



W.P.No.12465 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 03.02.2023

CORAM

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

W.P.No.12465 of 2010
and M.P.No.1 of 2010

The company,
M/s.Propel Valves (P) Limited,
No.33, SIDCO Industrial Estate,
Ranipet – 632 403,
represented by its Director.

.. Petitioner

Vs.

1.The Presiding Officer,
Labour Court, Vellore.

2.S.Sekar

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF CERTIORARI to call for the records of the award dated 29.01.2010 passed in I.D.No.116 of 2004 on the file of the Principal Labour Court, Vellore District and to quash the same.



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W.P.No.12465 of 2010

For Petitioner : Mr.A.P.Venkatesh Prasadl
for M/s.T.S.Gopalan and Co.

For R2 : No appearance

ORDER

This writ petition has been filed by the petitioner/company challenging the award dated 29.01.2010 passed in I.D.No.116 of 2004 on the file of the Principal Labour Court, Vellore District, in which, the Presiding Officer directed reinstatement of the second respondent with continuity of service and payment of 50% back wages and other attendant benefits.

2. The brief facts that are necessary for disposal of this writ petition are as follows:

2.1 The petitioner/company is a private limited company manufacturing industrial pipelines and has one factory at Ranipet and the other factory at Ambathur, Chennai.

2.2 It is the case of the petitioner/company that the design of pipes is crucial and the manufacture of such pipes are done on specific orders placed by its customers.



W.P.No.12465 of 2010

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2.3 The petitioner/company states that the Director of the petitioner/company by name M.Swaminathan suffered heart attack and had undergone surgery followed by continuous treatment thereafter.

2.4 Since the Director, who was a Mechanical Engineer, was unable to involve himself in the business, it is stated that there was sudden set back in the business and the petitioner/company was facing severe financial crunch and its industrial activity could not be revived. As a result, the petitioner/company started making losses continuously. The loss was more than Rs.7,00,000/- during the financial year 2002-2003.

2.5 Due to continuous loss for few years, the petitioner/company decided to retrench its workmen *viz.* three turners, one fitter and one miller and one buffer. As per seniority, the retrenchment notice dated 12.04.2003 was issued to all the workmen, who were facing retrenchment and the seniority list was also furnished to such retrenched employees.

2.6 Though the second respondent and other five retrenched employees raised an Industrial Dispute before the Conciliation Officer, Vellore, alleging that they were dismissed from service without following



W.P.No.12465 of 2010

minimum procedure, it appears that all other retrenched employees except the second respondent came for negotiation before the Conciliation Officer and a settlement was entered into and the amounts as agreed by the employees were also settled, whereas, the second respondent raised an Industrial Dispute by contending that his retrenchment is against the provisions of Sections 25F of the Industrial Disputes Act, 1947 (for brevity “the ID Act”).

2.7 The case of the second respondent before the Labour Court was that the second respondent was appointed as turner in the petitioner/company on 01.04.1995 and his last drawn salary was Rs.2,500/- per month.

2.8 It is the specific case of the second respondent that he was illegally terminated from service because of his trade union activities. The second respondent claimed himself as the Deputy Secretary of the union.

2.9 According to the second respondent, on behalf of the trade union, he represented before the Regional Provident Fund Commissioner, as a result of which, the Provident Fund Commissioner directed the petitioner/company to pay substantial amount towards provident funds due



W.P.No.12465 of 2010

to the employees. Therefore, the petitioner/company, with an intention to

victimise the second respondent, had orally terminated the second respondent

from service on 23.04.2003. According to the second respondent, he was

illegally terminated from service and that the decision of the

petitioner/company to terminate him under the guise of retrenchment is

illegal in view of the pendency of an industrial dispute filed under Section 2K

of the ID Act.

2.10 Before the trial Court, the petitioner/company examined two

witnesses and marked twenty four exhibits. On behalf of the second

respondent, three witnesses were examined and twelve exhibits were marked.

2.11 The Labour Court, after considering the evidence on either side,

vide award dated 29.01.2010, directed reinstatement of the second

respondent with continuity of service and payment of 50% back wages and

other attendant benefits.

2.12 Challenging the aforesaid award, the petitioner/company has

preferred the present writ petition.



W.P.No.12465 of 2010

3. Heard Mr.A.P.Venkatesh Prasad, learned counsel representing

Mr.T.S.Gopalan, learned counsel on record for the petitioner/company.

4. The second respondent, who was examined as W.W.1, in his examination, has specifically stated that he was terminated from service only with the *mala fide* intention because of his trade union activities.

5. The other two witnesses viz. R.Ganesh (W.W.2) and S.Maganathan (W.W.3), who are the retrenched employees of the petitioner/company, after accepting settlement before the Conciliation Officer, have deposed before the Labour Court, as if, they were illegally terminated from service.

6. This Court is unable to accept the versions of the two retrenched employees viz. R.Ganesh (W.W.2) and S.Maganathan (W.W.3), who had spoken in favour of the second respondent. The retrenchment notice and the seniority list that are said to have been circulated to the employees would give a clear picture that the second respondent is the junior most in his



W.P.No.12465 of 2010

position as turner in the petitioner/company. The second respondent has not raised any dispute with regard to the *bona fides* of the petitioner/company going for retrenchment. The second respondent has not questioned the wisdom of the petitioner/company, as regards the decision of retrenchment of number of persons in each category, as per the retrenchment notice. Along with the second respondent, G.Vinayagam and D.Nambinathan were also retrenched. Though D.Nambinathan is the senior most in the position as turner, he opted to receive retrenchment compensation and leave the petitioner/company. Since there are two more persons, who are senior to the second respondent in the petitioner/company in the post of turner, the second respondent cannot take advantage of one of his seniors expressing his willingness to go out on retrenchment.

7. The Labour Court has proceeded on the basis, as if, retrenchment notice was issued on account of action initiated by the trade union to recover substantial amount towards provident fund.

8. This Court does not find any document produced by the second



W.P.No.12465 of 2010

respondent to prove that the decision of retrenchment is an act of victimisation. Even though a question was raised that the statutory requirement of retrenchment was not followed, the Labour Court has not indicated any infraction or violation of statutory requirements. The fact that the second respondent and others were given retrenchment notice is not in dispute. Moreover, the second respondent was offered retrenchment compensation as per statute. Merely because the second respondent refused to receive the retrenchment compensation, the Labour Court cannot state that there are procedural violations. That apart, the second respondent has not disputed the specific averment in the written statement pointing out the financial crunch and the inability of the petitioner/company to continue its business, as it was done before, on account of sudden indisposed condition of one of its Managing Director.

9. This Court is unable to find any reason even in the award of the Labour Court pointing out any irregularity in the retrenchment process.



10. The Labour Court has relied upon the judgment of the Supreme Court in the case of *Aneep Jaiswal vs. Government of India*¹ and another and also in the case of *Jarnail Singh and Others vs. State of Punjab and Others*². The judgments relied upon by the Labour Court relate to the power and duty of the Court to pierce and lift the veil when an order is passed arbitrarily. Even without specifying any violation or illegality in the order of retrenchment, the Labour Court has stated that there is violation. The Labour Court has also observed that the second respondent is not junior most in the post of turner. As a matter of fact, the second respondent is the junior most in the post of turner in the petitioner/company. The second respondent joined in service only on 01.04.1999 and all other persons, who were holding the post as turner in the petitioner/company, joined in service long before 1999. The dates of joining of the employees and the serial number of the list have been confused by the Labour Court to hold that the second respondent has been wrongly shown in the seniority list.

11. This Court having regard to the facts has found several

1 1984 SC 636

2 1986 II LLJ 268



W.P.No.12465 of 2010

infirmities in the award of the Labour Court. The Labour Court has not applied its mind and the findings of the Labour Court are perverse.

In such view of the matter, this Court is unable to sustain the award of the Labour Court and accordingly, this writ petition is allowed and the award dated 29.01.2010 passed in I.D.No.116 of 2004 on the file of the Principal Labour Court, Vellore District, is set aside. No costs. Connected M.P. is closed.

03.02.2023

Index: Yes / No

Speaking Order / Non-speaking Order

Neutral Citation: Yes / No
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W.P.No.12465 of 2010

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The Presiding Officer,
Labour Court, Vellore.



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W.P.No.12465 of 2010

S.S.SUNDAR, J.

nsd

W.P.No.12465 of 2010

03.02.2023