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W.A.No.238 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.A.No.238 of 2022 and

C.M.P.No.1708 of 2022

The Managing Director,
Power Soap and Abirami Soap Works,
R.S.No.93/1A, 1B, 2 Sembiapalayam Village,
Korkadu Post,
Puducherry- 605 110.

.. Appellant

-VS-

Puthiya Jananayaka Thozhilalar Munani
Rep. by its Secretary,
Regn. No.1656/RTU/2010,
No.17, 11th Cross Street,
Kurinji Nagar, Laspeth,
Puducherry-605 008.

.. Respondent

Prayer: Writ Appeal filed under Clause 15 of Letter Patent Act, to set aside the order dated 06.12.2021 passed in W.P.No.1561 of 2020.



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W.A.No.1561 of 2020

For Appellant : Mr.V.Karthick
Senior Counsel
Assisted by M/s.Fox Mandal and Associates
For Respondent : Mr.Balan Haridas

J U D G M E N T

This Writ Appeal has been preferred by the Management challenging the order of the learned Single Judge in W.P.No.1561 of 2020 dated 06.12.2021, in setting aside the award of the Labour Court dated 31.03.2016 in I.D.(L)No.27 of 2014.

2. The sum and substance of the issue on hand is that the employees concerned in the Appeal have been transferred to Gummidipoondi and Silvasa and only one person accepted the transfer order and others refused to receive the same.

3. Mr.V.Karthick, learned Senior Counsel for the Appellant/Management submitted that in the light of Clause 38 (a) of the Standing Order the Appellant/Management has power and authority to transfer any workmen according to exigencies of work and therefore there is no need to interfere with the order of transfer, but the learned Single Judge has erroneously set aside the order of transfer with full



W.A.No.1200 of 2011

back-wages, continuity of service and all other attendant benefits, challenging which the present Writ Appeal came to be filed.

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4. Mr.Balan Haridas,the learned Counsel appearing for the Respondent-Union submitted that the persons who have been transferred are the members of the Respondent Union. The said persons initially belonged to some other Union and thereafter joined the Respondent Union, which is a rival Union to the Management, for which the Petitioner/Management deliberately transferred the Workmen to Gummidipoondi and Silvasa which is an act of victimization. He further submitted that some of the Workmen have been transferred to Silvassa which is about 1200 Kms away from Puducherry and those workmen are only Class IV employees who have no knowledge of Hindi and hence it is impossible for them to survive in the said place and further all the employees who have been transferred are married and are having school going children. He further submitted that Management has not established the exigency in transferring the Workmen to different places and under the guise of transfer they have been divested of the duties and are without employment and the learned Single Judge by taking note of the difficulties of the workmen has rightly interfered with the order of transfer. He further submitted that all the employees of the Respondent-Union who have been transferred are willing to join at Puducherry.



W.A.No.1200 of 2021

5. The learned Single Judge while interfering with the order of the award relied upon the Judgment of Hon'ble Supreme Court in the case of ***Caparo Engineering India Ltd. Vs. Ummed Singh Lodhi*** reported in ***2021 SCC online SC 973***

6. We have gone through the aforesaid Judgment of Apex Court and in that case under the guise of transfer, the employees status were sought to be altered to that of "supervisor" by taking them away from the category of workman, so that they would be deprived of the beneficial provisions available under the I.D.Act, more so, when there was no provision for transfer of the said employees.

7. But, in the present case on hand, there is provision for transfer in the Standing Order more so in Clause No. 38 (a) and therefore the question violation of Section 9A of the I.D.Act,1947 does not arise. It is seen that there is a delay of four years in filing the Writ Petition and that the Workmen have not reported for work even after award have gone against them.

8. The matter is argued at length. After hearing the arguments at length and after due deliberations and negotiation and as agreed by learned counsel appearing on either side, the following order is passed :

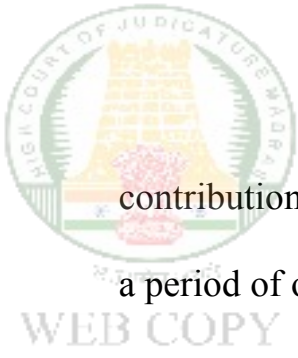


(i) The Workmen are directed to report for work on or before 15.02.2023 at Karaikkal.

(ii) A sum of Rs.4,00,000/- (Rupees Four Lakhs only) in full quit towards backwages shall be paid by the Appellant to each Workman of the Respondent-Union who have been transferred, after deducting their share towards Provident Fund contribution so that the employer can also contribute its share to enable the workmen to get pensionary benefits. Such payment shall be made within a period of one week from the date of receipt of a copy of this order. The amount of Rs.4,00,000/- (Rupees four lakhs) will be spreadover from the date of transfer till the actual date of resumption of work for the purpose of deduction from Income Tax Act,1961 in the light of Judgment of Hon'ble Supreme Court in the case of ***Sundaram Motors (P) Ltd. Vs.Ameerjan and Another*** reported in ***1985 2LLJ page 22***

(iii) The Employees Provident Fund Organisation shall not levy any interest citing belated payment, as the matter was *sub judice* and the date of payment of salary alone to be taken as payment date for payment of EPF contribution.

(iv) The employee's contribution so deducted together with the Employer's



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contribution shall be remitted with the Employees Provident Fund Organisation within a period of one month from the date of receipt of a copy of this order.

(v) The Appellant shall continue to pay current wages to the Workmen which has been paid to the other co-workers.

(vi) The entire period of service from the date of relieving till 31.01.2023 shall be treated as continuous service for the purpose of terminal benefits.

(vii) As agreed by the Employer, free accommodation for a period of one month at Karikkal shall be given to the workmen, within which time they have to find alternate accommodation.

(viii) The Travel allowance shall be provided by the Appellant to the Workmen once in 15 days in order to enable them to visit their families on 2nd and 4th Saturdays of every month, on production of photocopy of the travel tickets. It is always open to the employer to ascertain the genuineness of the transfer.

The order of the learned Single Judge stands modified to the extent indicated



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above and the Writ Appeal is disposed of. No costs. Consequently, connected

Miscellaneous Petition is closed.

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[S.V.N., J.] [J.S.N.P., J]
30.01.2023

Index: Yes / No
Internet: Yes / No
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Note: Issue order copy on 08.02.2023



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S.VAIDYANATHAN,J.,
and
J.SATHYA NARAYANA PRASAD.,J
arr

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