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W.P.No.17263 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

Writ Petition No.17263 of 2013
and M.P.Nos.1 and 2 of 2013 and WMP No.1253 of 2016

M/s.Titanium Equipment and Anode
Manufacturing Company Ltd.,
Team House, G.S.T.Salai
Vandalur, Chennai 600 048.

.... Petitioner

-Vs-

1.The Presiding Officer
1st Additional Labour Court
Chennai.

2.K.V.Ramani

.... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records to quash the award dated 18.01.2013 in I.D.No.534 of 1999 on the file of the 1st respondent Labour Court, Chennai.

For Petitioner : Mr.S.Ravindran, Senior Counsel
for Mr.S.Vijayaganesh

For Respondents : Mr.K.V.Ananthakrushnan – for R2
R1 – Court



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ORDER

This petitioner Management challenges the award of the labour Court in I.D.No.534 of 1999 dated 18.01.2013. For the sake of convenience, the parties shall be referred to as 'workman' and 'Management'.

2. M/s.Gurudev Engineers Private Limited, a group company of the Management appointed the 2nd respondent / workman as P.A., to the Managing Director in and by way of proceedings dated 25.03.1991. Thereafter, he was appointed by M/s.Chemfab Welders Limited, a group company of the Management in the same capacity. On being appointed by M/s.Chemfab, he tendered his letter of resignation from M/s.Gurudev Engineers Private Limited by a letter dated 31.01.1994. From M/s.Chemfab, he was sent to Titanium Equipment and Anode Manufacturing Company Ltd., (TEAM) on 15.04.1998. In the meanwhile, on 07.04.1997, he was deputed to another group entity viz., Shree Padmam (Restaurant Division). For the sake of meeting with the arguments raised by Mr.S.Ravindran, learned Senior Counsel appearing for M/s.S.Vijaya Ganesh, learned counsel for the petitioner / Management, the said deputation order is extracted hereunder:



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" With effect from 07.04.1997, you are **deputed** to Shree Padmam (Restaurant Division) and you will report to Mrs.K.M.Padma, Director."

3. When he went to Shree Padmam Restaurant, he went as a Manager in-charge of the restaurant. The job description of the workman was as follows:

- " 1. In charge of general administration of restaurant.
2. Will control costs by studying daily cost sheet and report to the undersigned on any action to be taken.
3. Will resolve any staff related problems in consultation with the undersigned.
4. Will be responsible for harmonious work atmosphere.
5. Will ensure that all goods / items required in the restaurant are made available and will arrange for any sourcing and procurement required.
6. Will liaise with personnel department of TEAM for proper quality and quantity of food at TEAM canteen.
7. Will act on the decisions taken by the undersigned after consultation with the P.R.O. to improve all round customer relations."

4. For the allegations made against the 2nd respondent / workman, particularly of pilferage of articles from the restaurant and for under billing food items, he was issued a charge sheet on 16.04.1998. It is pertinent to note that charge sheet had been given to the workman from TEAM, which is the writ petitioner / Management. The workman submitted an explanation on



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17.04.1998, pleading his innocence. Domestic enquiry was conducted and the petitioner was dismissed from service by the writ petitioner / Management on 04.09.1998.

5. The workman raised a dispute before the authority under the Tamil Nadu Shops and Establishments Act in T.S.E.No.26 of 1998. The workman simultaneously raised an industrial dispute before the Labour Officer also. By an order dated 09.03.1999, the authority under the Tamil Nadu Shops and Establishments Act, came to a conclusion that the dismissal was fair and upheld the order of dismissal. Challenging the same, a writ petition was filed by the workman in W.P.No.10431 of 2000.

6. While this completes the proceedings insofar as the Tamil Nadu Shops and Establishments Act, I have to take note of the fact that on 18.06.1999, the workman raised an industrial dispute in I.D.No.534 of 1999, which is the subject matter of the present writ petition. He succeeded in getting an exparte award on 12.11.1999. On a demand to pay the backwages by way of a notice dated 12.05.2011, the Management filed I.A.No.163 of 2001 to set aside the exparte award. I.A.No.164 of 2001 was filed to condone the delay of 713 days in filing the application to set aside the exparte award. On 26.03.2003, I.A.No.163 of 2001 came to be dismissed.



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7. Challenging the same, the Management filed W.P.No.27440 of 2003.

The workman moved W.P.M.P.Nos.13550 and 13551 of 2004 in W.P.No.27440 of 2003 seeking for back wages pending 17B petition. This Court was pleased to dismiss W.P.M.P.Nos.13550 and 13551 of 2004 on 06.10.2004. The workman filed writ appeals in W.A.Nos.88 and 89 of 2005 challenging the orders passed in the aforesaid W.P.M.Ps. On 20.11.2008, orders were passed in W.A.Nos.88 and 89 of 2005 and W.P.No.27440 of 2003.

8. Finally, W.P.No.10341 of 2000, filed by the workman against the order passed in T.S.E.No.26 of 1998 and W.P.No.5955 of 2009, filed by the Management against the order passed in I.D.No.534 of 1999, were taken up together and by order dated 29.04.2011, the following directions were passed.

- (i) W.P.No.10341 of 2000 is allowed and the order of the Deputy Commissioner of Labour (Appeals) in T.S.E.No.26 of 1998 dated 09.03.1999 is quashed.*
- (ii) W.P.No.5955 of 2009 is allowed and the exparte award dated 12.11.1999 made in I.D.No.534 of 1999, on the file of First Additional Labour Court is set aside and the matter is remanded to the labour Court for fresh consideration on merits and in accordance with law.*
- (iii) The petitioner Management is directed to deposit a sum of Rs.5,00,000/- (Rupees Five Lakhs only) to the credit of*



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I.D.No.534 of 1999, within two weeks from the date of receipt of a copy of this order.

- (iv) *On such deposit, the petitioner management shall be entitled to file their counter and thereafter, the Labour Court shall decide the matter on merits and in accordance with law, preferably within four months from the date of receipt of a copy of this order.*
- (v) *The deposit of Rs.5,00,000/- (Rupees Five Lakhs only) shall abide by the final order to be passed by the labour court in I.D.No.534 of 1999.*
- (vi) *If the petitioner management fails to deposit the amount of Rs.5,00,000/- within the time stipulated, the benefit of this order shall not enure to the petitioner management and the writ petition being W.P.No.5955 of 2009, shall stand automatically dismissed without reference to this Court."*

9. By virtue of the order dated 29.04.2011, the matter was taken up by the Labour Court again. An opportunity was given to the Management to let in evidence in order to prove the charge of misconduct. The labour court, by award dated 08.01.2013 held that the enquiry was not fair and proper and set aside the findings of the enquiry officer dated 25.07.1998 and the order of dismissal dated 31.03.1998. It came to a conclusion that the charge of misconduct against the workman was not proved and therefore, ordered payment of compensation of Rs.5,00,000/- as full and final settlement.



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10. During the course of arguments before the labour Court, it was argued that the workman was not a "workman" within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 on the ground that he was employed in a managerial capacity in Shree Padmam Restaurant and therefore could not be treated as a "workman". The labour Court returned a finding on this issue that as Shree Padmam Restaurant was part of TEAM (acronym for the Management), he has to be treated as a "workman" and therefore, rejected that argument. Challenging the award of the labour Court dated 18.01.2013 the present writ petition has been filed by the Management.

11. At the time of arguments, Mr.S.Ravindran, learned Senior Counsel would submit that the 2nd respondent / workman having worked in managerial capacity, is not entitled to make a claim under the Industrial Disputes Act. Therefore, he would state that the the 2nd respondent not being a workman, the labour Court does not have jurisdiction to deal with the same.

12. I would reach the same conclusion as the labour Court to hold that the 2nd respondent is a "workman". There cannot be any dispute that P.A., to the Managing Director is a workman. However, the fact that the 2nd respondent was working as Manager in Shree Padmam Restaurant does throw some doubt as to whether he was still continuing in the said category. Therefore, I called for the



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records and went through the original documents. It is pertinent to point out that like the previous instances, this did not snap his relationship with the Management, but it was only a deputation from the Management to Shree Padmam Restaurant, which happened to be a unit of the Management.

13. As pointed out above, the charge memo was issued by the Management and the order of dismissal was also passed by the Management. A person who is sent on deputation continues to have a lien over the post in his parent company, which is the Management in the present case. The word **"depute"** means, 'a person appointed to act in an official capacity of as another's official representative'. This is as per Black's Law Dictionary 10th Edition. The same meaning is given for the word 'deputation' in this country also. Therefore, though the workman went on deputation to Shree Padmam Restaurant, he continued to be only an employee of the Management. For the sake of satisfying myself, I had extracted the order by which the workman was sent by TEAM to Shree Padmam Restaurant.

14. Apart from that, the charge memo was issued only by the writ petitioner Management and the order of dismissal was also passed only by the writ petitioner Management. Merely because he went on deputation, he does not stop being a workman within the meaning of Section 2(s) of the Industrial



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Disputes Act. Therefore, I do not agree with the submission of Mr.S.Ravindran, learned Senior Counsel appearing for the petitioner Management that since he was sent on deputation, the workman became a Manager and therefore he is not entitled to maintain the industrial dispute.

15. Moving on to the next point, the learned Senior Counsel would submit that there is no assertion by the writ petitioner that he was gainfully employed. On going through the records again and from the proof affidavit filed by him before the labour Court on 12.10.2011 in Para No.21, he has specifically stated that he had attained superannuation in October 2001 and he has not been gainfully employed anywhere for the past ten years. This specific averment in the proof affidavit is sufficient for discharging the burden on the workman that he was not gainfully employed. On the discharge of his burden, the onus shifts to the writ petitioner Management to prove that the 2nd respondent was gainfully employed in order to deny him back wages. Unfortunately, I am not able to see any evidence to substantiate the same.

16. Mr.Ravindran, learned Senior Counsel would then point out that the sum of Rs.5,00,000/- arrived at by the labour Court on the plea of the workman is without any basis. Here I have to refer to the calculation given by the workman marked as Ex.W.41. He has arrived at the calculation of Rs.6,21,706/-.



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The labour Court took into consideration the fact that pursuant to the order of this Court, Rs.5,00,000/- have been ordered to be deposited and also to the fact that the petitioner Management had deposited the same. It is true that if last drawn salary alone is taken into consideration, it will not arrive at this figure. Once the labour Court comes to the conclusion that the 2nd respondent is a workman and that the enquiry was not done in a fair and proper manner, and also the evidence that had been let in before it by the Management was insufficient, the conclusion that it had arrived at that the dismissal was improper is unassailable. Once the dismissal is improper, the workman would be entitled to back wages and reinstatement. Reinstatement could not be ordered because the workman reached the age of superannuation in October 2001. Therefore, from the calculation given by the workman, it is clear that he made a claim for Rs.6,21,706/-. This amount has not been granted by the labour Court. It has only taken into consideration, as stated above, the amount deposited by the Management pursuant to the orders of this Court in W.P.No.10341 of 2000 and W.P.No.5955 of 2009 dated 29.04.2011.

17. I do not find any illegality in granting compensation to the tune of Rs.5,00,000/- when the claim of the workman was Rs.6,21,706/-. Therefore, I confirm the award of the labour Court. The writ petition is dismissed. No costs. Consequently connected miscellaneous petitions are closed. The workman will be



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entitled to withdraw the balance sum of Rs.2,50,000/- together with accrued interest, if any, on filing appropriate application before the labour Court. I record the fair submission of the learned Senior Counsel appearing for the petitioner Management that they have no objection for the petitioner to withdraw the amount. The labour Court is directed to permit the workman / 2nd respondent herein to withdraw the amount without insisting on any objection of the Management.

27.06.2023

Index : Yes/No
Neutral Citation : Yes/No
Speaking Order / Non-speaking order
KST
To

The Presiding Officer
1st Additional Labour Court
Chennai.



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V. LAKSHMINARAYANAN, J.

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