



W.A.No.3703 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

W.A.No.3703 of 2019
and
C.M.P.No.23565 of 2019

The Executive Engineer,
Maintenance Division,
Tamil Nadu Water Supply and Drainage Board,
Salem-7.

... Appellant

-VS-

1. Baskardoss Prabakaran

2. The Presiding Officer,
Labour Court, Salem.

... Respondents

Prayer: Writ Appeal filed under Clause 15 of Letter Patent to set aside the order dated 31.08.2018 passed in W.P.No.29357 of 2014 and allow the Writ Appeal.

For Appellant : Ms.Mekhala

For 1st Respondent : Mr.V.Govardhanan

J U D G M E N T

Questioning the order of the learned Single Judge in W.P.No.29357 of 2014 dated 31.08.2018, confirming the award of the Labour Court dated 15.10.2009 passed in I.D.No.19 of 2007, the present Writ Appeal has been filed.

2. The admitted facts of the case are as follows:



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The Workman / 1st respondent herein joined the services of the appellant Board on 21.03.1997 and on 30.01.2003, he gave a letter stating that he is resigning from his post with effect from 01.02.2003. Thereafter, the said letter was withdrawn on 05.06.2003. As the Workman was not allowed to report for work even after withdrawal of his resignation, he had raised an Industrial Dispute, which was adjudicated by the Labour Court, Salem, and an award was passed on 15.10.2009, directing the employer to reinstate the Workman with 50% back wages and with continuity of service. The award was communicated to the parties on 18.03.2010 and that on receipt of the notice, since no action was taken, the Workman had to file a Writ Petition in W.P.No.21442 of 2013, seeking enforcement of the award and in the meantime, the Workman attained the age of superannuation on 31.12.2013.

3. The contention of the employer before this Court in the appeal is that when the Workman had submitted his resignation voluntarily and that there is no prescribed time limit under the rules for acceptance, it would take effect immediately and that there is no need for the employer to wait for a particular period anticipating withdrawal of resignation submitted by the Workman. Secondly, as the Workman's resignation has come into effect, the finding of the Labour Court that the Workman had withdrawn his resignation in June 2003 and that there was a delay of four years. Thus, the Labour



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Court's interference with the same and depriving of 50% of the back wages is bad.

Even assuming that there is any erroneous act on the part of the employer, the entire back wages ought to have been deprived and that the Workman had not evinced any interest to report for work. Hence, the order of the learned Single Judge in confirming the award of the Labour Court is erroneous, as the finding of the Labour Court is perverse.

4. Learned Counsel for the 1st respondent has, in turn, contended that in terms of the Certified Standing Orders applicable to the appellant Board and Workmen, a Workman needs to give his intention to resign from the service at least 30 days prior to the date of coming into force of the said resignation, which would mean that the employer will have to wait for a period of 30 days and thereafter, pass an order with immediate effect. Even assuming for the sake of argument that the employer is entitled to accept the resignation immediately in the absence of the said clause, in the present case on hand, the employer has not accepted the resignation, for the reason that there was an order dated 08.02.2003 passed by the employer, stating that unless the Workman pays a sum of Rs.11,050/-, the resignation submitted by him would not be accepted. It is stated that there was no response to the reply sent by the Workman that the amount due from him can be adjusted from the monetary benefits payable to him. He further



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contended that the award has become final and only after the Workman preferred a Writ Petition in W.P.No.21442 of 2013, seeking enforcement of the award, the present writ petition which is under appeal has been preferred after a delay of 5 years. The Labour Court has deprived the back wages to an extent of 50% for the delay in approaching the court belatedly after a lapse of 4 years and the Workman is not entitled to any relief, since the Workman had already attained the age of superannuation and his last drawn salary is less than Rs.1500/- that the Labour Court has deprived of 50% of the back wages, monetary compensation alone is payable apart from gratuity and other terminal benefits.

5. Heard both sides.

6. The factum that the Workman had submitted his resignation letter on 30.01.2003 is not in dispute and he had subsequently submitted a letter dated 05.06.2003 seeking withdrawal of his resignation. The employer had not accepted his resignation. Employer has categorically replied vide order in Ku.No.475/Ni.Vu1/Ko.56/2003 dated 08.02.2003 that only after a sum of Rs.11,050/- payable to the employer is tendered by the Workman, and without payment of the same, the resignation would not be accepted. Employer contended that the resignation has



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come into effect and the Workman would not be entitled to seek relief. The dispute has been raised after a delay of four years. That apart, the employer has slept over for a period of five years in questioning the award of the Labour Court. Only after the writ petition was filed by the Workman mentioned supra seeking enforcement of the award in I.D.No.19/2007 dated 15.10.2009, the Management has chosen to file the writ petition questioning the award. The learned Single Judge, taking note of the evidence tendered by the employer before the Labour Court and the discussion of the Labour Court, came to the conclusion that there is no evidence to show that there was a letter by the Workman dated 11.03.2003 withdrawing the letter of resignation, but the employer has not accepted the resignation letter till the date of the withdrawal on 05.06.2003. The request of the Workman to pay the dues in instalments was also not acceded to. The Board regulation produced before this Court, more so, Clause No.25 reads as follows:

"25. Consequences of resignation:

Any person intending to resign from the Board's service shall give atleast 30 days notice to the Board indicating his intention.

....

...

25-A (ii) Non-Technical:

Any person who had undergone an induction Training Course at the Board's Training Centre or in other approved Institutions sponsored by the Board at the time of appointment and fails to serve the Board till his superannuation shall be made liable to repay the cost training plus one



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month salary in lieu of one month notice to the Board indicating his/her intention to tender resignation."

7. A reading of the above Board Regulation clearly shows that the Workman must

give 30 days notice of his intention to leave the services. In this case, the Workman has given a letter on 30.01.2003 and the resignation would take effect only after the expiry of 30 days. The employer will have to wait for a period of 30 days and thereafter pass an order. Even assuming that the employer has indeed accepted the resignation immediately, the conditional acceptance in the present case on hand would make it very clear that there was no acceptance of resignation at all and that the employer's action in depriving the employment amounts to termination and the Workman would be entitled to all the benefits, but for the termination. It is no doubt true that the payment of back wages to an employee is an automatic. But for the delay in raising the dispute after a period of 4 years, the Labour Court has deprived the back wages to an extent of 50%. The employer has not chosen to file the writ petition immediately after the award and waited for the Workman to approach the court seeking enforcement of the award. Only after that, the present Writ Petition has been filed, which is subject matter of the appeal. For the delay of 5 years, when the employer is trying to blame the Workman that there was a delay of 4 years in raising the dispute, the employer is also equally responsible for the delay in filing the writ petition, which is over 5 years. The learned Single Judge has passed a Common Order confirming the award of the Labour Court, with a direction



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that the award should be implemented. The relevant paragraph is extracted here under:

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"8. So far as the facts of the case are concerned, the letter of resignation was neither accepted nor rejected by the Board, thereby giving a clue to the workman that he is entitled to come for work, so long as the resignation letter is not accepted. In fact when the workman has informed the employer that he is inclined to work and the employer should provide him work. The case on hand is factually different and there is no order accepting or rejecting the resignation.

9. In view of the above reasonings, the award of the Labour Court directing reinstatement with backwages of only 50% is liable to be confirmed. Accordingly, W.P.No.29357 of 2014 filed by the Management is dismissed. The writ petition, in W.P.No.21422 of 2013, seeking enforcement of the award of the Labour Court is ordered. No costs. Consequently, the connected MP and WMP are closed."

8. In the written statement filed before the Labour Court, the employer has stated as follows:

"5. Petitioner had given an application that he cannot report to employment permanently from 01.02.2003. It was not possible for the Board to finalise the resignation letter of the petitioner as the petitioner did not pay the arrears amount as per the Board's Standing Orders. Further, in the letter dated 11.03.2003, of the petitioner, he only stated that the arrears amount of Rs.11,050/- cannot be settled in one shot, and he would pay Rs.700/- every month, and that he did not say that he may be permitted to repost to duty further petitioner can be admitted into work only after getting instructions from superior officers, further the petitioner had stated in letter dated 30.01.2003 that due to illness with full consent he is not able to repost to duty from 01.02.2003."

9. From the above, it is very clear that there is no resignation at all in the eye of



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law. The act of the employer amounts to terminating the Workman, who had submitted a letter dated 30.01.2003 to resign from the services. The employer should have waited for 30 days as contemplated under the Rules and should have rejected his resignation at the threshold or should have waited for 30 days and passed an order accepting the resignation without any condition. In the absence of any order passed by the employer, accepting the resignation without condition, the finding of the Labour Court on fact that there was disengagement of the service of the Workman need not be interfered with in this appeal and the finding of fact rendered by the Labour Court cannot be reappraised. Even assuming that there was some factual error, the interference of the award under Article 226 is very limited. Finding no merits in the Writ Appeal, the same is liable to be dismissed.

10. We make it very clear that if the award of the Labour Court is not implemented within a period of three months from the date of receipt of a copy of this judgment, it is open to the Workman to make a complaint under Section 29 of the Industrial Disputes Act, 1947 against the persons falling under Section 32 of the Act. As the award or settlement will be in force, till such time, it is modified or substituted by any other settlement then there is no delay at all. In the light of the judgment of the Hon'ble Supreme Court in **LIC vs. DJ Bahdur** reported in **1981(1) LLJ 1** and in



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Rajkumar Gupta's case reported in **1997 (1) LLJ 994**, the Government shall have to act on the complaint, if any made by the employee or the representative and sanction prosecution against the persons falling under Section 32 of the Act and the criminal court is expected to proceed with the matter on day-to-day basis without adjourning the matter beyond 15 working days at any point of time and bring it to a logical conclusion in case the award is not complied with.

11. With the above observations and directions, the Writ Appeal is dismissed.

No costs. Consequently, connected Miscellaneous Petition is closed.

[S.V.N., J.] [R.K.M., J.]
09.02.2023

Index: Yes / No
Internet: Yes / No
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To:

The Presiding Officer,
Labour Court,
Salem.

S.VAIDYANATHAN,J.
and
R.KALAIMATHI,J.
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