



W.P.(MD).No.15556 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.12.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.15556 of 2014

and

M.P.(MD).No.2 of 2014

R.Jabin

... Petitioner

Vs.

1.The Management,
Suzlon Gujarat Wind Park Limited,
104, First Floor, Delta Wing,
Raheja Towers,
No.177, Anna Salai,
Chennai – 600 002.

2.Sundaresan (Engineer),
Suzlon Gujarat Wind Part Limited,
Project Division,
116-9, Madurai Road,
Kayathar, Kovilpatti Taluk,
Tirunelveli District.

3.The Presiding Officer,
Labour Court,
Tirunelveli.

... Respondents



W.P.(MD).No.15556 of 2014

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the third respondent herein in I.D.No.59/2013 dated 30.06.2014 and quash the same which is conformed in the termination order dated 05.03.2013 passed by the first respondent Management and consequently direct the respondents to pay the back wages, continuity in service and confer all the attendant and consequently benefits with due regards to the petitioner seniority.

For Petitioner : Mr.S.Balaji
For R-1 : Mr.Aayiram K.Selvakumar,
For Mr.M.Ravi
For R-2 : No Appearance
For R-3 : Labour Court

ORDER

This Writ Petition is filed to quash the order dated 30.06.2014 which has confirmed the termination order dated 05.03.2013 passed by the first respondent Management and consequently direct the respondents to pay the back wages, continuity in service and confer all the attendant and consequently benefits with due regards to the petitioner's seniority.



W.P.(MD).No.15556 of 2014

2. The brief facts as stated in the affidavit are that the petitioner joined the service as Senior Engineer in the year 2005 under the respondent Management. On 10.11.2012, the petitioner was not allowed to enter the site office at Devikulam by the security personnel. On 09.11.2012, Mr.Sivanandam and Mr.Ganesh, HR Department insisted the petitioner that he should submit resignation letter by November 2012 and directed the petitioner not to come to the Office from 10.11.2012. Since the petitioner was not permitted to enter the Office, he sent a letter dated 20.11.2012 regarding the action of the persons who had prevented the petitioner from entering the Office. The petitioner also sent a detailed letter through email on 20.12.2012 to the CMD, CEO and to the Director. On 31.03.2013, the petitioner received a letter dated 29.01.2013 from the second respondent stating that the petitioner was absconding from service and hence show cause notice was issued for terminating the petitioner's service. Immediately, on 04.02.2013, the petitioner sent a reply to the second respondent denying the false and fictitious story. The petitioner also denied receiving communication dated 23.12.2012 and 05.01.2013 regarding allegations of absconding. The petitioner requested to withdraw the letter dated 29.01.2013. But without conducting any departmental enquiry and without framing any charges, the petitioner was terminated from service on 05.03.2013, as if the petitioner has failed to report duty on or before 04.03.2013.



W.P.(MD).No.15556 of 2014

WEB COPY

3. The contention of the petitioner is that he did not receive letters dated 23.12.2012 and 05.01.2013 which was issued calling for explanation for not joining duty. The respondents ought to have conducted departmental enquiry by framing charges and granting opportunities to the petitioner. Hence, the termination *per se* illegal. Hence, the petitioner has raised industrial dispute before the Labour Court. The Labour Court held that the petitioner is not a workman under the Industrial Dispute Act, since he is a Senior Engineer. The Labour Court has also considered the case on merits and held that the petitioner has not reported to duty inspite of the letter dated 29.01.2013 which was received by the petitioner. Aggrieved over the said order, the present Writ Petition is filed.

4. The learned counsel appearing for the second respondent vehemently opposed the contention of the petitioner by stating that the petitioner has received a letter dated 29.01.2013. Having received the said letter, the petitioner instead of writing letters, opposing the other colleagues in HR Department ought to have reported for duty. The petitioner is deliberately silent regarding the letter dated 29.01.2013 that was received by the petitioner. The petitioner if he is really interest in the service, he would have joined the



W.P.(MD).No.15556 of 2014

service immediately after receiving the said letter. Infact for conducting departmental enquiry, earlier two letters were sent to the petitioner, but he did not respond to the same. If the petitioner has received the letter dated 29.01.2013, it ought to have been deemed to have received the earlier letters also. The petitioner has deliberately concealed the fact that he had received earlier letters. Therefore, he submitted his strong objection to the contentions submitted by the petitioner.

5. Heard Mr.S.Balaji, learned counsel for the petitioner and Mr.Aayiram K.Selvakumar, learned counsel, for Mr.M.Ravi appearing for the first respondent and perused the records.

6. It is seen from the records that especially the letter dated 29.01.2013 and the reply of the petitioner dated 04.02.2013, the petitioner has consistently denied that he did not receive the letters dated 23.12.2012 and 05.01.2013. However, the petitioner has received the letter dated 29.01.2013 on 31.03.2013. After receipt of the letter, the petitioner had replied to the said letter dated 04.02.2013, wherein, he has stated that the said Mr.Sivanandam and Mr.Ganesh of HR Department denied entry to the office and insisted to submit his



W.P.(MD).No.15556 of 2014

resignation. The petitioner had sent email to CMD, CEO and the Director complaining about the said Mr.Sivanandam and Mr.Ganesh. The petitioner having received the letter dated 29.01.2013 along with the letter dated 04.02.2013 ought to have reported to duty, if not, atleast ought to have reported to the duty to any higher authorities other than the said Mr.Sivanandam and Mr.Ganesh. The petitioner failed to report to duty, is an indication, he is not interested in further continuing in the service. Now, at this stage, more than 10 years was lapsed. Therefore, the petitioner cannot be reinstated into service. The learned counsel appearing for the petitioner submitted that the petitioner has joined the service in the year 01.10.2005 and has put in 8 years service. From the records, it is not clear whether the petitioner has received the terminal benefits. The respondents have also not categorically stated whether any terminal benefits was paid to the petitioner. Hence, this Court is passing the following orders:

- a) The first and second respondents shall pay terminal benefits that is applicable to the petitioner by taking into service from 01.10.2005 to 05.03.2013.*
- b) Instead of treating the petitioner as terminated from service, the respondents shall treat the service as retired under voluntary retirement scheme.*



W.P.(MD).No.15556 of 2014

c) The said exercise shall be completed within a period of eight (8) weeks from the date of receipt of a copy of this order.

7. With the above direction, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

01.12.2022

Index : Yes / No
Internet : Yes/ No
Nsr

To

1.The Management,
Suzlon Gujarat Wind Park Limited,
104, First Floor, Delta Wing,
Raheja Towers,
No.177, Anna Salai,
Chennai – 600 002.

2.Sundaresan (Engineer),
Suzlon Gujarat Wind Part Limited,
Project Division,
116-9, Madurai Road,
Kayathar, Kovilpatti Taluk,
Tirunelveli District.

3.The Presiding Officer,
Labour Court,
Tirunelveli.



WEB COPY



W.P.(MD).No.15556 of 2014

S.SRIMATHY, J.

Nsr

W.P.(MD).No.15556 of 2014

01.12.2022