



W.P(MD)No.17449 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Orders reserved on
30.08.2022

Orders pronounced on
02.09.2022

CORAM

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

W.P(MD)No.17449 of 2013

Shaji M.Simon

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Madurai.

2.The Management of Hill Country Holiday
Resorts India Limited,
No.22, Jeganathan Road,
Nungambakkam,
Chennai - 600 034.

... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the award passed by the first respondent in I.D.No.9 of 2009, dated 14.05.2012, quash the same and consequently, direct the second respondent to reinstate the petitioner with continuity of service, backwages and other attendant benefits.



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For Petitioner : Mr.A.Rahul

For R - 2 : Mr.S.Manohar

ORDER

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the award passed by the first respondent in I.D.No.9 of 2009, dated 14.05.2012 and consequently, direct the second respondent to reinstate the petitioner with continuity of service, backwages and other attendant benefits.

2. Learned counsel appearing for the petitioner submitted that the petitioner was appointed as Sales trainee on 13.09.1995 in the Madurai branch of the second respondent company. His services were confirmed with effect from 01.01.1996. He was promoted as Territory Manager with effect from 29.04.1999 and was drawing basic pay of Rs.2800 and other allowances. The second respondent omitted to pay salary to the petitioner and other employees of Madurai branch from October 2002. It issued cheques for arrears of salary, but also requested not to present the cheque for collection. The second respondent assured that the salary will be paid soon. Believing that assurance, the petitioner and other employees



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continued to work in the Madurai branch of the second respondent.

In December 2002 the petitioner was called to Chennai office and asked to submit a resignation letter. However that was not accepted by the second respondent. The petitioner was not relieved from duty. Suddenly second respondent terminated the petitioner's service on 01.11.2003 by oral termination and closed down the Madurai branch of the company. The closure of business was without compliance of Section 25-FFF of the Industrial Disputes Act, 1947. The petitioner raised an industrial dispute before the Labour Officer, Madurai. However it ended in failure resulting in filing I.D.No.9 of 2009. The Labour Court, Madurai, without considering the case of the petitioner, wrongly dismissed the petitioner's claim holding that the petitioner submitted his voluntary resignation, there is no question of illegal termination and therefore the petitioner is not entitled for any relief.

3. Learned counsel appearing for the petitioner further submitted that the petitioner's legal notice was not replied by the second respondent. When the petitioner requested in the alleged resignation letter that he would leave with effect from 25.12.2002, the acceptance letter alleged to have been issued by the second respondent is dated 28.12.2002. It is obvious of the fact that this



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letter is created for the purpose of this case. Therefore the award passed by the learned Judge, Labour Court, Madurai, without considering the case in proper perspective is liable to be set aside and the petitioner shall be ordered to be reinstated with continuity of service and backwages and other benefits.

4. Per contra, learned counsel appearing for the second respondent submitted that the second respondent's Madurai branch had not fared well in the business and therefore it was decided to close the business. Sensing that the second respondent's business at Madurai branch would be closed, the petitioner had voluntarily submitted his resignation and his resignation was accepted and he was relieved on 25.12.2002. The submission of the learned counsel for the petitioner that the petitioner was forced to give resignation under coercion and that resignation was not acted upon and also the fact that the petitioner continued to work under the second respondent till November 2003 are not true and correct. There is absolutely no evidence with regard to oral termination. The claim statement is bereft of any material particulars. Though the Conciliation failed and failure report was filed on 13.05.2005, industrial dispute was raised only on 09.01.2009. There is a delay and laches on the part of the petitioner in filing the claim petition



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before the Labour Court, Madurai. It is also seen from the evidence of the petitioner that he was working gainfully and in fact he was having business transactions with the second respondent. This petition is filed only with a view to get unjust enrichment, if possible. Therefore learned counsel for the second respondent prayed for confirming the award of the Labour Court and for dismissal of this Writ Petition.

5. Considered the rival submissions and perused with the records.

6. The fact that the petitioner was appointed as Sales trainee on 13.09.1995, confirmed on 01.01.1996, promoted as Territory Manager with effect from 29.04.1999 are all admitted by both the parties. The petitioner's case is that he was forced to submit his resignation letter under coercion. His resignation letter is produced as Ex.M1. It is seen from this resignation letter, the petitioner stated that there was a drastic reduction in sales and an overall crisis in the industry. It affected his growth in the company and he decided to resign from the company and he requested that his resignation be accepted with effect from 25.12.2002. The submission of this resignation letter is not denied by the petitioner but his contention



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is that he was asked to go to head office at Chennai and this resignation was obtained by force. This allegation is mentioned only in the proof affidavit of the petitioner filed before the Labour Court. In the claim statement filed before the Labour Court, there is no hint of the allegation made that the petitioner was forced to give resignation. There is no specific pleading in the claim statement that the petitioner was forced to give the resignation letter.

7. This resignation letter was given on 12.12.2002. The legal notice was given by him only on 17.11.2003. Only in the legal notice it is alleged that he was asked to come to Chennai and resignation was obtained from him under force and threat. If really, the resignation was obtained from him under force and threat, it is expected that he immediately raised this issue through criminal or other proceedings. The fact that the notice was issued one year and nine month after the date of submission of resignation along with failure to mention about the resignation under coercion in the claim statement show that the claim made by the petitioner that he was forced to give resignation under coercion and threat is not true, but an invention for the purpose of this case.



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8. As already mentioned, the conciliatory effort ended in failure and failure report was filed on 13.05.2005. However the Industrial dispute was raised through I.D.No.9 of 2009 only in the year 2009. There is a huge delay and laches on the part of the petitioner in furthering his cause.

9. In the absence of any material to show that the petitioner was forced to give a resignation letter under the coercion and threat, it has to be considered and concluded that his resignation was voluntary. Thus, this Court finds that the finding of the learned Labour Judge, that the petitioner's resignation was voluntary, there is no question of illegal termination and therefore the petitioner is not entitled for any relief are correct and confirmed.

10. In this view of the matter, this Court confirms the order passed by the first respondent in I.D.No.9 of 2009, dated 14.05.2012. Accordingly, this Writ Petition is dismissed. There shall be no order as to costs.

02.09.2022

Internet :Yes
Index :Yes / No
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Note:-

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

- 1.The Presiding Officer,
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Madurai.
- 2.The Management of Hill Country Holiday
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G.CHANDRASEKHARAN, J.

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