



WEB COPY

1/12

W.A.No.1781/2022 & Batch



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 07-11-2023

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.A.Nos.1781, 1784, 1825 & 1827 of 2022

The Management,
M/s.British Airways

...

Appellant in all W.As.

-VS-

1.The Presiding Officer,
The Central Government Industrial Tribunal-
cum-Labour Court,
Shastri Bhawan,
Haddows Road,
Chennai – 600 006.

2.T.Ramesh Thangadurai

3.Customer Service Manager,
M/s.British Airways.

...

Respondents in W.A.No.1781/2022

1.The Presiding Officer,
The Central Government Industrial Tribunal-
cum-Labour Court,
Shastri Bhawan,
Haddows Road,
Chennai – 600 006.



2.Sathish Loganathan

3.Customer Service Manager,
M/s.British Airways. ...

Respondents in W.A.No.1784/2022

1.The Presiding Officer,
The Central Government Industrial Tribunal-
cum-Labour Court,
Shastri Bhawan,
Haddows Road,
Chennai – 600 006.

2.Ramaraja Govindan

3.Customer Service Manager,
M/s.British Airways. ...

Respondents in W.A.No.1825/2022

1.The Presiding Officer,
The Central Government Industrial Tribunal-
cum-Labour Court,
Shastri Bhawan,
Haddows Road,
Chennai – 600 006.

2.T.Jenifer Prasanna Kumari

3.Customer Service Manager,
M/s.British Airways. ...

Respondents in W.A.No.1827/2022

W.A.No.1781 of 2022 is filed under Clause 15 of the Letters Patent against the order, dated 08.02.2022, passed in W.P.No.13604 of 2016.



W.A.No.1784 of 2022 is filed under Clause 15 of the Letters Patent against the order, dated 08.02.2022, passed in W.P.No.13605 of 2016.

W.A.No.1825 of 2022 is filed under Clause 15 of the Letters Patent against the order, dated 08.02.2022, passed in W.P.No.13606 of 2016.

W.A.No.1827 of 2022 is filed under Clause 15 of the Letters Patent against the order, dated 08.02.2022, passed in W.P.No.13603 of 2016.

For Appellant in all W.As. : Mr.M.Vijayan,
for M/s.King & Partridge.

For Respondent 2 in all W.As.: Mr.Balan Haridas

COMMON JUDGMENT
(By *S.Vaidyanathan,J.*)

Respondent workmen joined the services of the appellant management as Junior Cargo Security Clerks/Junior Security Service Clerks. On 16.02.2014, the management had issued an order, terminating the services of the workmen, which resulted in the industrial disputes being raised by the workmen. The Ministry of Labour referred the industrial disputes to the Central Government Industrial Tribunal-cum-Labour Court for adjudication.



2. The factum of employment, nature of work and termination of the workmen from service was not in dispute. However, the management had taken a plea that taking into account the security and safety of the aircraft, certain activities pertaining to aircraft operations were treated as Aircraft Operators' Aviation Security Functions (AVSEC) and that there was an agreement with domestic Indian Air Carriers having International Operations from the airport for security functions. It was stated that the services of the workmen, working as Junior Cargo Security Clerks/Junior Security Service Clerks, fell directly under the purview of the services so defined and prohibited to be carried out by Foreign Airlines, and, thus, the workmen in the security functions, performing the functions of security and screening, lost their jobs due to security reasons. It was also stated that the workmen, numbering four, were disengaged from services and the question of violation of the provisions of the Industrial Disputes Act, 1947, in short, "the Act", do not apply. The management had further stated that the question of providing alternative employment did not arise, more-so, there was no privity of contract between the management and the workmen and that there was only contract for service and not contract of service. It was also their case that the workmen would not be entitled for any relief much less reinstatement, as demanded by them.

3. In response, the workmen contended that their services were terminated by the management without following the mandatory provisions of the Act. In support of their contention, they produced 19 documents, apart from examining W.W.1.



WEB COPY



4. The Tribunal/Labour Court, after analysing the evidence on record, came to the conclusion that there was termination of service and that there was violation of Section 25-G of the Act. For the sake of convenience, Paragraphs 11 and 12 of the Award of the Labour Court, dated 08.02.2016, are scanned below :

11. The contention that is raised by the petitioners with force is that they were terminated in violation of Section-25G of the Industrial Disputes Act. WW1 has given the names of the 12 Junior Cargo Security Clerk / Junior Security Service Clerks engaged by the Respondents in the order of seniority in the Claim Statement as well as in the Proof Affidavit. This list given by WW1 is not questioned by the Respondents. So it is to be accepted that this is the order of seniority in which these persons were appointed. The grievance of the petitioners is that while juniors were retained by the Respondents, they were terminated from service. Of course, there is a case for the Respondents in the Counter Statement that these persons were re-deployed after a selection process based on interview in which the petitioners are also said to have participated. WW1 Has denied the case that there was an interview and she had undergone the process of interview. According to her, they were only made to report at a hotel and fill up a form. There was no interview as claimed by the Respondents. Against the claim of WW1 also there is no contra evidence.

12. WW1 has stated in the Claim Statement as well in proof affidavit that the order of seniority was not maintained while terminating the petitioners, retaining some of the employees. As seen from the evidence of WW1, out of the six persons retained in service, Srijith Nair and Rajesh Harikrishnan, Arun Charles and P.J. Charles are junior to her. Again Senthil Kumar who has been transferred to Bangalore also is junior to her. Out of 12 persons named as those working in the security service, the petitioner in ID 91/2014 comes fourth. The petitioner in ID 128/2014 is in the 7th place. The petitioner in ID 92/2014 is in the 9th place and the petitioner in ID 93/2014 is in the 10th place. The petitioners should have been retained when those who were junior to them were retained. Termination of the petitioners is certainly in violation of Section-25G of the ID Act.



Because of non-compliance with Section-25G of the ID Act itself the petitioners are entitled to be reinstated in service.

WEB COPY

In view of my discussion above an award is passed as below in the following terms:

The Respondents are directed to reinstate the petitioners in service with 50% backwages, continuity of service and other attendant benefits, within a month of the publication of the Award. The Respondents are entitled to adjust the amount paid at the time of termination of service, towards the amount payable as backwages. If payment is not made within the prescribed time, the amount will carry interest at the rate of 7.5% per annum.

A reading of the Award would make it clear that the management had not examined any witnesses and no documents were also filed in support of their contention.

5. On questioning the Award of the Labour Court by way of Writ Petition, the learned single Judge observed that the finding of fact was rendered by the Labour Court and it could not be interfered with by this Court in the light of the decision of the Supreme Court in *Syed Yakub v. K.S.Radhakrishnan and Others*, AIR 1964 SC 477, and the same is extracted below :

"7. In Syed Yakoob V. K.S.Radhakrishnan and Others reported in AIR 1964 SC 477, such a proposition was held in the following manner:-

'7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdictions. A writ can similarly be



WEB COPY

issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was' insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the 7 said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Syed Ahmed Ishaque(1), Nagendra Nath Bora v. The Commissioner of Hills Division and Appeals, Assam(2), and Kaushalya Devi v. Bachittar Singh(3))."



WEB COPY



6. In the light of Paragraphs 11 and 12 of the Award, extracted supra, there appears to be a clear violation of Section 25-G of the Act, by the management.

7. It is brought to the attention of this Court that some of the workmen have not been paid wages under Section 17-B of the Act and, during the pendency of the Writ Appeals, the said wages have been paid.

8. Though Mr.M.Vijayan, learned counsel for the appellant management, would submit that they would submit documents in support of their contention, we are of the view, that in the light of the decision of this Court in *Madras Aluminium Company Limited v. Labour Court, Coimbatore, and Another*, 1992 II LLN 101, the documents, that were not marked before the Labour Court, cannot be relied upon by any of the parties, unless the parties accept the genuineness of the same. In this regard, we passed an order on 18.08.2023 and the relevant portion of the same is extracted below :

"5. The finding of fact rendered by the Labour Court as confirmed by the learned Single Judge cannot be interfered with and that in the light of the judgment of Madras High Court in Madras Aluminium Company Limited V. Labour Court, Coimbatore and another reported in 1992 II LLN 101, documents that were not marked before the Lower Forum cannot be relied upon by this Court unless both parties accept genuineness of the same. Even though the employer would submit that the employees had been working in Security Zone, it is the mandatory duty of the employer to comply with the provisions of



Industrial Disputes Act, 1947 and the stand of the employer that the employees were employed in Security Zone is disputed by Mr. Balan Haridas, learned counsel for the employees as the Labour Court has rendered a finding that the employees were not engaged in the Security Zone. It is represented by the learned counsel for the employer that eventhough the workmen have stated that they will not insist upon the contempt petition to be taken up for hearing, till the disposal of the writ appeal, statutory notice has been issued by the learned Single Judge and the matter is listed before the learned Single Judge today for appearance. He would further submit that once the appeal is numbered, contempt petition before the learned Single Judge is not maintainable, in view of the judgments of the Hon'ble Apex Court in Kunhayammed & Others Vs. State of Kerala & Another, (2000 (6) SCC 359) and Dineshan, K.K. Vs. R.K.Singh and another, [(2014) 16 SCC 88] and the judgment of this Court in Contempt Petition No.702 of 2020 dated 26.03.2021."

The Labour Court also moulded the relief and granted only 50% of the back-wages with continuity of service and other attendant benefits to be payable within one month from the date of publication of the Award, and, if the amount was not paid, it would fetch interest at 7.5% per annum.

9. During the course of argument, Mr.M.Vijayan, learned counsel for the appellant management, contended that two workmen, namely, (1) T.Jenifer Prasanna Kumari, workman in W.A.No.1827 of 2022, and (2) Sathish Loganathan, workman in



W.A.No.1784 of 2022, were gainfully employed; of whom, the former took up employment in another establishment and the latter went abroad, and, therefore, the wages under Section 17-B of the Act were not granted to them. In so far as the other two workmen are concerned, this Court has directed the management to pay wages under Section 17-B of the Act, which are extended to them.

10. Though we find no perversity in the Award, which has been affirmed by the learned single Judge, Mr.Balan Haridas, learned counsel for the workmen, would fairly submit that when there is employment the same has got to be provided to the two workmen and it is sufficient if they are paid 25% of the back-wages.

11. Taking note of the submissions of the parties, we are of the view that the two workmen, who are gainfully employed, are not entitled to any back-wages, and, in case they report for work within one month from the date of receipt of this order, they can be provided with employment with continuity of service and other attendant benefits, except back-wages. As for the other two workmen, namely, (1) T.Ramesh Thangadurai, workman in W.A.No.1781 of 2022, and (2) Ramaraja Govindan, workman in W.A.No.1825 of 2022, the Award is modified into one of 25% of back-wages, reviewed from 50% to 25%, with continuity of service. We also make it clear, that, while paying the back-wages at 25% as per the order of this Court, the wages paid under Section 17-B of the Act can be adjusted and the remaining amount released. In other words, the difference between the back-wages at 25% and the wages drawn under



Section 17-B of the Act shall be paid by the management within three months from the date of receipt of this order. On reinstatement, the workmen are entitled to continuity of service. In order to give a quietus to the matter and to cut short the life of the litigation, we are reducing the back-wages to 25% with regard to two workmen, as stated above. Workmen are to report for work within one month from the date of receipt of this order.

12. Writ Appeals are disposed of accordingly. No costs. Consequently, the connected C.M.P.Nos.13096,13104,13259 and 13270 of 2023 are closed.

Index : Yes/No
Internet : Yes/No
dixit

(S.V.N.,J.) (K.R.S.,J.)
07-11-2023

To

The Presiding Officer,
The Central Government Industrial Tribunal-
cum-Labour Court,
Shastri Bhawan,
Haddows Road,
Chennai – 600 006.



WEB COPY

12/12

W.A.No.1781/2022 & Batch



S.VAIDYANATHAN,J.
AND
K.RAJASEKAR,J.

dixit

W.A.No.1781 of 2022 & Batch

07-11-2023