



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.12.2021

Coram:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.1561 of 2020

Puthiya Jananayaka Thozhilalar Munani,
Rep. by its Secretary,
Regn.No.1656/RTU/2010,
No.17, 11th Cross Street,
Kurinji Nagar, Laspet,
Puducherry-605 008.

... Petitioner

Vs.

The Managing Director,
Power Soap and Abirami Soap Works,
R.S.No.93/1A, 1B, 2, Sembiapayalam Village,
Korkadu Post,
Puducherry-605 110.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, after calling for the concerned records from the Labour Court, Puducherry, quash the Award of the Labour Court, Puducherry, dated 31.03.2016 in I.D.(L).No.27 of 2014 as illegal, arbitrary and contrary to law and consequently hold that the order of the respondent transferring the workmen concerned in the writ petition, viz., (1) E.Murugan, (2) A.Veerasami, (3) R.Raja, (4) M.Lingeswaran, (5) L.Pachaiappan, (6) L.Gnanamurthy and (7) K.Kannan, as illegal, arbitrary, without power and authority and in colourable exercise of power and consequently direct the respondent to reinstate the workmen concerned in this Writ Petition, viz., (1) E.Murugan, (2) A.Veerasami, (3) R.Raja, (4) M.Lingeswaran, (5) L.Pachaiappan, (6) L.Gnanamurthy and (7) K.Kannan in Puducherry, with full back-wages, continuity of service and all other attendant benefits.

For petitioner : Mr.Balan Haridas

For respondent : Mr.M.V.V.N.Sivanathy for
M/s.Fox Mandal and Associates



ORDER

WEB COPY The petitioner-Puthiya Jananayaka Thozhilalar Munnani, has filed the present Writ Petition seeking for issuance of a Writ of Certiorarified Mandamus, after calling for the concerned records from the Labour Court, Puducherry, quash the Award of the Labour Court, Puducherry, dated 31.03.2016 in I.D.(L).No.27 of 2014 as illegal, arbitrary and contrary to law and consequently hold that the order of the respondent transferring the work-men concerned in the writ petition, viz., (1) E.Murugan, (2) A.Veerasami, (3)R.Raja, (4) M.Lingeswaran, (5)L.Pachaiappan, (6) L.Gnanamurthy and (7)K.Kannan, as illegal, arbitrary, without power and authority and in colourable exercise of power and consequently direct the respondent to reinstate the work-men concerned in this Writ Petition, viz., (1) E.Murugan, (2) A.Veerasami, (3) R.Raja, (4)M.Lingeswaran, (5) L.Pachaiappan, (6)L.Gnanamurthy and (7) K.Kannan in Puducherry, with full back-wages, continuity of service and all other attendant benefits.

2. The case of the petitioner is that the work-men concerned in the Writ Petition, are working under the respondent-Company for a period ranging from six to ten years. The respondent-Company was involved in manufacture of washing soap, washing powder, toilet soap, shampoo, face powder, etc. The respondent employed 183 permanent employees.

3. According to the petitioner, an Union was formed in order to espouse various grievances of the work-men and represent their interests with the Management. According to the petitioner, the respondent-Management started victimising the office bearers of the said Union, as the Management was supporting its own Union.

4. According to the petitioner, there was some dispute in regard to the Union's activities, as the Management was sponsoring its own Union and was attempting to victimise the work-men who have joined in the Union which were not sponsored by them. When some workers who resigned from the Union sponsored by the Management, the Management did not take it lightly and the Management refused to provide them work when they entered into the factory premises. Series of telegrams were also sent by the work-men concerned for denial of employment. A representation was also submitted to the Conciliation Officer concerned.



5. When an action was initiated from the Deputy Inspector of Factories in response to the complaints by the Association of the work-men concerned, it was informed that seven work-men have been transferred to a different locations. Out of seven employees, who were transferred, three were to a place called Silvasa, which was nearly 1200 Kms. away from Puducherry. Four of the work-men have been transferred to Gummidipoondi. The workers who had been transferred to Silvasa, had no knowledge of Hindi, which alone was the working language in that area and they were merely loaders and last grade servants earning a meagre monthly wages. It is impossible for the work-men to work and to survive in a far away distant place not having knowledge of Hindi and forced to have two establishments. All the work-men were married with school going children.

6. In the above circumstances, dispute was raised against transfers of the work-men, which resulted in non-employment of the work-men concerned. As the Conciliation failed, the dispute was referred to and a reference was also made, which reads as follows:

"(a) Whether the dispute raised by Puthiya Jananayaga Thozhilalar Munnani against the management of M/s.Abirami Soap Works, Korkadu, Puducherry over transfer of employees resulting in non-employment of Tvl. (1) E.Murugan, (2) A.Veerasmis, (3) R.Raja, (4) M.Lingeswaran, (5)L.Pachaiappan, (6) L.Gnanamurthy and (7)M.Kannan, is justified? If justified, what relief the work-men are entitled to?

(b) To compute the relief, if any awarded in terms of money, if it can be so computed?

7. The Labour Court at Pondicherry, in I.D.(L).No.27 of 2014, by the impugned Award dated 31.03.2016, after hearing the parties, and after adverting to various materials marked in the proceedings and evidence adduced, finally concluded that the transfers of seven work-men, were not an act of victimisation amounting to Unfair Labour Practice and held that they were not entitled to any relief, as against which, the present Writ Petition is filed by the Association (Puthiya Jananayaga Thozilalar Munnani).



8. The learned counsel for the petitioner-Munnani submitted that the findings of the Labour Court were completely erroneous and legally not acceptable. When a worker could be transferred to a place 1200 Kms. away, which by itself can be construed as punitive transfer intended to victimise the work-men.

9. According to the learned counsel, when a labourer or worker, for no reason, is transferred, the Labour Court ought to have verified from the Management as to the reasons for transferring the work-men in the first place. On the other hand, the Labour Court has erroneously held that the work-men had no right to contend that they were not transferrable. The Labour Court proceeded to hold that the transfer of work-men was strictly in accordance with the provisions of the Certified Standing Orders and not an act of victimisation, nor amounting to Unfair Labour Practice. The Labour Court, in fact, substituted its own reason that there was exigency and dire necessity for transfers of seven work-men to Gummidipoondi/Silvasa Units.

10. The learned counsel for the petitioner further submitted that the conclusions reached by the Labour Court are absolutely without any basis. On the face of the very transfer of these loaders to far away places, that too 1200 Kms. away from Puducherry, by itself, is an action intended to victimise the work-men. According to the learned counsel, the question of administrative exigency or requirement did not arise in the case of transfer of loaders to a far away Units of the respondent-Management.

11. In support of his contentions, the learned counsel for the petitioner relied on a decision of the Supreme Court reported in 2021 SCC Online SC 973 (Caparo Engineering India Ltd. Vs. Ummed Singh Lodhi), in which, he referred to paragraphs 36 to 46, which are extracted hereunder:

"36. It also emerges that the number of workers at Dewas factory has been reduced by nine by transferring the workmen to Chopanki. It also emerges that even as admitted by DW-1 and DW-2 the transferred workmen would work in the capacity of supervisor at Chopanki and after their transfer to Chopanki, they will be given training and assigned the work of supervisor.

37. As observed hereinabove and even the findings recorded by the learned Labour Court



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and even it also emerge from the evidence on record that at Dewas all of them were 'workmen' as defined in Section 2(s) of the Industrial Disputes Act and, therefore, would have a protection under the provisions of the Industrial Disputes Act and after their transfer to Chopanki, they will have to work in the capacity of supervisor and, therefore would be deprived of the beneficial provisions of the Industrial Disputes Act. Therefore, on such transfer from Dewas to Chopanki, the nature of service conditions and the nature of work would be changed, therefore, in such a case Section 9A read with Fourth Schedule would be attracted. Section 9A and the Fourth Schedule reads as under:-

"9A. Notice of change.- No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,-

(a) without giving to the workman likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or

(b) within twenty-one days of giving such notice:

Provided that no notice shall be required for effecting any such change-

(a) where the change is effected in pursuance of any settlement or award; or

(b) where the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence



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Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply.

THE FOURTH SCHEDULE

(SEE SECTION 9A)

Conditions of Service for change of which Notice is to be given

1. Wages, including the period and mode of payment;
2. Contribution paid, or payable, by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force;
3. Compensatory and other allowances;
4. Hours of work and rest intervals;
5. Leave with wages and holidays;
6. Starting alteration or discontinuance of shift working otherwise than in accordance with standing orders;
7. Classification by grades;
- 8 Withdrawal of any customary concession or privilege or change in usage;
9. Introduction of new rules of discipline, or alteration of existing rules, except in so far as they are provided in standing orders;
10. Rationalisation, standardisation or improvement of plant or technique which is likely to lead to retrenchment of workmen;



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11. Any increases or reduction (other than casual) in the number of persons employed or to be employed in any occupation or process or department or shift, not occasioned by circumstances over which the employer has no control."

38. In view of the above and from the findings recorded by the learned Labour Court on the appreciation of evidence on record, it is rightly held that the order of transfer dated 13.01.2015 transferring the respective workman from Dewas to Chopanki, which is at about 900 Kms. away is in violation of Section 9A read with Fourth Schedule of the Industrial Disputes Act and is arbitrary, mala fide and victimization. As observed above, by such transfer, their status as "workman" would be changed to that of "supervisor". By such a change after their transfer to Chopanki and after they work as supervisor they will be deprived of the beneficial provisions of the Industrial Disputes Act and, therefore, the nature of service conditions/service would be changed.

39. Even from the judgment and award passed by the learned Labour Court as well as the impugned judgment and order passed by the learned Single Judge, it can be seen that the appellant/employer has failed to justify the transfer of nine employees from Dewas to Chopanki, which is at a distance of 900 Kms. and that too at the fag end of their service career. Every aspect has been dealt with and considered in detail by the learned Labour Court as well as by the learned Single Judge of the High Court.

40. Now, so far as the submission on behalf of the appellant that the respective workmen - employees were not 'workmen' and, therefore, the reference to the learned Labour Court was not maintainable, has no substance at all. There are concurrent findings recorded by the learned Labour Court as well as the learned Single Judge that the



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have treated the petition(s) under Article 226, therefore, the writ appeal before the learned Single Judge would have been maintainable, is concerned, at the outset, it is required to be noted that before the learned Single Judge in the cause title specifically Article 227 has been mentioned. Even in prayer clause, no writ of certiorari is sought. The prayer is simply to quash and set aside the judgment and award passed by the learned Labour Court and, therefore, in the fact situation, the Division Bench has rightly dismissed the writ appeal as not maintainable. Be that it may, even for the sake of submission, assuming that we accept the submission that the petition before the learned Single Judge ought to have been treated as under Article 226 and writ appeal would have been maintainable, in the facts and circumstances of the case and instead of remanding the matter to the Division Bench to decide the same afresh, we, ourselves, have decided the entire controversy/issues on merits considering the fact that the order of transfer is of 2015 and that most of the employees have by now retired or they are about to retire on attaining the age of superannuation and that it is stated that they are not paid the salaries since 2015. Therefore, we, ourselves, have decided the entire issues on merits.

44. In view of the above and for the reasons stated above, we see no reason to interfere with the impugned judgment and award passed by the learned Labour Court confirmed by the learned Single Judge of the High Court. We are in complete agreement with the view taken by the learned Labour Court as well as the learned Single Judge holding the order of transfer dated 13.01.2015 transferring the respective workman from Dewas to Chopanki, which is at about 900 Kms. from the place they were working as illegal, mala fide and in violation of Section 9A read with Fourth Schedule of the Industrial Disputes Act.



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45. Consequently, all these appeals deserve to be dismissed and are accordingly dismissed. The appellant is directed to comply with the judgment and award passed by the learned Labour Court confirmed by the learned Single Judge of the High Court. All the concerned workmen shall be entitled to the consequential benefits including the arrears of salary etc., as if they were not transferred from Dewas and continued to work at Dewas and whatever benefits, which may be available to the respective workmen including the arrears of salary/wages, retirement benefits etc. shall be paid to the concerned workman within a period of four weeks from today.

46. All these appeals are accordingly dismissed with costs, which is quantified at Rs. 25,000/- qua each workman also to be paid to the concerned workman within a period of four weeks from today."

12. According to the learned counsel, the above decision of the Supreme Court could be exactly applied to the factual matrix of the present case as well. He lastly submitted that the impugned Award of the Labour Court suffers from fatal infirmity, which cannot be sustained under any circumstances.

13. Per contra, the learned counsel appearing for the respondent-Management drew support from the findings of the impugned Award of the Labour Court and submitted that the Writ Petition is devoid of merits and substance.

14. This Court, in consideration of the above case law cited on behalf of the petitioner, as well as the findings of the Labour Court, is in agreement with the submissions made on behalf of the petitioner. The Labour Court has completely erred in coming to the conclusion that the transfers were necessitated by exigency of service, and therefore, there was no victimisation at all. Such finding of the Labour Court is completely bereft of any material or understanding as to the true nature of transfers. On the other hand, the very fact that the workers have been transferred to a place 1200 Kms. away from the present place of work, by itself, is an indicative of the punitive nature of the transfers of the work-men. There cannot be a valid explanation by the Management as to how they can



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pick and choose few work-men to transfer them to a far away place. In fact, on behalf of the Management, nothing has been demonstrated as to the necessity or administrative requirement for transferring few work-men alone to a far away place. The Management owes a great deal of explanation in justifying such transfers, particularly, when a worker is transferred to a far away place of nearly 1200 Kms. from the present place of work.

15. The transfer involves several collateral difficulties to be faced by a work-man in the new place with a different environment and conditions. That is why the Honourable Supreme Court has held in the above decision that Section 9-A of the Industrial Disputes Act is attracted in such cases. In the absence of mandatory notice to the work-men, the impugned transfer cannot be countenanced both in law and on facts. Sweeping statement made by the Labour Court that there was no substance to hold that the transfer was an act of victimisation and punishment amounting to Unfair Labour Practice, was not borne out by any records. The Labour Court has completely surrendered its judicious discretion and preferred to presume that the transfer of the work-men concerned, did amount to victimisation.

16. The Labour Court, in fact, has taken certain extraneous facts and materials into consideration like finding that one Tamilian was working in Silvasa Unit and some Tamilians are also working and therefore, there was nothing wrong in transferring the work-men to that place. It appears that the Labour Court has considered the entire case in lopsided perspective in favour of the respondent/Management without objective analysis of the back-drop in which the work-men have been shunted out to a far away place.

17. On the other hand, this Court is of the view that the reasons that weighed with the Labour Court in coming to the conclusion against the work-men, were legally unacceptable and the findings rendered by the Labour Court are nothing short of perverse conclusion, which cannot be countenanced both in law and on facts.

18. For all the above reasons and also following the above ruling of the Honourable Supreme Court, which can be squarely applied to the factual matrix of the present case, the impugned Award of the Labour Court, Pondicherry, in I.D.(L).No.27 of 2014, dated 31.03.2016, is hereby set aside. The respondent-Management is directed to reinstate the seven work-men concerned (supra) forthwith, with full back-wages, continuity of service



and all other attendant benefits. The respondent-Management is also directed to pass appropriate orders in this regard within a period of four weeks from the date of receipt of a copy of this order, or on production of a web-copy of this order, whichever is earlier.

19. With the above observations and directions, the Writ Petition is allowed as prayed for. No costs.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

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To

The Presiding Officer,
Labour Court, Pondicherry.

Copy to

The Managing Director,
Power Soap and Abirami Soap Works,
R.S.No.93/1A, 1B, 2, Sembiapayalam Village,
Korkadu Post,
Puducherry-605 110.

+1cc to Mr.Balan Haridas, Advocate Sr.63932

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