



W.P.No.13618 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.No.13618 of 2016

and

W.M.P.No.23827 of 2021

1.Max Life Insurance Co. Ltd.,
Rep. by its Executive Vice-President and Head HR – Gurpal Singh
Operation Centre,
90A, Udyog Vihar, Sector 18,
Gurgaon,
Haryana – 122 015.

2.Max Life Insurance Co. Ltd.,
Regional Head, Tamil Nadu,
No.41, Venkatanarayana Road,
SREE.ES.ARR Building, III Floor,
Chennai – 600 017.

... Petitioners

Vs.

1.Special Deputy Commissioner of Labour,
The Appellate Authority under the
Tamil Nadu Shops and Establishments Act,
Chennai – 600 006.

2.Jakir Hussain

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of the 1st respondent in TNSE-1/20/2009 and quash its order dated 25.11.2015.



W.P.No.13618 of 2016

For Petitioner : Mr.Rajinish Raja
for M/s.Viruksham Legal

For Respondents : Mr.S.John T. Raja Singh
Additional Government Pleader [R1]
M/s.D.Muthukumar [R2]

ORDER

This Writ Petition has been filed seeking for a Writ of Certiorari, to call for the records of the first respondent in TNSE-1/20/2009 and quash its order dated 25.11.2015.

2. The case of the petitioners is that, they are the officers of the petitioner's Company and they are engaged in the business of Life Insurance Coverage to the public at large. The second respondent/workman joined the services with the petitioner/Company as Manager – Sales on 01.09.2008 and he was not employed up to the satisfaction of the petitioner/Company, thereby, he was given warning for his improvement. However, his improvement is not up to the mark, thereby, the petitioner/Company decided not to engage the services of the second respondent. Aggrieved by the same, the second respondent raised



W.P.No.13618 of 2016

a dispute before the first respondent under Section 41 of the Tamil Nadu Shops and Establishments Act, 1947 (in short 'the Act') on the ground that before issuing termination notice, no proper enquiry was conducted and no notice was issued. Further, one month salary was also not paid as mandated under Section 41(2) of the Act, thereby, the first respondent passed an order in favour of the second respondent. Challenging the same, the above writ petition is filed.

3. The learned counsel for the petitioner submits that, though before passing the termination order, no enquiry was conducted and no notice was issued and one month salary was not paid to the second respondent/workman, however, providing opportunity to the second respondent does not arise, since his performance is not up to the satisfaction of the petitioner/Company. The said issue was decided by this Court in W.P.No.2491 of 1974 vide order dated 27.01.1975 reported into **1975 SCC OnLine Mad 24**, in which, this Court, held that non-compliance with the requirement of one month's notice or payment of wages in lieu of one month's notice will not by render the termination



W.P.No.13618 of 2016

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void. The question of failure to give one month's notice or non-payment of wages in lieu thereof will have to be considered, since the same is against Section 41(2) of the Act. Further, he submits that, during the pendency of this writ petition, the second respondent was reinstated into service in the year 2018 and 40% back wages was paid to the second respondent. Accordingly, he prays for appropriate orders.

4. The learned counsel appearing for the second respondent submits that, though the second respondent was reinstated into service in the year 2018 and 40% back wages was paid to him, however, the petitioner/Company did not pay the current wages to him. Further, he submits that, the petitioner Company has not followed the procedures contemplated under Section 41(2) of the Act before passing the termination order, thereby, the first respondent has passed an order in favour of the second respondent, which cannot be interfered with. Accordingly, he prays for dismissal of the above writ petition.

5. Heard the learned counsel appearing for the parties and perused the materials available on record.



W.P.No.13618 of 2016

WEB COPY

6. Admittedly, the second respondent was appointed as Manager Sales by the petitioner/Company, however, the petitioner/Company claims that the second respondent's performance was not up to their satisfaction despite the repeated requests made by the petitioner Company to improve his performance, thereby, they have not engaged the services of the second respondent after a period of one year, which was challenged before the first respondent and the first respondent arrived a conclusion that no prior notice was give to the second respondent before passing the termination order. It is also an admitted fact that one month salary was not paid to the second respondent as mandated under Section 41(2) of the Act. Considering the above aspects, the first respondent has rightly passed an order in favour of the second respondent. On the score, this Court is not inclined to interfere with the order passed by the first respondent.

7. The next question arises is whether the second respondent is entitled for 100% back wages or not. In catena of decisions, this Court as well as the Apex Court repeatedly held that, when a person is not in employment, by applying the principle of 'No Work No Pay', he is not



W.P.No.13618 of 2016

WEB COPY

entitled for any back wages. However, in the present case, the petitioner/Company projected as if the second respondent resigned his job vide resignation letter dated 06.07.2009 and the said resignation letter was sent for forensic verification, since the same was disputed by the second respondent. From the forensic report, it is seen that the signature in the said resignation letter was not signed by the second respondent and the said fact was well established before the first respondent. Further, one month salary was not paid to the second respondent as mandated under Section 41(2) of the Act, therefore, the order of termination is not sustainable. However, the second respondent is not entitled for 100% back wages, but, he is entitled for 50% back wages for the lapses committed by the petitioner/Company.

8. It appears that that the petitioner/Company has already paid 40% back wages to the second respondent, therefore, the petitioner Company is directed to pay the balance 10% back wages to the second respondent within a period of twelve (12) weeks from the date of receipt of a copy of this order. Further, the second respondent is entitled for the current wages from the date of reinstatement onwards.



W.P.No.13618 of 2016

WEB COPY

9. With the above observations and directions, the writ petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

10.07.2023

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
sp

To

The Special Deputy Commissioner of Labour,
The Appellate Authority under the
Tamil Nadu Shops and Establishments Act,
Chennai – 600 006.



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W.P.No.13618 of 2016

M.DHANDAPANI, J.

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W.P.No.13618 of 2016

10.07.2023