



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.11.2019

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P.(MD)No.8257 of 2011

and

M.P.(MD)No.1 of 2011, 1 and 2 of 2013 and 1 of 2015

The Management,
India Cements Limited,
Sankar Nagar, Tirunelveli - 627 357.

... Petitioner

vs.

1.The Presiding Officer,
Labour Court,
Tiruchendur Road, Tirunelveli.

2.A.Muthusamy

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records of the first respondent in the proceedings in I.D.No.53 of 2007, dated 11.03.2011 and quash the same.

For Petitioner : Mr.Raghuvaran Gopalan

For R2 : Mr.S.M.Mohan Gandhi

O R D E R

The petitioner is the Management and the Writ Petition is filed challenging the Award of Labour Court, Tirunelveli, in I.D.No.53 of 2007.

2.The brief facts that are necessary for the disposal of this petition are as follows:

2.1.The second respondent joined as a Mazdore in the petitioner Factory in Tirunelveli. Though he was promoted earlier to the level of Pump Operator, due to administrative reasons, it is stated that he was transferred to the Marketing Office at Vizhianagaram in Andhra Pradesh. It is stated by the petitioner that on 02.01.2006, the second respondent was relieved from Sankar Nagar Factory at Tirunelveli. Since the second respondent could not join therein in



Andra Pradesh, he filed a petition under Section 2-A of Industrial Disputes Act alleging that he was terminated from service on 03.01.2006 under the pretext of transfer.

2.2.Since the Conciliation failed, the second respondent raised an industrial dispute to set aside the order of termination and to reinstate the second respondent with back wages and continuity of service as Pump Operator in the Sankar Nagar Factory. The petition filed by the second respondent was allowed by the Labour Court and as per the Award, the second respondent was directed to be reinstated with back wages, continuity of service and other statutory benefits with cost of Rs.50,000/-. Aggrieved by the same, the above Writ Petition is filed.

3.The learned Counsel for the petitioner submitted that the order of transfer cannot be termed as an order dismissing the second respondent from service and therefore, the Labour Court has exceeded its jurisdiction by entertaining the industrial dispute. The learned Counsel for the petitioner further submitted that the second respondent himself has given a leave letter seeking leave for 30 days from 20.01.2006 to 19.02.2006 and that therefore, the contention of the second respondent that he was terminated from service on 03.01.2006 cannot be accepted. The learned Counsel for the petitioner further submitted that the Labour Court failed to appreciate the discrepancies in the statement of second respondent. It is further submitted that when the Management has only transferred the second respondent from Tirunelveli to Andra Pradesh, unless, there are materials to show that the second respondent was prevented from joining duty at Vizhianagaram in Andra Pradesh, the Labour Court is not justified in accepting the case of the workman.

4.Having regard to the nature of dispute, the issue to be considered is whether the petitioner allowed the second respondent to join duty at transferred place and whether the transfer was just to camouflage the real intention of Management to get rid of the employee. The specific case of the second respondent before the Labour Court has been accepted by the Labour Court. After relieving the second respondent on 02.01.2006, the second respondent was supposed to join duty on the next day in Andra Pradesh. The second respondent by producing documents to show that he travelled from Tirunelveli to Andra Pradesh and that he had also stayed there. It is the further case of the second respondent that there was no Marketing Office at Vizhianagaram in Andra Pradesh and that the place to which the second respondent was asked to report duty is only a Cement Godown of one of the stockists of petitioner, by name K.Logaraj. The petitioner has not produced any document to show that a marketing office is functioning at Vizhianagaram in Andra Pradesh in the address that was given to the second respondent. The second respondent further stated that when he enquired the godown people about the Marketing Office of petitioner Management, he was



Assistant Manager, at Visakapattinam. Therefore, the second respondent has further stated that he met the Assistant Manager at Visakapattinam who informed the second respondent that no communication was received from the Office at Shankar Nagar. It is in these circumstances, the petitioner Management ought to have produced necessary documents to prove the existence of an Office at Vizhianagaram in Andra Pradesh and the business transactions in the Office at Vizhianagaram.

5.It is not known under what circumstances, the second respondent was transferred to a far away place in Andra Pradesh. The second respondent was doing the job of Pump Operator. The office at Vizhianagaram is stated to be a Marketing Office, where, the second respondent may not be suitable and hence the so called transfer is nothing, but to cover up an unfair labour practice. Under the pretext of transferring the second respondent, the petitioner has intended to terminate the second respondent from service, which can be done only, after holding enquiry against any employee for any irregularity committed by him and by following the procedure known to law.

6.The findings of the Labour Court are well founded and supported by materials and reasons and hence this Court has no reason to interfere with the order of Labour Court. The petitioner is a reputed Company and they are expected to be a model employer. In this case, the conduct exhibited by petitioner has to be deprecated. As a result, the Writ Petition is dismissed and the Award passed by the Labour Court, Tirunelveli, in I.D.No.53 of 2007, dated 11.03.2011 is confirmed.

7.It is stated that the second respondent has filed a claim petition and in view of the writ petition, the petition is pending for adjudication. It is further stated that the second respondent has attained the age of superannuation in May'2014. Therefore, the second respondent is entitled to monetary benefits as per the Labour Court Award. Any other issues relating to the settlement of other benefits will be decided by the Labour Court in terms of the Award. The petitioner Management states that the second respondent has not vacated the quarters even after his retirement and some amount is due from the second respondent. All these issues can be decided independently at the appropriate time before appropriate forum or in the claim petition. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Cr1.Side)

// True Copy //

Sub Assistant Registrar(CS)



To

The Presiding Officer,
Labour Court,
Tiruchendur Road, Tirunelveli.

WEB COPY

+1 CC to M/s.S.M.MOHAN GANDHI, Advocate (SR-97051[F] dated 08/11/2019

+1 CC to M/s.K.PRABHAKAR, Advocate (SR-97134[F] dated 08/11/2019)

W.P.(MD)No.8257 of 2011
08.11.2019

JMN(03.12.2019) 4P : 4C