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W.P.No.27439 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

Writ Petition No.27439 of 2013
and M.P.Nos.1/2013, 1/2014 and W.M.P.No.30449/2016

The Management
CLS Press, 3-A, Church Road
Chennai-600 007

.... Petitioner

-Vs-

1.The Presiding Officer
First Additional Labour Court
Chennai.

2.G.Kuppuswamy

.... 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 in I.D.No.243 of 2000 on the file of the first Additional Labour Court, Chennai the 1st respondent herein, quash the award passed therein dated 26.03.2013.

For Petitioner : Mr.M.R.Raghavan
For Respondents : Mr.K.V.Dhanapalan
for M/s.Fenn Walter Associates- for R2
R1 - Court

ORDER

The petitioner is the Management. It challenges the order passed in I.D.No.243 of 2000 dated 26.03.2013. This is a petition filed under Section



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2A(2) of the Industrial Disputes Act, 1947. The second respondent / workman joined the services of the writ petitioner on 21.01.1975 as a book binder. In 1997, a union was formed, which according to the workman was not liked by the Management. The Management had transferred the second respondent/workman from Madras to Bangalore. Since the nature of work was simple, the workman states that it was not necessary to transfer him. According to him, the transfer order was issued on malafide motive and to victimise the workman. He would state that it is an unfair labour practice under the Fifth Schedule of the Industrial Disputes Act. Since the conciliation failed, he was constrained to initiate proceedings before the first respondent / labour court.

2. Learned counsel appearing for the Management would submit that the petitioner was transferred on 09.10.1998 from Madras to Bangalore and that too for a press which belonged to the writ petitioner / Management. Since there were acts of misconduct under Section 14(a), 14(c) and 15(xi) of the Standing Orders, a charge sheet was given to the workman on 09.03.1999 calling for his explanation. As the workman's explanation was not satisfactory, an enquiry was ordered. The workman participated in the enquiry and the charges stood proved.



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3. A second show cause notice was issued on 14.06.1999 and as the explanation given by the workman was not satisfactory, the workman was dismissed from service on 22.07.1999. The labour Court did not reinstate the workman in service, but granted a compensation of Rs.5,00,000/- to be paid within a period of eight weeks. It is on record that out of Rs.5,00,000/- compensation, a sum of Rs.2,50,000/- has already been deposited in the labour court, out of which Rs.2,00,000/- has been withdrawn by the workman.

4. The labour Court came to this conclusion on two grounds viz., that the Standing Order does not have a provision for transfer and since a criminal case was filed by the Management against the workman, it amounts to victimisation.

5. I have heard Mr.M.R.Raghavan, learned counsel for the writ petitioner / Management and Mr.Jai Kumar, learned counsel for the workman / second respondent.

6. I am afraid, I am not able to sustain the award of the Labour Court for more than one reason.

(a) The labour Court had come to the conclusion that the Standing Orders does not have a provision for transfer.



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(b) The Standing Orders speak only about unauthorized absence of the workman and does not speak about any transfer of the workman from Chennai to elsewhere.

(c) The labour Court would state that a criminal case was filed by the Management against the workman and that shows that there is victimization of the workman.

Consequently, the labour Court had ordered payment of compensation of Rs.5,00,000/- instead of reinstatement in service.

7. It is pertinent to point out here on the aspect of domestic enquiry. The workman himself had made an endorsement that he is not challenging the fairness or validity of the domestic enquiry. The only argument was that the punishment awarded is excessive and disproportionate. The labour court came to the conclusion that though the enquiry is fair and it had been done in compliance of the principles of natural justice, it amounts to victimisation. It is here that I would usefully refer to a judgment cited by Mr.M.R.Raghavan, learned counsel for the Management (**Bharat Iron Works -vs- Bhagubhai Balubhai Patel and Others**) reported in **1976(1) SCC 519**, where the Supreme Court was pleased hold that a proved misconduct is antithesis to victimisation as understood in industrial relations. No doubt, if victimisation is proved the industrial tribunal has



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jurisdiction to interfere. But, here is a case, where the alleged act of victimisation is in violation of Standing Orders and the filing of the criminal complaint.

8. I am unable to accept the argument of the learned counsel for workman that Standing Orders are statutory in flavour. The Standing Orders will override any orders of appointment or confirmation only if they are in conflict with each other. In the present case, it is pertinent to point out Clause 5 of the order of appointment and Clause 10 of the order of confirmation. For ready reference, the same are extracted hereunder:

“ Clause 5 of appointment order:

5. You are liable to be transferred from one section or department to another in this establishment or to any associate or sister concerns or to any other branches belonging to the same management whether existing or not as on this day.

Clause 10 of confirmation order:

10. You are liable to be transferred from one section or department to another in this press or to any associate or sister concerns or to any other branches belonging to the same management, whether existing at present or not, provided, however, your emoluments are not reduced.”



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9. This shows, even at the time of appointment, the workman had accepted that he would be transferred from one section to another section, one department to another belonging to the same establishment or to any associate or sister concerns or any other branch belonging to the same management. In the claim petition also, the respondent workman had taken a stand that the workman had only expressed his difficulty, but never refused to go on transfer to Bangalore. This militates against the case of the workman that he was opposed to the transfer. On the contrary, a reading of the petition would go to show that he was willing to go on transfer and did not question the same. For the reasons best known to him, he had suddenly taken a stand that the Standing Orders did not confer the right of transfer.

10. As long as the appointment and confirmation order are not contrary to the Standing Order, the order of transfer made from one place to another is not bad. I find support for this view in **Cipla Limited -Vs- R.Jayakumar and another (1999) 1 SCC 300**, wherein the Supreme Court was pleased to hold as follows,

“12. In our opinion, the aforesaid construction does not flow from the provisions of the Standing Orders when read along with the letter of



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appointment and, therefore, the conclusion arrived at by the High Court was not correct. As has already been noticed the letter of appointment contains both the terms namely for the respondent being transferable from Bangalore as well as with regard to the applicability of the Standing Orders. These clauses, namely, clauses 3 and 11, have to be read along with the Standing Orders, the relevant portion of which has been quoted here in above. Reading the three together we do not find that there is any conflict as has been sought to be canvassed by the learned Counsel for the respondent. Whereas the Standing Orders provide for the department wherein a workman may be asked to work within the establishment itself at Bangalore, Clause 3 of the letter of appointment, on the other hand, gives the right to the appellant to transfer a workman from the establishment at Bangalore to any other establishment of the Company in India. Therefore, as long as the respondent was serving at Bangalore he could be transferred from one department to another only in accordance with the provisions of the Standing Orders but the Standing Orders do not in any refer to or prohibit the transfer of a workman from one establishment of the appellant to another. There is thus no conflict between the said clauses."

11. This makes it clear that if there is no conflict between the appointment order, confirmation order and Standing Order, the power to transfer can be exercised by the Management. Going through the Standing Orders does not reveal that there is any conflict. Therefore, in exercise of the powers conferred on it, the Management had transferred the workman from Chennai.



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12. The act of the workman in not joining the transferred place amounts to indiscipline and as found by the labour court, such an act would invite consequences. Even if I were to agree with the respondent workman that despite his transfer if he does not report and if action is taken it amounts to victimisation, it will amount to sowing seeds of indiscipline in an establishment, which I will not do. There is no prohibition in the power of the Management to transfer, as already found, and it was the workman who was at fault in not reporting to the place of duty.

13. The argument of the learned counsel for the workman placing reliance on the judgment **Srivastava (S.P.) and Another vs Banaras Electric Light And Power** reported in **1968(2) LLJ 483**, in which it was held that Standing Orders are binding on both the Management as well as the workman is not in dispute. This is in line with the view taken by the Hon'ble Supreme Court, which I have cited above (**Cipla case**).

14. The other judgment referred to by the learned counsel for the workman is **Pushpakaran -Vs- Coir Board** reported in **1979 (I) LLJ 139**. A reading of Paragraphs 24 and 25 of the said judgment would show that it is a



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case where it was a punitive transfer and transfer as punishment and not a transfer for administrative reasons. There is more than one ground to distinguish with the said judgment.

15. Learned counsel for the workman would rely upon another judgment in **Sudhir Chandra Sarkar -vs- Tata Iron and Steel Co., Ltd and Others** reported in **1984(3) SCR (3) 325**, to press the point that Standing Orders are statutory in flavour. A careful reading of the judgment would show that it was a case, where, on the basis of the Standing Orders, the Management refused to pay gratuity to the employee. Section 14 of the Gratuity Act states that any instrument which is contrary to the Act will not prevail and there were specific rules under the Retiring Gratuity Rules, 1937 on payment of gratuity. Those Rules assured that gratuity will be paid to an employee and when there are subordinate level legislation or legislations, the standing order obviously will have to give way for the same. Therefore, the said judgment of gratuity is inapplicable to the case of transfer.

16. The first respondent / labour Court had erroneously appreciated the facts and law and had come to the conclusion to award compensation. It held that, there was victimisation and the power of transfer was not available to the



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writ petitioner Management. It failed to see it was the workman who refused to join despite his specific statement given in the claim petition. It found that the finding that the Standing Orders are statutory in flavour and the same can be over-written by order of appointment. Ignoring the position of law that Standing Orders are not statutory in flavour and ignored the position of fact that there is no conflict between the appointment order, confirmation order and the Standing Order. It failed to note that mere filing of police complaint will not amount to victimisation.

17. I feel that the order of the labour court is tainted with illegality and as it is contrary to the law laid down by the Supreme Court I am constrained to interfere with the same. Consequently, the writ petition is allowed and the order passed by the first respondent / labour court in I.D.No.243 of 2000 dated 26.03.2013 is set aside. No costs. Consequently, connected miscellaneous petitions are closed.

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

The Presiding Officer
First Additional Labour Court
Chennai.



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V. LAKSHMINARAYANAN, J.

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