is the other relief to which the petitioner is entitled to?

5 During the course of enquiry, the appellant/writ petitioner examined himself as W.W.1 and marked Exs.W.1 to W.16 and on behalf of the respondents 1 and 2, no oral as well as documentary evidences were let in.

6 The 3rd respondent / Tribunal, on a consideration of the averments made in the claim petition, counter affidavits and upon appreciating the oral and documentary evidences, has recorded a finding that the plea made by the appellant/writ petitioner lacks merit and substance and accordingly, dismissed the claim petition, vide Award dated 14.01.2016. The appellant/writ petitioner, challenging the legality of the said Award, had filed WP.No.25864/2017 and it was entertained.

7 The learned Single Judge, on going through the findings recorded by the 3rd respondent / Tribunal, observed that the appellant/writ petitioner had miserably failed to discharge the burden to establish that the resignation letter was obtained by force and the act of vacating the Quarters would also clearly reveal that he has submitted the letter of resignation voluntarily and after accepting the resignation only, he has vacated the Quarters and further recorded the finding that though the Award came to be passed as early as on 14.01.2016, the appellant/writ petitioner kept quiet and chose to make a

challenge only in the year 2017 and citing the said reasons, had dismissed the writ petition vide impugned order dated 03.10.2017 and challenging the legality of the same, the appellant/writ petitioner came forward to file the present writ appeal.

8 The learned counsel for the appellant/writ petitioner has drawn the attention of this Court to the typed set of documents as well as to the additional typed set of documents and would submit that though it was indicated that the offer of appointment to the appellant/writ petitioner as a Driver was purely a contractual one, the fact remains that periodically, his services have been extended and therefore, it can be safely construed that the post is permanent and so also the need and admittedly, the appellant/writ petitioner has performed his duties admirably to the satisfaction of the superior officers and he has also been offered with a Quarters he was occupying and due to mala fide and oblique reasons, a letter alleged to be the resignation letter, was forcefully obtained on 24.09.2013 from the appellant/writ petitioner and apprehending that the 2nd respondent may immediately act on the said forceful resignation letter, immediately submitted a letter withdrawing the said resignation and though a promise was yielded out that the said letter would be favourably considered, the appellant/writ petitioner was not given any relief. It was also pointed out by the learned counsel for the appellant/writ petitioner that subsequent to the acceptance of the resignation letter on 24.09.2013, an offer of appointment was given to the petitioner once again on contractual basis and therefore, it also reveals the fact that the work/duty to be performed is permanent and perennial in nature and since the appellant/writ petitioner had completed 480 days in a calendar period of two years continuously, he is deemed to be declared as a permanent workman and therefore, prays for interference in the Award passed by the 3rd respondent / Tribunal as well as in the impugned order passed by the learned Single Judge in the writ petition.

9 The learned counsel appearing for the 1st respondent would submit that the 1st respondent is nothing to do with the alleged act of termination and the 1st respondent is neither a proper nor a necessary party, both in the writ petition as well as in the writ appeal.

10 The learned counsel for the 2nd respondent has invited the attention of this Court to the contents of the claim petition as well as the findings recorded by the Tribunal and the learned Single Judge and would submit that the exercise of jurisdiction by the learned Single Judge under Article 226 of the Constitution of India is in the nature of judicial review and in respect of the findings rendered by the 3rd respondent / Tribunal, it cannot be said that the said findings are perverse

and based upon 'no evidence' and this Court cannot re-appreciate the evidence/materials made available before the 3rd respondent / Tribunal and reach an altogether a different conclusion and since the findings rendered by the Tribunal came to be confirmed by the learned Single Judge, this Court, in exercise of its Appellate jurisdiction, under Clause 15 of the Letters Patent, may not interfere with the same and prays for dismissal of the writ appeal.

11 This Court has carefully considered the rival submissions and also perused the materials placed before it.

12 The issue arises for consideration in this writ appeal is whether the Award passed by the 3rd respondent / Tribunal as confirmed by the learned Single Judge in the impugned order dated 03.10.2017 made in WP.No.25864/2017 warrant interference?

13 A perusal of the claim petition would disclose among other things that the appellant/writ petitioner took a stand that he was orally retrenched from service on 24.09.2013 and the resignation letter was forcefully obtained from him and though immediately he has submitted a letter withdrawing his resignation, it was not acted upon and the act of termination on the part of the 2nd respondent is in violation of the relevant provisions of the Standing Orders as well as the Industrial Dispute Act, 1947 and it also amounts to an unfair labour practice and the 2nd respondent, being a Government Entity, is expected to act as a Model Employer and in the case on hand, it has acted illegally and unreasonably in terminating the services of the appellant/writ petitioner, by acting on the alleged letter of resignation and further took a stand in the appeal that the learned Single Judge, without properly appreciating the materials placed before it, has erroneously reached the conclusion to dismiss the writ petition and prayed for allowing of the writ appeal and thereby, setting aside the Award passed by the 3rd respondent / Tribunal. On the other hand, the learned counsel appearing for the 2nd respondent has sought to sustain the reason assigned by the Tribunal as well as the learned Single Judge, by dismissing the writ appeal.

14 In the considered opinion of the Court, the 3rd respondent / Tribunal has recorded factual findings based on proper appreciation of oral and documentary evidences. The Tribunal, after formulating necessary points for determination, has recorded the finding that the appointment of the appellant/writ petitioner was a contractual one and his services were extended every six months and he continued his service until 24.09.2013 and though he has marked the alleged letter of resignation as Ex.W.13, the fact remains that he did not mark the letter in and by which, he has withdrawn his earlier letter

of resignation given in Ex.W.13 and therefore, there is nothing to show that he wanted to withdraw the letter of resignation. The 3rd respondent / Tribunal, on going through the contents of the claim petition, also recorded the fact that on going through the cross-examination of W.W.1 - the appellant/writ petitioner, the plea taken by the appellant/writ petitioner that the letter of resignation was forcefully obtained from him, could not be accepted and also taken note of the fact that immediately on the date of resignation, he has also voluntarily handed over the Quarters. At this juncture, the learned counsel for the appellant/writ petitioner would submit if applying the common sense and logic, the conclusion would be that immediately after submission of the letter of resignation, the appellant/writ petitioner would have vacated the Quarters ; but it is also one more factor to reach the conclusion that the letter of resignation was forcefully obtained in order to terminate his services illegally. However, this Court is unable to accept the said contention in the absence of any tenable materials.

15 The learned Single Judge on going through the materials, found that the reasons assigned by the 3rd respondent / Tribunal in the Award, warrant no interference and the appellant/writ petitioner has miserably failed to discharge the burden to establish that the resignation letter was forcefully obtained from him and the act of vacating the Quarters is also one more factor to reach the conclusion that such a plea taken by the appellant/writ petitioner was unsustainable and dismissed the writ petition.

16 It is a well settled position of law that exercise of the jurisdiction under Article 226 of the Constitution of India is in the nature of judicial review in respect of the Award passed by the Tribunal and unless this Court records a finding that the findings of the Tribunal are perverse and based upon 'no evidence', it cannot upset or set aside the findings recorded by the said Tribunal. In the considered opinion of the Court, the 3rd respondent / Tribunal, on a thorough consideration of the contents of the claim petition ; counter statements, oral and documentary evidences let in on behalf of the appellant/writ petitioner, had rightly reached the conclusion that the appellant/writ petitioner is not entitled to any relief and the learned Single Judge, in the considered opinion of the Court, has also rightly reached the conclusion to uphold the Award and thereby, dismissed the writ petition.

17 This Court is also of the view that in the absence of any material to show that the resignation letter under Ex.W.13 was forcefully obtained and that no evidence as to the withdrawal of the resignation has been produced, the 3rd respondent / Tribunal as well as the learned Single Judge has

rightly reached the conclusion to deny the relief to the appellant/writ petitioner.

18 This Court, on an independent application of mind to the entire materials, is of the considered view that there is no error apparent on the face of the record or infirmity or error of jurisdiction in the reasons assigned by the 3rd respondent / Tribunal as well as the learned Single Judge and finds no merit in the writ appeal.

19 In the result, the writ appeal is dismissed, confirming the order dated 03.10.2017 made in WP.No.25864/2017. No costs. However, if the appellant/writ petitioner is so advised and if it is open to him under law and subject to delay and laches, he is always at liberty to work out his remedy seeking permanency before the appropriate or competent Forum, in accordance with law.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

AP

To

- 1 The Secretary to the Government
Ministry of Surface Transport
Government of India, New Delhi.
- 2 The Management of Indian Maritime University
Uthandi, Chennai 600 119.
- 3 The Presiding Officer
Central Government Industrial
Tribunal cum Labour Court
Chennai.

SSV(CO)
SSM(31/01/2019)

WA.No.309/2018

WEB COPY