



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.04.2022

(Reserved on 23.03.2022)

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.A(MD)Nos.372 and 373 of 2011

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Balasubramanian, S/o.S.Chelliah ... Appellant in both appeals

vs.

1.The Management of
Madura Coats Pvt. Ltd.,
83, 88 Beach Road, Tuticorin 628 001,
Rep. by its Industrial Relations Manager.

2.Managing Director,
Madurai Coats Pvt. Ltd.,
New Jail Road, Post Box No.35,
Madurai-625 001.

3.The Presiding Officer,
Labour Court,
Tirunelveli.

... Respondents in both appeals

Appeals filed under Clause 15 of Letters Patent Act, against the order dated 30.11.2010 in W.P(MD)Nos.10199 of 2009 and 1234 of 2010.

Prayer in WP(MD). 10199/ 2009 :

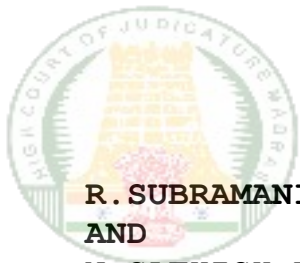
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari, calling for the records of the 1st respondent and quash its Award dated 30/03/2009 in I.D.No. 148 of 1996.

Prayer in WP(MD). 1234/ 2010 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a WRIT OF CERTIORARI calling for the records of the 3rd respondent in I.D.No. 148 of 1996, dated 30.03.2009, and quash the same insofar as it relates to denial of full back-wages is concerned, and consequently directing the respondent management to pay full back-wages with all other attendant benefits.

For Appellant : Mr.Ajmalkhan, Senior Counsel for
M/s.Ajmal Associates

For R1 & R2 : Mr.Anand Gopalan for
M/s.T.S.Gopalan & Co.



COMMON JUDGMENT

R.SUBRAMANIAN, J.
AND
N.SATHISH KUMAR, J.

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Challenge in these appeals is to a common order of the Writ Court passed in W.P(MD)Nos.10199 of 2009 and 1234 of 2010, dated 30.11.2010 in and by which, the Writ Court while allowing the writ petition filed by the respondent Management in W.P(MD)No.10199 of 2009, had dismissed the writ petition filed by the workman in W.P (MD)No.1234 of 2010.

2. The writ petitions arose under the following circumstances:-

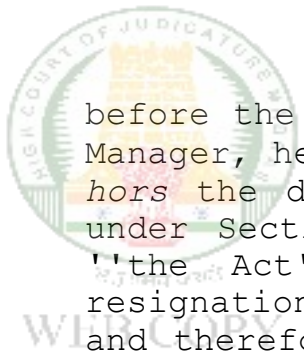
The appellant was appointed as a Textile Apprentice with the respondent Management on 30.12.1972. He joined duty on 10.01.1973. He was made permanent on 01.10.1974. Subsequently, he was transferred to Tuticorin Unit, where he worked for 4 years in the Spinning Department and in 1979, he was transferred to the newly commissioned Sewing Thread Department called, finishing department in Tuticorin Unit. He was allotted work in the thread Lubrication Solution preparation which prepares Alusil starch, P.V.A wax moulding, gum preparation in the Finishing Process Department, since he was a Chemistry graduate with a Diploma in textile technology. He was promoted as a Sub-Manager on 01.10.1982 and he was governed by the service rules meant for Sub-Managers. He had accepted the promotion and had signed the order issued to him on 30.09.1982. His services as Sub-Manager were confirmed on 01.04.1983. A Booklet setting out the terms and conditions of service in the post of Sub-Manager was issued to the appellant. It is the case of the appellant that he was forced to resign on 17.03.1995 under threat and coercion. On the same day, a cheque for Rs.93,210/- was issued to him as compensation. The appellant lodged a police complaint on 18.03.1995, followed it up with a request for reinstatement on 29.03.1995. On 07.04.1995, he had encashed the cheque. Thereafter, the appellant approached the Labour Court in the year 1996 seeking reinstatement on the ground that he is a workman and that his resignation was obtained by coercion and therefore it is invalid.

2.1. The appellant sought for the following prayers before the Labour Court:-

- (i) To set aside the relieving order passed by the respondent Management;
- (ii) to direct reinstatement with continuity of service;
- (iii) to disburse salary and other monetary benefits during the interim period; and
- (iv) for costs of the petitioner.

2.2. The sum and substance of the contention of the appellant

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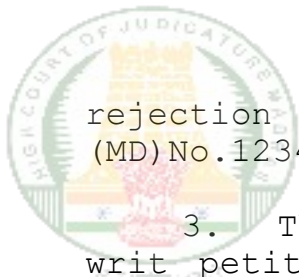


before the Labour Court was that though he was designated as a Sub-Manager, he was only doing the duties of a workman and therefore, *de hors* the designation, he would be a workman within the definition under Section 2(s) of the Industrial Disputes Act, 1947 (in short 'the Act'). He would further contend that the letter of resignation dated 17.03.1995 was obtained under threat and coercion and therefore, the relieving order passed based on the said letter of resignation, is not valid.

2.3. In response, the Management would contend that the appellant is not a workman within the meaning of Section 2(s) of the Act. Therefore, the Labour Court has no jurisdiction to decide on the issue of termination/resignation. The Management would further contend that the petitioner has received an ex-gratia compensation and it was a goodwill gesture on the part of the Management. It is the further contention of the Management that a scheme for reconstruction of the entire institution which was running under loss, was evolved and under the scheme, nearly 250 employees all over the India had resigned on the same day namely, 17.03.1995. It was also pointed out that nearly 24 employees working at Tuticorin, had submitted their resignations on the same day, after receiving the ex-gratia payment. Therefore, the claim of the appellant that the resignation dated 17.03.1995 was obtained from him by threat and coercion, is completely false. The Management would also contend that having encashed the cheque, the appellant cannot seek reinstatement that too with continuity of service.

2.4. Before the Labour Court, the appellant/workman examined himself as a witness and one Tr.A.Somasundaram was examined on the Management side as a witness. While the appellant/workman produced nearly 105 documents namely, W.O.1 to W.O.105, the Management produced 41 documents namely, M.O.1 to M.O.41. 3 documents were marked as Court documents.

2.5. The Labour Court upon a consideration of the evidence on record, came to the conclusion that the appellant was, in fact, discharging the duties of a workman though he was designated as a Sub-Manager. The Labour Court also concluded that the letter of resignation was extracted from the appellant by coercion and threat. On the said findings, the Labour Court concluded that the appellant is entitled to the relief sought for in the petition. However, since the appellant had attained the age of superannuation, by that time, the I.D was disposed of, the Labour Court refused the relief of reinstatement, it however awarded a sum of Rs.7,34,998/- as compensation, *ad hoc* Provident Fund Contribution and *ad hoc* interest. The Labour Court rejected the claim of the appellant for backwages on the ground that the appellant had by then enrolled as an Advocate and was having lucrative practice before the Labour Court itself. Aggrieved by the grant of compensation, the Management filed W.P(MD)No.10199 of 2009 and challenging the



rejection of his claim for backwages, the appellant had filed W.P (MD)No.1234 of 2010.

3. The above two writ petitions were taken up along with other writ petitions filed by similarly placed workmen before the Writ Court. The Writ Court referred to an earlier judgment in W.P(MD) Nos.11632 and 11633 of 2001 which were disposed of by the Writ Court on 24.03.2010, wherein, the status of the Sub-Managers employed with the respondent Management was decided by the Writ Court and concluded that in view of the said judgment, the appellant, who was working as a Sub-Manager, cannot be termed as a workman. The Writ Court, in fact, held that the issue whether the appellant who is designated as a Sub-Manager is a workman or not, was covered by its judgment in the above writ petitions dated 24.03.2010. The Writ Court also concluded that the claim of the appellant on the resignation, has also not been established by positive evidence. The Writ Court pointed out certain anomalies in the claim made by the appellant in the police complaint dated 18.03.1995, the letter seeking reinstatement dated 29.03.1995, to come to the conclusion that there was no coercion or threat and the resignation was voluntary in nature. On the aforesaid findings, the Writ Court allowed the writ petition filed by the Management and dismissed the writ petition filed by the appellant. Hence, these two writ appeals.

4. We have heard Mr.Ajmalkhan, learned Senior Counsel appearing for the appellant and Mr.Anand Gopalan learned counsel appearing for the respondent Management.

5. Mr.Ajmalkhan, learned Senior Counsel appearing for the appellant would submit that the question as to whether a person is a workman as defined under Section 2(s) of the Act or not, has to be decided based on the actual work that is done by him and not on the basis of his designation. Drawing our attention to the definition of 'workman' under Section 2(s) of the Act, the learned counsel would contend that the appellant has been doing technical work and therefore, he cannot be termed as a managerial staff. The learned counsel would invite our attention to the judgment of the Hon'ble Supreme Court in **Hussan Mithu Mhasvadkar vs. Bombay Iron & Steel Labour Board and another** reported in (2001) 7 SCC 394, in support of his above contention. The learned Senior Counsel would also invite our attention to the judgment of the Hon'ble Supreme Court in **S.K.Mani vs. M/s.Carona Sahu Company Limited and others** reported in (1994) 3 SCC 510, wherein also, the Hon'ble Supreme Court has held that the test to determine as to whether an employee is a workman or not, will be the nature of the duties and functions and not the designation. Though the learned counsel has referred to several other judgments of other High Courts, we do not see a need to burden this judgment with all the citations, since we agree with the contention of the learned counsel that the determining factor is the



nature of the duties performed and not the designation.

6. Contending contra, Mr.Anand Gopalan, learned counsel for the Management would submit that the appellant was promoted and appointed as a Sub-Manager on 01.10.1982 and he continued to serve as one till the date he submitted his resignation. He was also made permanent in the category of Sub-Manager on 01.04.1983. Mr.Anand Gopalan would further point out that the terms and conditions of service of Sub-Managers were totally different from that of the workmen and they come under the completely different category. They are paid ordinary dearness allowance as against the industrial dearness allowance that is paid to the workmen of a company. He would also point out that by the very nature and the duties that are performed by the Sub-Managers, it could be gathered that they will not come within the definition of 'workman' under Section 2(s) of the Act. The learned counsel would also place reliance on the judgment in W.P(MD)Nos.11632 and 11633 of 2001, wherein, this Court had held that Sub-Managers working under the very same management are not the workmen within the definition of the term under Section 2(s) of the Act.

7. We have given our anxious consideration to the contentions of the learned counsel on either side.

8. As we had already pointed out, the core issue is as to whether the appellant could be termed as a workman or he would be an employee in the managerial cadre. The Writ Court had gone by its earlier decision, wherein, similarly placed employees under the very same Management were held to be managerial staff and not workmen. Mr.Ajmalkhan would vehemently contend that the Writ Court erred in following the judgment in W.P.Nos.11632 and 11633 of 2001. He would point out that the evidence on record in the case on hand is different and therefore, the Writ Court ought not to have blindly applied the judgment in the said writ petitions to the appellant. The basic contention of the appellant/workman is that being a technically qualified person and performing technical duties, he cannot be called a managerial staff in the true sense of the term. The fact remains that the appellant/workman was promoted as a Sub-Manager in the year 1982 and a separate set of service conditions were made applicable to him. He has been working in the said service conditions ever since his promotion till he submitted his resignation on 17.03.1995, for almost a period of 13 years without any demur.

9. The appellant in his evidence has admitted that he had accepted the conditions imposed by the Management in M.O.1 namely, the order promoting him as a Sub-Manager and has joined as a Sub-Manager. The very order shows that the appellant is made eligible to receive high cost allowance, house rent allowance and conveyance allowance as per the Rules. To a specific question as to whether he has been working as a member of the Employees' Provident Fund, the

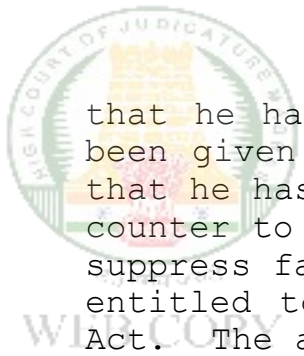


appellant has answered that though he requested the Management to make him a member of the Employees' Provident Fund, he was made a member of the Sub-Managers and Supervisors Provident Fund scheme. Though he claims to be a member of the Trade Union, he has not filed any document in support of such membership. In the course of cross examination, the appellant has admitted that he had not received the industrial dearness allowance that was paid to the workmen. The appellant has chosen to deny his signature in various documents that were produced by the Management to show that he was actually working in a managerial capacity and was supervising the work of the other workman in the spindle section. He had also denied his signature in various memos which are maintained by the Sub-Managers.

10. Though we are sitting in a writ appeal, we had gone through the evidence of the appellant before the Labour Court, since the learned single Judge had decided the question of the status of the appellant as a Sub-Manager on the basis of an earlier decision and has not adverted to the evidence on record. We deemed it fit to carry out the exercise, since the learned counsel for the appellant would vehemently contend that the Writ Court should have gone into the evidence and it ought not to have disposed of the question on the basis that it is covered by a decision in another case. We have an option to have remitted the matter to the Writ Court, but since the appellant is already more than 70 years old, we do not propose to do that, as the same would result in further delay in disposal of the case.

11. One document which in our opinion clinches the issue is M.O.22-Appraisal report for the year 1991 which has been accepted by the appellant, would show the performance of the appellant. This has been signed by the immediate superior of the appellant one Mr.M.Krishnaswamy. The said report shows that the appellant had excelled in his work. A perusal of the report shows that the appellant had even represented the Management in negotiations with workmen regarding settlements on certain occasions. It is stated that he took part in the negotiations for the workers' settlement and implemented the same successfully. It is also stated that he has shown a very good leadership qualities and his quality team has always stood first in the management presentation. He has done a good job in organising quality awareness programmes. He has well developed his subordinates by giving a proper training in their fields. Relying heavily on the above comments, Mr.Anand Gopalan, would submit that the appellant was only doing managerial work and he was not doing any technical work. His duties were managerial in nature and therefore, he cannot be said to be a workman.

12. A reading of the entire evidence of the appellant does not inspire the confidence of this Court. While he would accept that he had applied for payment of the withdrawal of the provident fund amount on the ground that his father is unwell, he has chosen to deny his signature in the application. He would, however, admit



that he has received the amount. He had said that the amount has been given to him as a loan from his provident fund. He would add that he has accepted it with objections. These statements which run counter to the hard facts would show that the appellant is trying to suppress facts and project that he is a workman and therefore, he is entitled to invoke the jurisdiction of the Labour Court under the Act. The appellant has also accepted that he has been practicing as a Lawyer from 2001. The appellant has admitted that he has been described as a Sub-Manager in various communications addressed by the Management to him. The Writ Court though had not adverted to the evidence in the case on hand, has found that the category of Sub-Managers in the respondent Management is only in managerial cadre and they cannot be termed as workmen within the meaning of Section 2(s) of the Act. We are not able to fault the Writ Court for having applied the judgment in which it has decided that some persons working in the same category under the same Management are managerial employees and not workmen under Section 2(s) of the Act, to the appellant also. We, therefore, do not find any reason to interfere with the said conclusion of the Writ Court that the appellant is not a workman, but he is a managerial cadre employee.

13. The next question that would crop up for consideration is whether the resignation dated 17.03.1995 was obtained by threat or coercion. We can, at the outset, say that the case of the appellant on the resignation is not uniform. Though he had complained about the resignation being obtained on 18.03.1995 by addressing a police complaint, in the said police complaint, he had only said that manufacturing manager Mr.Deivanayagam had told him that since the Mill is working under the financial constraints, they will have to resign and if they do not resign, they will face severe consequences. The appellant has chosen to right to the Management including the Chairman and Managing Director of the respondent on 29.03.1995, wherein also, he had not stated that the resignation was obtained by coercion. He has only stated that it was obtained by undue influence with false promises. He has also said that resignation has not been signed voluntarily and wholeheartedly. There is no reference to any other person being employed by the Management in coercing the appellant to sign the resignation letter. However, before the Labour Court, the appellant has chosen to state that the Management employed bouncers or outsiders to threaten the appellant and extract a resignation letter from him. As rightly pointed out by the Writ Court, the Labour Court referred to various judgments rendered under Article 311 of the Constitution of India, to come to the conclusion that the resignation was obtained by coercion or threat. The Writ Court has pointed out there is absolutely no evidence to establish the fact that the resignations were obtained by force or by coercion. The Writ Court has analysed the evidence on record regarding coercion aspect and has come to the conclusion that such evidence is not enough to conclude that the resignation was obtained by threat or coercion.



14. Sitting in an appeal, we do not think that we will be justified in re-appreciating the evidence that has already been considered by the Writ Court. We do not find any compelling reason to take a different view from that of the Writ Court when it came to the conclusion that the appellant has not established that the resignation is due to threat and coercion. As rightly pointed out by the Writ Court, the Labour Court had referred to the decisions of the Hon'ble Supreme Court relating to Government employees rendered under the terms of Article 311 of the Constitution of India, to come to the conclusion that the resignation was obtained by threat or coercion. It is incumbent on the workman to establish that the resignation was obtained by coercion. Except the evidence of the workman, there is no other evidence available on record to show that the resignation was obtained by coercion.

15. Yet another factor which was taken into account by the Writ Court is that almost 250 employees of the respondent Management chose to resign on and around 17.03.1995. At least, 24 employees at Tuticorin Unit had resigned on the said date. It would be really far fetching to buy the argument that the Management coerced 24 employees to submit the resignation on a single day. We are, therefore, unable to agree with the contention of the learned Senior Counsel for the appellant that the resignation dated 17.03.1995 was obtained by coercion or undue influence.

16. In the light of the above discussion, we do not find any ground to interfere with the common order of the Writ Court. The Writ Appeals fail and they are accordingly dismissed. However, in the circumstances, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS-III)

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Sub Assistant Registrar(CS)

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To
The Presiding Officer,
Labour Court,Tirunelveli.

+2 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-18170 & 18169[F] dated 12/04/2022)

COMMON JUDGMENT MADE IN
W.A(MD)Nos.372 and 373 of 2011
DATED : 12.04.2022

nsn(CO)

<https://hcservicescourts.gov.in/hcservices> EP (26-04-2022) 8P 4C