

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2020

CORAM

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P. No. 23171 of 2014

P. Venkatesh
S/o. K. Perumal ,
296, Chekkiyar Street,
Samathuvapuram,
Perunkalathur Post-604 047. ... Petitioner

-vs-

1. The Management,
East-Wind Foot Ware Company Limited,
Sipcot Industrial Estate,
Mangal Village,
Mathur Post-632 701.
2. The Presiding Officer,
The Principal Labour Court,
Vellore. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, calling for the records from the files of the second respondent in I.D. No. 76 of 2013 and quash its Impugned Award made therein dated 13.05.2014 insofar as it has denied the claim of the petitioner for reinstatement in service, with continuity of service, with back wages and with all other attendant benefits.

For Petitioner :Mr. K.M. Ramesh

For Respondents:Mr. C.Manohar Gupa
for Mr. M. Kandasamy for R1
R2 - Court

O R D E R

The prayer sought for herein is for a Writ of Certiorari, to call for the records from the files of the second respondent in I.D. No. 76 of 2013 and quash its Impugned Award made therein dated 13.05.2014.

2. The petitioner was an employee of the first respondent / Management. The petitioner and the Management seems to have some misunderstanding, due to which, according to the first respondent, the petitioner had voluntarily given resignation and the said resignation having been accepted the full settlement has been made in favour of the petitioner / employee. Having receipt of the same, the petitioner cannot turn around and state that, he was not given the voluntary resignation dated 22.04.2013.

3. However, the case of the petitioner is that, the said resignation was not voluntarily given by the petitioner and it was forcibly taken from the petitioner by the two Managerial staff namely, the Technical Director viz., Nandakumar and the Director viz., Bharath and according to the petitioner, they threatened the petitioner to give voluntary resignation. Therefore, the said resignation cannot be construed as a voluntary resignation.

4. In order to resolve these disputes, the petitioner has raised an ID in I.D. No. 76 of 2013 on the file of the Principal Labour Court, Vellore. Before the Labour Court, in fact, the first respondent / Management seems to have filed an Interlocutory Application in I.A. No. 23 of 2014, to decide whether the petitioner is a workman within the meaning under Section 2(s) of the I.D. Act as a preliminary issue and thereafter to proceed with the merits of the I.D.

5. However, the Labour Court could not decide the said issue, as to whether the petitioner was a workman or not for the purpose of having jurisdiction before the Labour Court, to raise the I.D. for want of evidence, which according to the Labour Court, would be made available at the time of trial and accordingly after trial, the Labour Court while passing the Final Award dated 13.05.2014 framed four issues, out of which, the first issue was that, whether the petitioner was an employee under the provisions of the I.D. Act or not.

6. Accordingly, whether the petitioner is a workman as defined under Section 2(s) of the I.D. Act, was decided by the Labour Court in the Impugned Award dated 13.05.2014 as a first issue in favour of the employer and against the employee. However not stopping with that, the Labour Court has gone further in to the merits of the I.D., by thus, giving answer to other three issues on the merits of the I.D. raised by the petitioner, as to whether he has given voluntary resignation or not. Absolutely, those merits has been gone in to or answered by the Labour Court, by thus, the Award was passed, which is impugned herein dated 13.05.2014, whereby, the Labour Court rejected the claim made by the petitioner / employee.

7. Aggrieved over the said Impugned Award made in I.D. No. 76 of 2013 dated 13.05.2014, the employee / petitioner has filed the present Writ Petition with the aforesaid prayer.

8. Heard Mr. K.M. Ramesh, learned counsel appearing for the petitioner, who raised the preliminary objection with regard to the Impugned Award, where he has pointed out that, the issue as to whether the petitioner was a workman within the meaning under Section 2(s) of the I.D. Act, though was framed as first issue in the I.D, the said issue once is decided in favour of the employer and against the employee, the Labour Court has lost its jurisdiction, as the main issue raised by the employee from the view point and the Labour Court does not fall under the Industrial Dispute and therefore the I.D. could have been rejected on the preliminary ground itself i.e., as to whether the petitioner was a employee or not.

9. Since the Labour Court has decided the said preliminary issue in favour of the employer and further gone into the merits of the case, thereafter entire findings given in the Impugned Award on the merits of the I.D., shall not stand in the way of the petitioner to agitate the issue.

10. Without prejudice to the said contention, the learned counsel appearing for the petitioner has made elaborate submissions on the merits of the other issues also. According to him, the resignation obtained from the petitioner, was a forcible one, by coercion and threat to the petitioner and this aspect has not been considered and therefore, on that ground, the Impugned Award has to be set aside and the Writ Petition may be allowed, he contended.

11. However, Mr..C.Manohar Gupta, learned counsel appearing for the first respondent / Management would contend that, in respect of the preliminary issue, as to whether the petitioner was a workman or not is concerned, no doubt that was the first issue decided by the Labour Court and why the Labour Court decided the said issue in the Final Award itself is because, even though the Management has filed an IA in I.A. No. 23 of 2014, praying the Court to take the decision with regard to the status of the petitioner as a preliminary issue, that was not taken up and it could not be taken up by the Labour Court for want of adducing evidence and this has been specifically mentioned by the Labour Court in Para No. 7 at heading point No.1 in the impugned Award, he contended.

12. The learned counsel appearing for the first respondent / Management would further contend that, on the merits of the Labour Court Impugned Award is concerned, absolutely there is no whisper that the petitioner was threatened to get his

resignation. In fact, the resignation dated 22.04.2013 was given by the petitioner voluntarily and having accepted the same, the Management has settled the dues payable to the petitioner which was accepted by the petitioner and having accepted the settlement from the Management in lieu of the resignation which was voluntarily given by the petitioner, the petitioner cannot now turn around in the Industrial Dispute to state that, the said resignation was obtained by coercion. Therefore, in the merits of the case also, the Labour Court has discussed those aspects and has come to the right conclusion that, the resignation given by the petitioner was voluntary in nature and therefore based on which, the petitioner cannot subsequently raise any I.D. and thus, that issue in favour of the employer has been decided by the Labour Court and ultimately rejected the ID, hence it does not require any interference from this Court, he contended.

13. I have heard the learned counsel appearing for both sides and have perused the materials placed before this Court.

14. As has been rightly pointed out by the learned counsel appearing for the petitioner, the issue as to whether the petitioner was a workman as defined under Section 2(s) of the I.D. Act, was framed as a first issue and that was decided by the Labour Court to state that, the petitioner is not a workman within the meaning under Section 2(s) of the I.D. Act. In order to appreciate the said aspects, the relevant discussions made by the Labour Court in the Impugned Award is quoted here under:

"11. It is admitted that the petitioner is involved in the purchase department. The petitioner is the person who have signed the Business Trip applications submitted by the Assistants who proceeded to make purchase. Ex.M.9 series would show that the signatures of this petitioner endorsed on the box left for the signature of the supervisor in the business trip applications. Apart from that Ex.M10 overtime slips and Ex.M.11 employees transfer orders also bear the signature of this petitioner as a Supervisor. The petitioner has stated that he is the petitioner who is responsible for the persons who requested for purchase of materials. Ex.M12 would show that the purchase request had been prepared by the petitioner and he endorsed his signature. Further, the petitioner has also got a quotation from various concerns through mails and those facts obtained from him by

mail was admitted by him in his cross examination and the relevant documents was marked as Ex.M.14. The above narrated functions performed by the petitioner squarely relate to the purchase supervisor and hence it is false to state that though the petitioner was promoted as Supervisor, he was undertaking the works of an assistant only. The evidence on record and the admission of petitioner in his cross examination would make it clear that the petitioner was working as a Supervisor and that he was also executing the functions of Supervisor under the respondent and that he was deriving the salary of rupees more than 10,000/- per month. The above said specification would clearly exclude the petitioner from the definition of worker as found in Section 2(s) of I.D. Act. Since the petitioner is not a worker as defined under Section 2(s) of I.D. Act, he is not entitled to file this petition before the Labour Court and issue No. 1 is answered accordingly against the petitioner."

15. Therefore, the findings of the Labour Court ultimately on the said first issue is, the petitioner is not a workman as defined under Section 2(s) of the I.D. Act and he is not entitled to file this petition i.e., I.D. before the Labour Court and the issue No. 1 was accordingly answered against the petitioner. If that is the answer given by the Labour Court for preliminary or first issue, as to whether the petitioner was an employee or not for invoking the provisions of I.D. Act especially under Section 2-A (2) of the I.D. Act for raising the Industrial Dispute, this Court feels that, the Labour Court should not have gone in to other aspects i.e., merits of I.D. raised by the petitioner. Once the Labour Court itself has decided that the petitioner is not entitled to file the petition before the Labour Court, as he is not at all the workman within the meaning under Section 2(s) of the I.D. Act, the Court insofar as the said I.D. raised by the petitioner is concerned, lost its jurisdiction and therefore, stopping with that decision, the Labour Court should have rejected the I.D. No. 76 of 2013 leaving the issue raised by the petitioner in the I.D. on merits to be decided before an appropriate forum, if the petitioner has chosen to workout his remedy in the manner known to law.

16. Instead of taking the said route, the Labour Court has gone in to merits of the case by exercising its jurisdiction under Section 2-A(2) of the I.D. Act, as if, that the I.D. raised by the petitioner is an issue to be adjudicated by the Labour Court, which action on the part of the Labour Court, in the considered opinion of this Court, cannot be appreciated and therefore, whatever findings given by the Labour Court on the merits of the I.D., except the findings with regard to the jurisdiction on the ground that, the petitioner is not a workman within the meaning under Section 2(s) of the I.D. Act, cannot be approved.

17. The said decision taken by the Labour Court insofar as the first issue is concerned, on the basis of the evidence adduced by both sides, the Labour Court has come to the conclusion that, the petitioner was drawing salary to the extent of Rs.10,813/-, even at that time, which is above the limit of Rs.10,000/- fixed or prescribed under the relevant provisions of the Act and therefore, this Court feels that, the said decision taken by the Labour Court that, the petitioner is not a workman under Section 2(s) of the I.D. Act is a justifiable conclusion. Therefore, the said conclusion arrived by the Labour Court can be sustained.

18. In that view of the above discussions, this Court feels that, except the decision of the Labour Court insofar as the first issue is concerned, other discussions made and conclusions arrived at by the Labour Court is liable to be interfered with. Accordingly, the following orders are passed in this Writ Petitions:

"(i) The decision made by the Labour Court in the Impugned Award dated 13.05.2014 made in I.D. No. 76 of 2013, to state that, whether the petitioner is a workman as defined under Section 2(s) of the I.D. Act is concerned, it is justifiable and sustainable and accordingly it is sustained.

(ii) Insofar as the other conclusion arrived at by the Labour Court with regard to the issue Nos. 2,3 and 4 are concerned, the said findings and the conclusion arrived at in those three issues by the Labour Court in the Impugned Award is liable to be set aside, accordingly is set aside.

(iii) As a sequel, the petitioner shall workout his remedy on the merits of the I.D. raised by him before an appropriate legal

forum, if he is advised to do so.

(iv) It is made clear that, in this context, if any such attempt is made by the petitioner to approach an appropriate forum, point of limitation shall not stand in the way, in view of the pendency of I.D. No. 76 of 2013 till 2014 and also subsequent to the same, the present Writ Petition is of the year 2014 since has been pending till date."

19. With these directions, the Writ Petition is ordered accordingly. However, there shall be no order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

vji

To

1. The Presiding Officer,
The Principal Labour Court,
Vellore.

+1cc to Mr.M.Kandasamy, Advocate, S.R.No. 35703

+1cc to Mr.K.M.Ramesh, Advocate, S.R.No. 35801

W.P. No. 23171 of 2014

KV(CO)
GN(19/03/2021)

सत्यमेव जयते

WEB COPY