



WP.Nos.20058 & 20059 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.08.2022

CORAM

THE HONOURABLE MR. JUSTICE R. SURESH KUMAR

WP.Nos.20058 & 20059 of 2019
W.M.P.Nos.19528, 19529, 24863, 24865,
24867 & 24869 of 2019

M/s.AMPA SKY WALK,
Represented by its
Assistant General Manaer [Admn.]
M.Alagappan,
EVR Periyar Salai,
Nelson Manickam Road,
Chennai – 600 029.

.. Petitioner in
both W.Ps.

Versus

K.S.Devaseelan

.. Respondent in
W.P.No.20058 of 2019

A.Gajapathy

.. Respondent in
W.P.No.20059 of 2019

Prayer in W.P.No.20058 of 2019:- Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari, to call for the records relating to the Award dated 28.03.2019, passed in I.D.No.205 of



WP.Nos.20058 & 20059 of 2019

2017 on the file of the III Additional Labour Court, Chennai and to quash the same.

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Prayer in W.P.No.20059 of 2019:- Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari, to call for the records relating to the Award dated 28.03.2019, passed in I.D.No.206 of 2017 on the file of the III Additional Labour Court, Chennai and to quash the same.

For Petitioner
in both W.Ps : Mr.S.Subbiah
Senior Counsel
for M/s.Elizabeth Ravi

For Respondent
in both W.Ps : Mrs.Rajini Ramadoss

COMMON ORDER

The prayer sought for in these writ petitions is similar to that of each other, the facts are almost similar and the petitioner is one and the same, hence with the consent of the learned counsel appearing for both sides, both the writ petitions are heard together and are disposed of by this common order.



WP.Nos.20058 & 20059 of 2019

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2.In W.P.No.20058 of 2019 is concerned, the respondent is a differently abled person and on that ground, he was considered and appointed by the petitioner Management as lift operator with effect from 01.12.2012 by giving an appointment order on 10.12.2012 and his services were confirmed on 02.06.2013. Initially he was paid the salary of Rs.7,510/- which was subsequently enhanced to Rs.9,257/- and house rent allowed of Rs.2,628/- also was paid.

3.After having worked for four years, all of a sudden in February 2016, i.e. on 19.02.2016 the Manager of the petitioner had directed the respondent to tender resignation, otherwise the termination benefits would not be paid to the respondent. Due to compulsion and coercion, according to the respondent, he had tendered resignation letter on 19.02.2016. Thereafter, the respondent raised an industrial dispute which was taken on file in I.D.No.205 of 2017 before the III Additional Labour Court, Chennai.

4.Insofar as the case of the petitioner in W.P.No.20059 of 2019 is



WP.Nos.20058 & 20059 of 2019

concerned, almost the facts are similar as the respondent herein was also differently abled. On that ground, he was considered and appointed as lift operator by the petitioner Management on 28.12.2012 by giving an appointment order dated 07.01.2013 and his service was confirmed by the petitioner Management on 29.06.2013 and the pay is same as that of the respondent in W.P.No.20058 of 2019. While so, on 19.02.2016, the Manager of the petitioner Management, one Dilip Kumar compelled the respondent herein to tender resignation with the same reason. Accordingly, he has tendered resignation and thereafter, he raised an industrial dispute before the III Additional Labour Court, Chennai in I.D.No.206 of 2017.

5. Therefore, both I.D.No.205 of 2017 as well as I.D.No.206 of 2017 having been filed before the Labour Court, ultimately they passed separate award on 28.03.2019 in both the cases, whereby the Labour Court passed an award setting aside the termination order made by the petitioner Management against the respective respondents dated 29.02.2016 and 20.02.2016 respectively and as a sequel, the Labour Court further awarded that the respondent workmen were entitled for reinstatement in the same job



WP.Nos.20058 & 20059 of 2019

under the petitioner Management with backwages, continuity of service and other attendant benefits excluding the period of employment under RSS Security Service from March 2016 to August 2016.

6. Aggrieved over the said two separate awards passed by the Labour Court as stated supra, the petitioner Management filed these two writ petitions with the respective prayers.

7. Heard the learned senior counsel appearing for the petitioner Management, who would submit that, these two respondents were appointed in the year 2012 as lift operator and had been working till 2016, i.e. for four years. Insofar as the petitioner Management is concerned, they had no occasion to compel them to go for resignation and it is their voluntary action they had tendered resignation due to their family circumstances as well as for getting further better options. After having tendered their resignation which were accepted by the petitioner Management the benefits payable to them having been paid which was received by them, they joined in another security service, namely, RSS Security Service from the next month, i.e.



WP.Nos.20058 & 20059 of 2019

from March 2016 itself and only for the said purpose they have resigned and left the job, now they cannot turn around and raise an industrial dispute as if the respondents have been compelled by the petitioner Management to resign the job.

8.In this regard, the finding given by the Labour Court as if that the Manager of the petitioner Management ought to have been examined on behalf of the Management to establish the case that the resignation which were obtained from the workmen were not on the basis of compulsion or coercion. The said reasoning given by the Labour Court according to the learned counsel for the petitioner Management is untenable because if at all any coercion or threat allegation had been made by the workmen, only they have to establish the same by adducing evidence either orally or documentary and therefore, the burden of proof since lies on the shoulders of the workmen it ought not to have stated by the Labour Court that the Management ought to have proved the said factor.

9.The learned senior counsel further submit that on perusal of the



WP.Nos.20058 & 20059 of 2019

resignation letter given by these two workmen, they have given the resignation on their own voluntary action, they also had given the reason that due to family circumstances as well as to go for some better prospects, they resigned the job and accordingly, they immediately joined in the RSS Security Service in the very next month, i.e. in March 2016, that would make clear that only for getting better job comparing with the job they had undertaken before the petitioner Management, they voluntarily came forward to resign the job and they left the job. Therefore, the said action on the part of the respondent workmen should have been taken into account as a voluntary action and hence, on that part the petitioner Management had no other reason to compel to go for resignation as they had been continuously working for four years. Therefore, the finding given in this regard by the Labour Court and conclusion reached thereon by setting aside the order of termination and directed the petitioner Management to reinstate the petitioner with back wages in the same job is without any basis or evidence adduced before the Labour Court. Hence, the learned senior counsel for the petitioner seeks indulgence of this Court to interfere with the award impugned passed by the Labour Court.



WP.Nos.20058 & 20059 of 2019

WEB COPY 10.Per contra, Mrs.Rajini Ramadoss, learned counsel for the respondent workmen in both the cases has submitted that both the respondent workmen were differently abled persons and therefore, they cannot be fit for any other job except the job like the lift operator. Having considered the physical nature of the respondents only, they had been considered and appointed by the petitioner Management in the year 2012 and the job is also regularized by separate communication issued in this regard by the petitioner Management. The salary also has been fixed including the house rent allowance which has been paid by the petitioner Management to the respondent workmen and in this regard, the respondents have no grievance.

11.Moreover, since the respondents workmen solely depending in the job they undertaken with the petitioner Management, absolutely there had been no reason for them to go for voluntary resignation. In this regard the Manager of the petitioner Management at same point of time compelled not only these two workmen but also other two, totally four workmen who are



WP.Nos.20058 & 20059 of 2019

similarly placed like the respondents to go for resignation only under the compulsion and coercion and not otherwise. There was also a threat from the Management that no benefits or salary are paid and they had no other option except to give such resignation letter. Thereafter they raised an industrial dispute. In the meanwhile, they found alternate job at RSS Security Service and the said RSS Security Service is none other than the Contractor with the petitioner Management with whom the RSS Security Service had entered into contract to supply manpower like the respondent workmen for various jobs. Therefore, the design conceived by the petitioner Management according to the learned counsel for the respondent was that, instead of keeping this workmen for years together as they have completed four years, there may be further obligation on the part of the petitioner Management to enhance the salary and extend more service benefits to them and in order to avoid the same, the Management decided to send these people out by compelling them to give resignation letter, however, the Contractor namely RSS Security Service supplied the very same workers for the same service to the petitioner Management, they had taken these workmen like the respondents and therefore, this action on the



WP.Nos.20058 & 20059 of 2019

part of the petitioner has clearly indicated that the petitioner had an intention to send them out only for the purpose of avoiding any future further enhancement of service benefits by making them as contract employees and they want to utilize the service of the respondents not as direct employees but only as contract employees.

12.The learned counsel further submitted that this aspect having been considered by the Labour Court after having appreciated, they have come to the conclusion that the resignation obtained from the workmen by the petitioner Management was sheer out of compulsion and coercion and this has been examined in detail by the Labour Court and ultimately, they came to the conclusion that such an order of termination by accepting the alleged resignation by these workmen in February 2016 is based on coercion and compulsion and therefore, after having setting aside the same, consequential order for re-instatement with backwages was given deducting the period where these workmen worked in RSS Security Service from March to August 2016. Hence, the learned counsel appearing for the respondent workmen wants this award impugned to be sustained.



WP.Nos.20058 & 20059 of 2019

WEB COPY 13.I have heard the submissions made by both sides and perused the materials placed before this Court.

14.The Labour Court in fact has gone into the fact with regard to the plea raised by the workmen before the Labour Court that they have been under coercion and compulsion to get such letter of resignation to the Manager one Dilip Kumar.

15.In this context, the discussion about the evidence and the conclusion arrived at therein by the Labour Court in the impugned award reads thus:

“8.From the evidence of the petitioner, it appears that the resignation has been obtained under coercion and compulsion. When the petitioner claims that he has been compelled to sign the resignation letter under coercion, then the respondents are expected to substantiate through oral and documentary evidence that the exhibit W5 has not been obtained under coercion or compulsion. On the other hand though the petitioner charged one Mr.Dilip Kumar,



WP.Nos.20058 & 20059 of 2019

Manager as the person who acted on behalf of the respondents to get his resignation, the respondents have not choosed to examine either the said Dilip Kumar or any responsible person on their side to deny the charges.

9.The respondents contend that, after his resignation the petitioner joined RSS Security Service and worked there till August 2016 and left that employment also. In this regard series of documents for 47 pages wre marked as Ex.M1 on the side of the respondents. The Ex.M1 contains the attendance particulars maintained by the RSS Security Service for the period from March to May 2016 and the contributions of EPF till August 2016. In the attendance paragraphs in Ex.M1, the name of the petitioner Devaseelan is found in Serial NO.59. Further the EPF details the contribution by RSS Security Service towards this petitioner is found for the period from March 2016 till August 2016. The petitioner during his cross examination has admitted his signature in the Ex.M1 attendance sheets. Further he has also conceded his subsequent employment with the RSS Security Service. The Ex.W7 is the dispute raised by thepetitioner u/s.2(A) of the ID Act before the Labour Conciliation Officer only on 21.10.2016, i.e. after a period of 6 months. All these facts would goes to show that, after his non employment with the respondents from



WP.Nos.20058 & 20059 of 2019

March 2016, the petitioner got employed in RSS Security Service prior to raising the dispute.

10. Now it is the contention of the respondents that only for the purpose of getting alternate job with the RSS Security Service, the petitioner had voluntarily resigned from the service of the respondents. Considered. Admittedly the petitioner was employed in RSS Security Service after his non employment. That doesn't lead to the inference that, he willfully resigned his earlier job to achieve the present employment. The petitioner is a physically challenged person and the nature of the employment under the respondents as lift operator would have been a more conducive employment to him. According to the petitioner he is having family consisting of his wife and son, who are depending on his only income and he is the sole bread winner of the family. Under such circumstances, it is hard to believe that, the petitioner had voluntarily left his service for another employment. From the Ex.M1 series of documents it can be seen that the petitioner got employed under RSS Security Service from March 2016. The fact that after his non employment during February 2016, the petitioner got employed in RSS on the very next month would itself go to show that, the petitioner was under the compulsion to search for another



employment for his livelihood. The above facts would further goes to show that there would not have been any necessity for the petitioner to resign his earlier comfortable job except under compulsion. Above all, from the evidence of the WW1 it can be seen that, after joining the RSS Security Service again the petitioner was deputed for the same post in the Sky Walk Mall, as a outsourced person.”

16.It is to be noted that the RSS Security Service is a contractor already entered into contract with the petitioner Management. The next month, i.e. in March 2016 these workers were taken by the RSS Security Service and immediately they had been pressed into service only with the petitioner Management. Therefore, it goes without saying that the job requirement at the petitioner Management in respect of these workers are still there. When that being so, there was no need for these workmen to go for resignation as they have already worked for four years on permanent basis.

17.The reason stated by the workmen that due to family circumstances is not attributable because there was no compulsion for these



WP.Nos.20058 & 20059 of 2019

workmen to go for resignation and to take a job only with the contractor as that is not the better prospects comparing with the job they undertaken directly as employees at the petitioner Management.

18. Moreover, when there was a specific allegation by the workmen against the Manager, one Dilip Kumar who only compelled on behalf of the Management with these workmen to give resignation letter, it was rightly pointed out by the Labour Court that the said Dilip Kumar, Manager of the petitioner Management had not been examined by the petitioner Management side to disprove the claim made by the workmen.

19. Moreover, the circumstances which has been stated supra makes it very clear that the petitioner Management in order to avoid the further enhanced benefits both financially and otherwise to these workmen wanted to take a different route that is why they were made to resign the job and immediately joined with the contractor, who is none other than the contractor of the petitioner Management and from whom, the very same workers had been taken back for the very same job.



WP.Nos.20058 & 20059 of 2019

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20. Therefore, the resultant situation is the same workers were pressed into service with the same job with the Management but now the salary would be paid only by the contractor and not by the Management. This is one of the modus operandi normally some Management would adopt and in this case, it has been adopted by the petitioner Management. This was rightly found out and pointed out by the Labour Court and ultimately, they came to the conclusion, of course rightly, to set aside the order of termination pursuant to the alleged voluntary resignation and accordingly directed to reinstate the workers with continuity of service, backwages and all other attendant benefits. Therefore, this Court is not inclined to interfere with the said decision taken by the Labour court in giving reason to arrive such a conclusion.

21. Insofar as the backwages is concerned, though the respondent workmen are entitled to get backwages as the termination pursuant to the alleged resignation found to be unlawful one or illegal one and it has been set aside by the Labour Court which is confirmed by this Court by this



WP.Nos.20058 & 20059 of 2019

order, since admittedly the respondents had not worked for the Management and therefore, insofar as the backwages are concerned, this Court feel that instead of full backwages to the respondent workmen they may be entitled for some lesser amount which this Court quantified at 50% of the backwages.

22.Except this modification, this Court do not want to interfere with the impugned award passed by the Labour Court. In the result, the following orders are made in this writ petition:

1. That the impugned award in both the writ petition are hereby sustained except with the modification that the backwages payable to the respondent workmen shall be only 50% and not full backwages.
2. Insofar as the said backwages of 50% is concerned which shall be calculated and paid to the respondent workmen after reinstating them in the job they already held, i.e. lift operator in the petitioner Management, the needful as indicated above shall be undertaken by the petitioner



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WP.Nos.20058 & 20059 of 2019

Management within a period of six weeks from the date of receipt of a copy of this order.

3. Insofar as the backwages from the date of award is concerned, the respondent employees are entitled to get full backwages.

23. With these directions, the writ petitions stand disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

08.08.2022

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WP.Nos.20058 & 20059 of 2019

R.SURESH KUMAR, J.,

cse

WP.Nos.20058 & 20059 of 2019

08.08.2022