



W.P.Nos.34446, 34447 & 34448 of 2013, 23778, 23780 &
23782 of 2019 and 29317, 29318 & 29320 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**W.P.Nos.34446, 34447 & 34448 of 2013, 23778, 23780 &
23782 of 2019 and 29317, 29318 & 29320 of 2018**

And

**W.M.P.Nos.23191, 23193 & 23195 of 2023, 31542, 31543 &
31544 of 2022 and 34262, 34264 & 34261 of 2018**

S.Pasupathi

... Petitioner in W.P.34446/2013

Vs.

1.The Presiding Officer,
Labour Court Puducherry,
Puducherry,
Union Territory of Puducherry.

2.The Management of Larsen & Toubro Limited,
ECC Division,
Rep. by its Managing Director ... Respondents in W.P.34446/2013

Prayer in W.P.No.34446 of 2013:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the first respondent pertains to the award dated 26.06.2013 in ID No.26 of 2012 and quash the same as far as denial of remaining 50% backwage and the following observation made in the award (i.e. In case of the



W.P.Nos.34446, 34447 & 34448 of 2013, 23778, 23780 & 23782 of 2019 and 29317, 29318 & 29320 of 2018

respondent feels that the transfer with promotion is an incidence of service to meet exigencies of business and administrative needs, the respondent is hereby directed to accommodate the petitioner in various location in Tamilnadu and Puducherry, as admitted by the learned counsel for the respondent), consequently direct the second respondent to pay remaining 50% backwage to the petitioner from the date of his denial of employment i.e. 18.02.2012 to till the date of reinstatement.

For Petitioners : Mr.P.R.Thiruneelakandan
in W.Ps.34446 to 34448/2013

for Mr.I.Abrar Md. Abdulla
for M/s.M.Vaikunth
in W.Ps.23778, 23780 & 23782 of
2019 and 29317, 29318 &
29320 of 2018

For Respondents : Mrs.Rita Chandrasekaran for R2
for M/s.Aiyar and Dolia
in W.Ps.34446 to 34448/2013

Mr.P.R.Thiruneelakandan
in W.Ps.23778, 23780 & 23782 of
2019 and 29317, 29318 &
29320 of 2018

COMMON ORDER

Since the issue involved in these writ petitions are one and the



W.P.Nos.34446, 34447 & 34448 of 2013, 23778, 23780 & 23782 of 2019 and 29317, 29318 & 29320 of 2018

same, they are heard together and disposed of by way of a common order. For brevity, the petitioners in W.Ps.34446 to 34448 of 2013 would be hereinafter referred to as 'workmen' and the petitioner in W.P.Nos.23778, 23780 & 23782 of 2019 and 29317, 29318 & 29320 of 2018 would be hereinafter referred to as 'Management'.

2.The facts of the case is that the workmen are the employees of the Management of Larsen & Toubro Limited and they were issued with promotion cum transfer order to the construction site contrary to the settlement dated 10.08.2009 arrived at under Section 12 (3) of the Industrial Disputes Act. Challenging the same, L & T Pattali Thozhil Sangam in which the workmen are members preferred complaint under Section 33-A of the Industrial Disputes Act before the Labour Officer and the Labour Officer vide order dated 09.02.2012 advised the Management to allow the workmen to report to work, however, the Management did not pay any heed on the advice.

3.Thereafter on 13.02.2012 the workmen forgone their promotion and requested the Management to provide work as workmen in the Puducherry factory, however, they were not allotted with any work. Therefore, the workmen raised industrial dispute in

3/17



W.P.Nos.34446, 34447 & 34448 of 2013, 23778, 23780 & 23782 of 2019 and 29317, 29318 & 29320 of 2018

I.D.Nos.26, 27 and 28 of 2012 before the Labour Court and the Labour Court passed award dated 26.06.2013 in favour of the workmen holding that the promotion cum transfer is malafide one and denial of employment is arbitrary, unreasonable, illegal and amounted to victimization and directed the Management to reinstate the workmen in service as operators at Puducherry factory with 50% backwages and continuity of service.

4. Thereafter, the workmen filed computation petitions in C.P.Nos.01, 02 and 03 of 2014 before the Labour Court seeking to compute the arrears of backwages, attendant benefits in terms of money as per the award of the Labour Court in I.D.Nos.26, 27 and 28 of 2012 dated 26.06.2013 and the Labour Court vide orders dated 16.11.2017 allowed the said petitions.

5. Since the Labour Court awarded only 50% of backwages, the workmen have filed W.Ps.34446 to 34448 of 2013 challenging the award dated 26.06.2013 passed in I.D.Nos.26, 27 and 28 of 2012. Aggrieved by the award dated 26.06.2013 in I.D.Nos.26, 27 and 28 of 2012 passed by the Labour Court and aggrieved by the orders dated 16.11.2017 in C.P.Nos.01, 02 and 03 of 2014 passed by the Labour



W.P.Nos.34446, 34447 & 34448 of 2013, 23778, 23780 & 23782 of 2019 and 29317, 29318 & 29320 of 2018

Court, the Management has filed W.P.Nos.23778, 23780 & 23782 of 2019 and 29317, 29318 & 29320 of 2018.

6.The learned counsel appearing for the workmen submitted that the workmen were given promotion and transferred to some other State. Further the workmen were working in the lower cadre and were given promotion cum transfer contrary to the settlement under Section 12 (3) of the Industrial Disputes Act dated 10.08.2009. Further, the workmen are aggrieved by the observation made in the award dated 26.06.2013 by the Labour Court that the Management can accommodate the workmen in various locations in Tamil Nadu and Puducherry. The workmen forgone their promotion and requested the Management to provide work as workmen in the Puducherry factory, however, they were not allotted with any work, however, the Labour Court has awarded only 50% of backwages, which is not sustainable one. The learned counsel further submitted that the award passed by the Labour Court is contrary to the decision of this Court reported in **2005 (3) MLJ 569 [Hotel Ambassador Pallava Vs. The Presiding Officer and another]**.

7.Per contra, the learned counsel appearing for the Management



W.P.Nos.34446, 34447 & 34448 of 2013, 23778, 23780 & 23782 of 2019 and 29317, 29318 & 29320 of 2018

submitted that the workmen relied upon the settlement under Section 12 (3) of the Industrial Disputes Act dated 10.08.2009, however, it is for IV grade employee and the same is not applicable for the workmen since they are grade III employees. The Management is entitled to promote and transfer the workmen as per their qualification and performance inorder to obtain better service from them, which cannot be interfered with.

8.The learned counsel appearing for the Management further submitted that the Labour Court in the award has observed that the Management can accommodate the workmen in various locations in Tamil Nadu and Puducherry. Thereafter, the workmen were transferred to Salem and Coimbatore vide order dated 15.10.2013, however, instead of joining the transferred place and without challenging the said order, have filed W.Ps.34446 to 34448 of 2013 which is not sustainable one.

9.The learned counsel appearing for the Management further submitted that before the Labour Court, the workmen have not specifically averred that they were not gainfully employed during the non employment period. In the absence of any averment or evidence,



W.P.Nos.34446, 34447 & 34448 of 2013, 23778, 23780 & 23782 of 2019 and 29317, 29318 & 29320 of 2018

the Labour Court awarding 50% backwages is not sustainable one.

Further the amount awarded in the computation petitions is also not sustainable one.

10. Heard the arguments advanced on either side and perused the materials available on record.

11. Admittedly the workmen are the employees under the Management and they were issued with promotion cum transfer order. Challenging the same, L & T Pattali Thozhil Sangam in which the workmen are members preferred complaint under Section 33-A of the Industrial Disputes Act before the Labour Officer and the Labour Officer vide order dated 09.02.2012 advised the Management to allow the workmen to report to work, however, the Management did not allow the workmen to work. Thereafter, the workmen forgone their promotion and requested the Management to provide work as workmen in the Puducherry factory, however, they were not allotted with any work.

12. Therefore, the workmen raised industrial dispute in I.D.Nos.26, 27 and 28 of 2012 before the Labour Court and the Labour



W.P.Nos.34446, 34447 & 34448 of 2013, 23778, 23780 & 23782 of 2019 and 29317, 29318 & 29320 of 2018

Court passed award dated 26.06.2013 in favour of the workmen directing the Management to reinstate the workmen in service as operators at Puducherry factory with 50% backwages and continuity of service. Thereafter, the workmen filed computation petitions in C.P.Nos.01, 02 and 03 of 2014 before the Labour Court seeking to compute the arrears of backwages, attendant benefits in terms of money as per the award of the Labour Court in I.D.Nos.26, 27 and 28 of 2012 dated 26.06.2013 and the Labour Court vide orders dated 16.11.2017 allowed the said petitions.

13.Before this Court, the workmen raised two grounds, one is that the promotion cum transfer given to them is contrary to clause 10 of settlement under Section 12 (3) of the Industrial Disputes Act dated 10.08.2009 and another is that when the workmen were prepared to forgo their promotion, the Management did not allow them to work and the same is contrary to the decision of the Hon'ble Division Bench of this Court reported in 2005 (3) MLJ 569 [Hotel Ambassador Pallava Vs. The Presiding Officer and another].

14.For better appreciation, the relevant portion of the settlement under Section 12 (3) of the Industrial Disputes Act dated 10.08.2009



W.P.Nos.34446, 34447 & 34448 of 2013, 23778, 23780 & 23782 of 2019 and 29317, 29318 & 29320 of 2018

is extracted hereunder:

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"10.GRADE CHANGE BENEFIT:

It is agreed to pay additionally Rs.250.00 (Two Hundred and Fifty only) for Ivth grade Workmen. This amount have been distributed to the following allowance i.e. for FDA Rs.150.00, for HRA Rs.50.00 and for Medical allowance Rs.50.00.

The management at the request of the union agreed to introduce some benefit for those who have reached the maximum basic slab in IVth grade. The management agreed that to consider the Increment slab for the IVth grade for Rs.120/- instead of Rs.90/- and there will be no more increase in future.

The persons who are reached the maximum basic slab in IVth grade employee will be promoted as staff (technical / non – technical) cadre based on their performance and will be posted in suitable place. Both union and management agreed that there will not be any further grade beyond IVth grade."

15.Perusal of clause 10 of the settlement under Section 12 (3) of



W.P.Nos.34446, 34447 & 34448 of 2013, 23778, 23780 & 23782 of 2019 and 29317, 29318 & 29320 of 2018

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the Industrial Disputes Act dated 10.08.2009 makes it clear that the persons who reached the maximum basic slab in IVth grade employee will be promoted as staff (technical / non – technical) cadre based on their performance and will be posted in suitable place. Both union and management agreed that there will not be any further grade beyond IVth grade. However, the workmen are grade III employees and hence the settlement dated 10.08.2009 is not applicable to them.

16.Further, it is for the Management to consider the claim of its workmen. Hence, relying upon the observation made in the award passed by the Labour Court is not sustainable one. Once, the workmen are prepared to forgo their promotion, they are entitled to enjoy their original post.

17.It is relevant to extract hereunder the relevant portion of the Hon'ble Division Bench of this Court reported in **2005 (3) MLJ 569 [Hotel Ambassador Pallava Vs. The Presiding Officer and another]**.

"6. The stand of the management before the learned single Judge was that there was no



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W.P.Nos.34446, 34447 & 34448 of 2013, 23778, 23780 & 23782 of 2019 and 29317, 29318 & 29320 of 2018

industrial dispute because it had never passed any order of dismissal, dismissing the 2nd respondent from service nor had it refused to permit him to serve under the management. Hence, it was alleged by the management that the question of non-employment does not arise at all, and hence there was no industrial dispute.

7. On the other hand, the stand of the 2nd respondent was that he had refused to accept the promotion and opted to continue as Office Boy. Hence, he is entitled to continue as Office Boy despite the order dated 24.11.1986, and the refusal of the management to permit him to continue as Office Boy was illegal, and it could not be deemed that the 2nd respondent had abandoned his service. It thus seems to us that the only allegation against the 2nd respondent was he refused to accept the promotion. It is well settled that no one can be forced to accept a promotion, and an employee can always forego a promotion if he so chooses. Since, the 2nd respondent had not accepted his promotion, we fail to understand how his refusal to accept the promotion given can be termed as abandoning of job. In our



W.P.Nos.34446, 34447 & 34448 of 2013, 23778, 23780 & 23782 of 2019 and 29317, 29318 & 29320 of 2018

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opinion, the action taken by the management was wholly arbitrary, unreasonable, illegal and amounted to victimization of the 2nd respondent. He was certainly dismissed from service because dismissal need not necessarily be by a written order, and it can be oral or even by the conduct of refusing to give work. In this case, there was dismissal of the 2nd respondent by refusing to allow him to continue working as Office Boy and by not paying him salary as such. Hence, there was certainly an industrial dispute which could be referred under [Section 10](#) read with [Section 2A](#) of the Industrial Disputes Act.

8. We also do not agree that the 2nd respondent had abandoned his service. The finding of fact of the Labour Court is that he was always willing to serve as Office Boy, and he never refused to perform his duties as such. He only did not want to become a Security Guard. In our opinion, this cannot be called as mis-conduct by any stretch of imagination. The 2nd respondent was prevented by the management from discharging his duties as Office Boy since November 1986, merely on



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W.P.Nos.34446, 34447 & 34448 of 2013, 23778, 23780 & 23782 of 2019 and 29317, 29318 & 29320 of 2018

the ground that he refused to accept promotion. In our opinion, the action of the management was wholly arbitrary and illegal. There is nothing to show that the 2nd respondent was unwilling to work as Office Boy. He was only unwilling to work as Security Guard. By foregoing his promotion, we fail to understand what wrong he had committed.

9. It may be mentioned that in the Award of the Labour Court dated 2 1.03.2003 the clear finding of fact after considering all the evidence on record is that the 2nd respondent had not accepted his promotion as Security Guard, but he was always willing to work as Office Boy, the post already held by him, but the management did not permit him to work as Office Boy. Since, this finding of fact is based on evidence on record, we cannot interfere with it in writ jurisdiction. It is not open for this Court in writ jurisdiction to sit as a Court of Appeal over the findings of fact of the Labour Court and hold that the 2 nd respondent had abandoned his job as Office Boy. The 2nd respondent had clearly stated before the Labour court that he was always ready and willing to work as Office Boy, but the



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W.P.Nos.34446, 34447 & 34448 of 2013, 23778, 23780 & 23782 of 2019 and 29317, 29318 & 29320 of 2018

management did not permit him to work as such, and he never accepted his promotion. This plea of the 2nd respondent was accepted by the Labour Court and we cannot sit as a Court of Appeal to reverse this finding of fact. Hence, we hold that there was no abandonment of job by the 2nd respondent, and instead it is a clear case of harassment and victimization by the appellant-management.

10. The appellant-management had given an option to the employee in the promotion order dated 24.11.1986 either to accept it or decline promotion, and the 2nd respondent declined promotion assigning his reasons immediately on 29.11.1986. Hence, the management cannot now accuse him of any mis-conduct, rather the mis-conduct is by the management which acted in a mala fide manner and victimized the 2nd respondent-employee.

11. The 2nd respondent was thrown out of employment for the past 18 years on account of the highly illegal and mala fide action of the appellant-management. He has alleged that he has been languishing in abject poverty, and



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W.P.Nos.34446, 34447 & 34448 of 2013, 23778, 23780 & 23782 of 2019 and 29317, 29318 & 29320 of 2018

that he was borrowing money from his friends and relatives to support his family. We cannot appreciate the attitude of the appellant-management which has acted in a highly mala fide and arbitrary manner, and hence while we dismiss this writ appeal, we direct that the Award of the Labour Court dated 21.03.2003 shall be implemented by the appellant-management forth with, and all arrears from the date of non-employment till the date of payment must be paid to the 2nd respondent with interest at the rate of 10% p.a. within two months from today. Consequently, connected miscellaneous petition is closed."

18.Applying the ratio laid down by the Hon'ble Division Bench of this Court in the decision cited supra, this Court issues the following order:

(i)The Management is directed to reinstate the workmen in the original post which they held at the relevant point of time in the Puducherry factory.

(ii)The Management shall pay 50% backwages from 14.02.2012 to 26.06.2013 and shall pay 25% backwages from 27.06.2013 to till date and shall settle the entire amount in favour of the workmen,



W.P.Nos.34446, 34447 & 34448 of 2013, 23778, 23780 & 23782 of 2019 and 29317, 29318 & 29320 of 2018

within a period of six weeks from the date of receipt of a copy of this order.

(iii)Liberty is granted to the Management to transfer the workmen within the State of Tamil Nadu in their original employment where they were employed in Puducherry factory.

(iv)The amount awarded to the workmen by the Labour Court vide orders dated 16.11.2017 in C.P.Nos.01, 02 and 03 of 2014 shall stand modified as per the modification of the award in I.D.Nos.26, 27 and 28 of 2012 made in this order.

19.With the above observations and directions, these writ petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

17.08.2023

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Speaking Order/ Non Speaking Order
Index: Yes/ No
Internet: Yes/ No

To

1.The Presiding Officer,
Labour Court Puducherry,
Puducherry,

16/17



W.P.Nos.34446, 34447 & 34448 of 2013, 23778, 23780 &
23782 of 2019 and 29317, 29318 & 29320 of 2018

Union Territory of Puducherry.

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M.DHANDAPANI,J.
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**W.P.Nos.34446, 34447 & 34448 of 2013,
23778, 23780 & 23782 of 2019 and
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17.08.2023



WEB COPY



W.P.Nos.34446, 34447 & 34448 of 2013, 23778, 23780 &
23782 of 2019 and 29317, 29318 & 29320 of 2018