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W.A.No.1266/2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 02-11-2023

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

**W.A.No.1266 of 2023**

M/s.Ampa Sky Walk ... Appellant

-vs-

K.S.Devaseelan ... Respondent

Appeal under Clause 15 of the Letters Patent against the order, dated 08.08.2022, passed in W.P.No.20058 of 2019.

For Appellant : Mrs.Elizabeth Ravi

For Respondent : Mrs.S.Rajeni Ramadass,  
for M/s.Rajeni Associates.

**JUDGMENT**

(By *S.Vaidyanathan,J.*)

Appellant - Management has preferred this appeal challenging the order of the learned single Judge, dated 08.08.2022, passed in W.P.No.20058 of 2019, in modifying the award of the Labour Court into one of restricting back-wages to 50% and confirming other portion of the award, granting full wages from the date of the award.



2. For convenience, the parties are referred to as "the workman" and "the management".

3. The workman, who is a physically challenged person, joined the services as a Lift Operator under the management on 10.12.2012 and was confirmed in service on 02.06.2013. According to him, he was forced to resign from the job and sign on a dotted line and the management took a plea that the workman has resigned from the job on 29.02.2016 and received full and final settlement. It is also stated by the workman that the management has taken a plea that the workman was gainfully employed in RSS Security service from March,2016, till August,2016, and after leaving the service, has raised an industrial dispute seeking for employment on the ground that he has been divested of the duties; there was no voluntary resignation and that he was asked to work in a dispensing unit in RSS Security service after obtaining his signature in a letter dictated by the management and, as he was not satisfied with the employment at RSS Security service, demanded employment under the management.

4. According to the management, the workman has resigned from the job on 29.02.2016; when he has left the job voluntarily, no industrial dispute can be raised; that apart, the document Ex.W-5, namely, Resignation Letter, would reveal that the workman has resigned due to family circumstances; after going out from the service voluntarily by submitting resignation, the workman has taken a "U" turn to contend that he has been forced to sign a letter and resign from the service; but, however, in the



industrial dispute raised, questioning non-employment, the workman contended that there was a forced resignation and he tendered evidence, which is extracted below :

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"நான் எப்போது ராஜினாமா கடிதம் கொடுத்தேன் என்றால் 20.02.2016ல் கொடுத்தேன். நான் பணியாற்றிய காலத்தில் எனக்கும் நிர்வாகத்திற்கும் இடையே எந்த சலசலப்பும் எந்த பிரச்சினையும் கிடையாது. நிர்வாகத்திலிருந்து ராஜினாமா கடிதம் கொடுக்கும்படி கேட்டார்கள். நான் எதற்கு என்று கேட்டபோது எழுதிக் கொடுத்துவிட்டு வேலையை விட்டு போகும்படி மேல் இடத்து உத்தரவு என்று என்னிடம் சொன்னார்கள். எனக்கு பணிநியமன உத்தரவு திலிப்குமார் கொடுத்தாரா அவ்வது மனிதவள மேலாளர் கொடுத்தாரா என்றால் மனிதவள மேலாளர் தான் கொடுத்தார். திலிப்குமாரிடம் நான் பேசவேண்டிய அவசியம் இல்லை. பின்னர் ஏன் திலிப்குமார் கேட்டதற்காக நான் ராஜினாமா கடிதம் கொடுத்தேன் என்றால் அவர்தான் என்னிடம் சுட்டாயப்படுத்தி கேட்டார். அந்த விவரத்தை நான் மனிதவள மேலாளரிடம் தெரிவித்தேனா என்றால் அந்த சமயத்தில் ஏற்கெனவே இருந்த மனிதவள மேலாளர் மாறிவிட்டார். அப்போதைய மேலாளரிடம் கேட்டேன். அவர் தனக்கும் இதற்கும் எந்த சம்பந்தமும் இல்லை என்று கூறி விட்டார். என்னை மிரட்டி கடிதம் வாங்கியதாக நான் ஏன் காவல் நிலையத்தில் புகார் கொடுக்கவில்லை என்றால் என்னுடைய அதிகாரம் என்பது வேறு நிர்வாகத்தின் அதிகாரம் என்பது வேறு. நான் எப்படி கொடுக்க முடியும்."

5. The Labour Court, after analysing the evidence, came to the conclusion that resignation was obtained on coercion and compulsion. There was a specific allegation against one Dilip Kumar, Manager, who is stated to have acted on instructions from the management to obtain resignation letter, and the Labour Court has



held that the said person has not been examined before the Labour Court. The management has filed Ex.M.1 to show that the workman was employed in RSS Security service from May,2016, till August,2016, and contribution towards EPF was made and that the name of the workman found a place. It was further held that the workman also admitted that he has taken employment with RSS Security and not satisfied with the work and it was a ruse, the workman raised an industrial dispute under Section 2-A, alleging coercive resignation. The Labour Court also analysed the evidence and came to the conclusion that the workman is a physically challenged person and the question of resigning from employment voluntarily may not be accepted. It was also held that the workman was the sole breadwinner of the family and that the workman had taken employment at RSS Security, after the forced resignation, which would clearly show that the workman was under compulsion to search for another employment for his livelihood.

6. The facts would reveal that the workman was forced to resign to his earlier comfortable job under compulsion. That apart, after joining RSS Security service, the workman was asked to work in the same post under the management as the outsource person. As the workman was a permanent employee, the Labour Court, after discussion, came to the conclusion that the workman had been forced to resign. Though the Labour Court has rendered a finding with regard to the violation of Section 25-F of the Industrial Disputes Act,1947, the same may not be applicable to the workman in the



present case. The Labour Court, after taking note of the entire evidence before it, came to the conclusion that the workman cannot be expected to sit idle and wait for years together to see the result of the adjudication in the dispute and normally he has to secure employment to feed his family, especially when he is a physically challenged person. Taking note of the totality of circumstances, the Labour Court held that there was a forced resignation and that the workman was entitled to reinstatement in the same post with back-wages, continuity of service and other attendant benefits, excluding the period of employment at RSS Security service from March,2016, till August,2016, and that he was not entitled to any other relief. Accordingly, the Labour Court set aside the order of termination, dated 29.02.2016. Aggrieved over the award of the Labour Court, the management has preferred W.P.No.20058 of 2019 before this Court and the learned single Judge, while confirming the award of the Labour Court, has categorically held that the finding of the Labour Court that when the workman was solely dependent on the job undertaken by him, there was absolutely no reason for him to go on voluntary resignation. There were four workmen who had been asked to resign and sign on the dotted lines and except salary no other benefits have been given while accepting the so-called resignation letter. Though the workman has joined RSS Security service, the said job is none other than the contract with the management with whom a contract was entered to supply the manpower, like the workman. Therefore, it was a smoke screen created by the management to offer employment through an intermediary, that is to say,



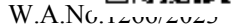
that direct employment was sought to be given in an indirect manner, which is held to be bad in the decision of the Supreme Court in *Workmen of Food Corporation of India v. Food Corporation of India*, 1985 (II) LLJ 4 SC.

7. Taking note of the pendency of the Writ Petition and that the workman was forced to tender resignation on the complaint of one Dilip Kumar, who was not examined, the award of the Labour Court was confirmed by the learned single Judge and the relevant paragraph of the order in the Writ Petition is extracted below :

*"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, 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*



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workmen have resigned, including the workman herein, the learned single Judge has refused to interfere with the findings of facts rendered by the Labour Court. However, in order to give a quietus to the matter, the learned single Judge has granted the relief of 50% of back-wages from the date of non-employment period, excluding the four month period during which the workman was employed at RSS Security, up to the date of the award and 100% back-wages from the date of the award.

9. Though in normal circumstances we are not inclined to interfere with the order of the learned single Judge, and that if the workman had filed a Writ Appeal we would have granted full back-wages, in order to give a quietus to the matter and bring down the life of the litigation, the award of the Labour Court, as modified by the learned single Judge, is modified as follows :

Award of the Labour Court is sustained except that the back-wages payable to the workman would be only at 50% and not full back-wages. From the date of the award, the workman would be entitled to 75% back-wages. Workman would not be entitled to any wages for the period he has rendered service under RSS Security. While calculating 50% back-wages and 75% back-wages mentioned supra, the wages paid under Section 17-B of the Industrial Disputes Act, 1947, are to be excluded and the remaining amount be paid. Workman shall be paid on par with his counterparts or the wages that were applicable to the counterparts as on the date of reinstatement. Entire arrears of wages, after adjusting the amount under Section 17-B of the Act, shall be paid



within a period of four months from the date of receipt of this order. Workman shall be reinstated in service with continuity of service on or before 01.12.2023. In case of non-providing of employment, the workman would be deemed to be in service and the management shall pay monthly wages to the workman as if he is in service. The contention of the management that the workman has suppressed the factum of gainful employment cannot be accepted. Though it is true that the workman, as stated, was in employment ever since the date of termination, we have taken into account the totality of the circumstances, more-so, the employment under RSS Security service, which was admitted by the workman and reflected in the award of the Labour Court and also the order of the learned single Judge. It is seen from the award that the last drawn salary of the workman on the date of termination was Rs.9,257/-.

10. Writ Appeal is disposed of accordingly. No costs. Consequently, the connected C.M.P.No.12648 of 2023 is closed.

Index : Yes/No  
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(S.V.N.,J.) (K.R.S.,J.)  
02-11-2023

Note :  
Issue Order Copy on 27.11.2023



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S.VAIDYANATHAN,J.  
AND  
K.RAJASEKAR,J.

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