

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.10.2019

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.10593 of 2017

and

W.M.P.No.11532 of 2017

The Management of
M/s.Evolv Clothing Company Pvt.Ltd.,
Industry II, Survey No.14/2, 3/3,
Vedanthangal High Road,
Kelambakkam Village, Maduranthagam Taluk,
Kancheepuram District - 603 308.
Rep by its Sr.Manager - HR & CompliancePetitioner

..Vs..

1.K.Elangovan
2.The Presiding Officer
Hon'ble I Additional Labour Court,
Chennai.Respondents

Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records connected with the Award dated 23.03.2017 made in I.D.No.151 of 2016 on the file of the second respondent, Labour Court, Chennai.

For Petitioner : Mr.Sai Prasad
for M/s.Sai Raaj Associates

For Respondent : No appearance for R.1
Labour Court - R.2.

ORDER

The award dated 23.03.2017 made in I.D.No.151 of 2016 is sought to be quashed in the present writ petition.

2.The writ petitioner is the Management of M/s.Evolv Clothing Corporation Private Limited. The learned counsel appearing on behalf of the petitioner states that the first respondent/workman was employed in the petitioner/Company as an Assistant in the stores of the petitioner/company situated at Kolambakkam, Kanchipuram District. The first respondent in the course of his duties on 19.11.2015 was transferred to the

finishing department to work as Store Assistant in the said Department.

3.However, the first respondent refused to do the said work claiming that the petitioner's Manager did not know how to respect their employees and that he did not want to work in such an environment. By saying so, the first respondent walked out of the factory. Within a period of 2 days of the said incident, the first respondent wrote a letter dated 21.11.2015, falsely claiming that he had been called upon to resign from service and that when he did not do so, the first respondent was refused the employment by the petitioner.

4.The petitioner wrote a letter on 28.11.2015 informing the first respondent that he was transferred to the finishing department only in terms of contract of employment and that it was the first respondent who had expressed that he was not willing to work in the current environment. In the said communication, the petitioner also stated that they have never asked the first respondent to submit his resignation and they are all along asking him to report for duty. In other words, the learned counsel appearing for the petitioner states that letter was sent stating that the first respondent/workman can join duty at any point of time. The first respondent submitted a letter on 21.01.2016 to the Conciliation Officer and a failure report was submitted and subsequently industrial dispute was raised in I.D.No.151 of 2016.

5.The learned counsel appearing on behalf of the petitioner states that the Labour Court has failed to consider the fact that the management expressed their intention to allow the first respondent to join the duty. At no point of time, the first respondent was prevented by the Management to perform his duties and responsibilities. Contrarily, at every stage, the writ petitioner/management repeatedly informed that the first respondent is not reporting for duty and in the event of attending duty, they are ready to permit him and there is no restriction for entering into the factory premises and to report for duty.

6.The Labour Court found that there was no reason for the petitioner to refuse to work, if he was actually transferred as a Stores Assistant. The Labour Court mainly relied on the fact that there is no transferring of the first respondent from Stores to finishing Department. In this regard, the learned counsel appearing on behalf of the petitioner states that the transfer was within the same factory and from one Section to another Section and such transfers will frequently take place in

order to extract effective work from the employees. It is not a transfer actually and it is only a change of department within the same factory and therefore, no transfer order will be issued to the employees. Even after the transfer of the first respondent from Stores Department to finishing Department, the Management has clearly stated that they had not insisted the first respondent to resign and all along, they have written a letter stating that the first respondent is at liberty to report for duty at any point of time.

7. However, the Labour Court arrived at a conclusion by drawing certain factual inferences. The correctness of the inferences drawn by the Labour Court has been considered by this Court. The Labour Court proceeded on the footing that there was no reason for the petitioner to refuse to work, if he was actually transferred as Stores Assistant, such an inference is uncalled for in view of the fact that the refusal to work by the workman would not provide any such suspension with the Employer, who terminated the services of the workman. Such an inference cannot be drawn as the facts and circumstances of the present case are entirely different. Perusing the earlier letters submitted before the Conciliation Officer himself by the Management and more specifically a letter dated 21.01.2016 reveals that the Management has expressed its view by stating that the first respondent is at liberty to report for duty and they have no objection. When the Management has submitted a letter even before the Conciliation Officer, at that point of time, the first respondent ought to have reported for duty.

8. Contrarily, he proceeded with the industrial dispute and the Labour Court has not considered the letter given before the Conciliation Officer stating that the Management has no objection in allowing the first respondent to report for duty. Contrarily, the Labour Court arrived at a conclusion that there is no reason why the first respondent is abandoning the duty. Such a factual inference is not settled by any other documents nor the said factors were established by the workman before the Labour Court.

9. The learned counsel appearing on behalf of the petitioner cited the judgment of the High Court of Delhi in the case of Shri Tirloki Nath Vs. Shri Dharam Paul Arora & another decided on 07.03.2006 wherein the following observations are made by the Delhi High Court;

"8. Learned counsel for the appellant submitted that the workman was willing to join duty in the scale of skilled worker. In this connection, it may be

stated that the appellant was admittedly working as a helper and was drawing a salary of Rs.750/- P.M. He was paid a salary in the presence of the Labour Inspector who visited the office of the management on 10.8.1989. The petitioner never raised any protest while receiving the salary and to his designation being shown as a helper.

9. In our opinion, the appellant should have joined duty when it was offered to him during conciliation proceedings, but evidently he was not prepared to join as a helper but on a higher grade.

10. The petitioner/appellant could have joined as a helper under protest if he was of the opinion that he was entitled to a higher designation/salary but he did not do so. In similar circumstances the Supreme Court in Central P and D Inst. Ltd. v. Union of India, (2005) 9 SCC 171 held that compensation should be granted instead of reinstatement."

10. This being the factum of the case, this Court is of the opinion that the findings of the Labour Court is mainly based on certain factual inferences drawn without considering the fact that there is no supporting documents or evidences for such factual inferences. Thus, this Court is not inclined to accept the findings and consequently, the award dated 23.03.2017 in I.D.No.151 of 2016 is hereby quashed.

11. With the above directions, this writ petition stands allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Presiding Officer, I Additional Labour Court, Chennai.

+1 cc to M/s.Sai Raaj Associates Sr.No. 83955

AKM/14.11.19/4P- 3C /

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