



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	19.07.2021
DELIVERED ON	17.09.2021

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.Nos.4972 to 4974 of 2006

and

W.P.Nos.40148, 40149 & 40151 of 2006

T.Loganathan	... Petitioner in W.P.No.4972/2006
N.P.Lakshminarayanan	... Petitioner in W.P.No.4973/2006
P.Somu	... Petitioner in W.P.No.4974/2006
D.Rosaiah	... Petitioner in W.P.No.40148/2006
N.Gunasekar	... Petitioner in W.P.No.40149/2006
B.Anantharaman	... Petitioner in W.P.No.40151/2006

vs.

1. The Presiding Officer,
Central Government Industrial Tribunal cum
Labour Court, Chennai.
2. The Managing Director,
Singapore Airlines Limited,
108, Dr.Radhakrishnan Salai,
Mylapore,
Chennai 600 004. ... Respondents in all W.Ps.

Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of writ of Certiorarified Mandamus, calling for the records of the 1st Respondent in connection with the Award dated 20.11.2002 passed in I.D.Nos.680, 688, 682, 685, 686 and 683 of 2001 respectively, and quash the same and direct the 2nd Respondent/Management to reinstate the Petitioners and regularize and absorb him in the services of the 2nd Respondent/Management with all past benefits as was paid to the permanent workmen with all other consequential benefits.

For Petitioner in all W.Ps. :Mr.V.Prakash, Senior Counsel
for Mr.S.S.Vasudevan

For 2nd Respondent in all W.Ps.:Mr.Vijayan,
for M/s.King & Patridge



COMMON ORDER

Petitioners have come up with the above Writ Petitions challenging the Award dated 20.11.2002 passed in I.D.Nos.680, 682, 683, 685, 686 and 688 of 2001 and for a consequential direction to the 2nd Respondent/Management to reinstate and absorb them in the services of the 2nd Respondent with all past benefits, as were paid to the permanent workmen, with all other consequential benefits.

2. As the issue involved in all these cases is one and the same, these Writ Petitions are taken up for disposal by a common order.

3. The case of the Petitioners herein is that, they have worked continuously under the 2nd Respondent/Management for more than 480 days in a period of 24 calendar months and that, the 2nd Respondent has terminated them from service without complying with the provisions under Section 25-F of the Industrial Disputes Act, 1947. It is further stated by the Petitioners that, the 2nd Respondent/Management has not complied with the provisions under Section 9-A of the Industrial Disputes Act, 1947 and that, they were paid only a sum of Rs.1,050/- per month as wages, whereas, permanent employees in the last grade were paid a sum of Rs.14,000/- as monthly wages.

4. Mr.V.Prakash, learned Senior Counsel appearing for the Petitioners/workmen contended that the Labour Court failed to note that, the action of the 2nd Respondent/Management in terminating the Petitioners/workmen amounts to retrenchment within the meaning of Section 2(oo) of the Industrial Disputes Act, 1947 and that, the Award of the Labour Court is an exparte one. He went on to contend that, the Presiding Officer, viz. K.Karthikeyan, who passed the Award dated 20.11.2002 in I.D.Nos.680, 682, 683, 685, 686 and 688 of 2001, was completely perverted towards workmen and if statistics are called for, many of the Awards passed by him will have to be automatically interfered with by this Court.

5. On the other hand, learned counsel appearing for the 2nd Respondent/Management submitted that, a Ground Handling Agreement was entered into between M/s.Singapore Airlines and M/s.Air India in the year 1988, which was renewed from time to time. As per clause 4.2 of the Agreement, the handling Company shall provide service personnel for handling baggage in Singapore Airlines. As such, Singapore Airlines did not maintain records with regard to temporary/casual engagements, since such engagements arose occasionally.



6. The Labour Court observed that, when the matter was taken up for enquiry on 17.09.2002, the counsel for the 2nd Respondent/Management alone was present and that, neither the Petitioners herein nor the counsel representing them was present. As no evidence was let in on either side, the evidence was closed and the matter was posted for arguments. The Labour Court held that, the Petitioners/workmen have not at all pleaded in the Claim Statement that, prior to the termination, they have worked for 240 days continuously, instead, they have taken a plea that, they have worked for 480 days in a period of 24 calendar months. The Labour Court accepted the contention of the 2nd Respondent/Management by holding that, non-employment of the Petitioners/workmen is justified and it does not amount to retrenchment.

7. It is the case of the 2nd Respondent/Management that, there was a contract between Air India and Singapore Airlines, and that, no employee will be allowed to work in the danger zone. Before the Labour Court, though, Petitioners/workmen have pleaded about the factual position, they have not made any plea as regards production of various documents that are in the custody of the 2nd Respondent/Management, in order to establish their case. Documents have to be produced by the workmen or it should have been called for by means of an Application, which has not been done in the case on hand.

8. After reiterating the contentions, learned Senior Counsel appearing for the Petitioners drew the attention of this Court to Rule 10(B)(5) of the Industrial Disputes (Central) Rules, 1957, and submitted that, the Labour Court shall fix a date for recording evidence on receipt of the list of Documents, Statements, witnesses, etc., which shall be ordinarily done within 60 days from the date on which the dispute has been referred for adjudication.

9. Heard the learned counsel on either side and perused the material documents available on record.

10. While presenting the Claim Statement before the Tribunal/Labour Court, it is the mandatory duty on the part of the workman to file list of documents, witnesses, etc., which has not been done in any case. It is not necessary that, while filing a Claim Statement, a separate Application need to be filed to call for the records. At least, Petitioners should have pleaded in the Claim Statement that, documents which are in the custody of the Management need to be produced, and thereafter, could have filed an Application calling for documents.



11. Even assuming that, Rule 10(B)(5) of the Industrial Disputes (Central) Rules, 1957, has to be read in isolation without reference to the other provisions, as contended by the learned Senior Counsel appearing for the Petitioners/workmen, a reading of Rule 10(B)(5) of the Rules does not prohibit the Tribunal to pass an exparte Award on merits in the absence of the other party. For better appreciation, Rule 10(B)(5) and Rule 10(B)(9) of the Industrial Disputes (Central) Rules, 1957, are extracted hereunder:

"

(5) The Labour Court, Tribunal or National Tribunal, as the case may be, shall fix a date for evidence within one month from the date of receipt of the statements, documents, list of witnesses, etc. which shall be ordinarily within sixty days of the date on which the dispute was referred for adjudication.

.....

(9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal or National Tribunal, as the case may be, may proceed with the reference ex parte and decide the reference application in the absence of the defaulting party:

Provided that the Labour Court, Tribunal or National Tribunal, as the case may be, may on the application of either party filed before the submission of the award revoke the order that the case shall proceed ex parte, if it is satisfied that the absence of the party was on justifiable grounds."

12. In a catena of decisions, Court has held that, in the absence of one party, the Tribunal is empowered to pass an Award, as if the other party is present. The above proviso makes it very clear that, the parties are entitled to file an Application to recall the exparte Award.

13. In the case on hand, admittedly, Petitioners/Workmen have not filed any Application to recall the exparte Award. It is no doubt true that, both the parties have not let in evidence. But, there is no iota of evidence that, the Petitioners/workmen have called for documents from the Management in support of their case. If the dispute is remanded and the employee calls for records now, that might not be with the Management, and certainly for non-production of documents,



the employee will gain bounty.

14. It is contended by the 2nd Respondent/Management that, Petitioners/workmen have approached the Labour Court belatedly after a period of four years. The Apex Court in a number of cases has held that, the delay in raising a dispute shall not throw away meritorious cases and that, the period of delay can be taken into account while granting the relief and the case should not be rejected at the threshold. This issue need not be gone into detail, as on the other point, this Court is not inclined to grant the relief to the workmen, as the Award of the Labour Court is on merits.

15. In this case, the initial burden of calling for documents and marking of the same has not been discharged by tendering any evidence by the employee. Hence, this Court is of the view that, the Award of the Labour Court does not suffer from any infirmity and that, Petitioners/workmen are not entitled to any relief sought for by them. Thus, in the absence of documents produced or called for by the Petitioners/workmen, it has to be construed that, the Labour Court has passed an Award on merits.

In view of the foregoing, Writ Petitions are dismissed. No costs.

Sd/-

Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

(aeb)

To:
The Presiding Officer,
Central Government Industrial Tribunal cum
Labour Court, Chennai.

+6cc to Mr.K.Sudalai Kannu, Advocate, S.R.No.47327, 47328,
47329, 47330, 47331, 47332

+3cc to M/s.King & Partridge, Advocate, S.R.No.47797, 47798,
47799

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RSI (CO)
CB(06/10/2021)