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W.A.No.825/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 20-04-2023

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

W.A.No.825 of 2023

K.Ramesh

...

Appellant

-VS-

1.The Presiding Officer,
II Additional Labour Court,
Chennai.

2.MITRA,
Rep. by Mr.Venktasubramanian ...

Respondents

Appeal is filed under Clause 15 of the Letters Patent against the order, dated 29.03.2021, passed in W.P.No.21140 of 2015, on the file of this Court.

For Appellant : Mr.B.Senthilkumar

For Respondent 2 : Mr.Anand Gopalan,
for M/s.T.S.Gopalan & Co.



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

This appeal has been preferred by the employee, challenging the order of the learned single Judge, dated 29.03.2021, passed in W.P.No.21140 of 2015, after receipt of the compensation awarded by this Court in lieu of reinstatement.

2. The matter was posted for reporting compliance by the order, dated 29.03.2021. If the employee was not satisfied with the compensation, he should not have accepted the same and when the matter was taken up for hearing and listed for compliance, he should have stated that he was not interested in accepting the compensation and that he was going to file a review against the order in the Writ Petition.

3. A reading of the evidence and the order of the learned single Judge would make it very clear that the appellant-writ petitioner has received all the benefits and sought for the provident fund benefits. Thereafter, he raised a dispute. The Management had taken a stand that there was no termination of the employee and that he could come and report for work, by filing a counter in the industrial dispute before the Labour Court on 01.07.2012. There was evidence before the Labour Court that the Management was willing to take back the employee in service. Only at the time of argument in the Writ Petition in the year 2021, the employee was willing to report for



work and, at that stage, the Management stated that, at that distant point of time, it was not possible to provide employment to the employee. The employee has, admittedly, worked for 14 months. The employer has also stated in the pleading that the employee was taking photograph of a woman employee and, in order to protect the interests of the woman, the issue was not precipitated. Though no evidence after framing of charges to that effect has been given, the fact remains that the employee has left the job and, thereafter, raised a dispute. Even assuming for the sake of argument that the contention of the employee is correct, he should not have accepted the cheque for Rs.1.00 lakhs tendered by the employer, pursuant to the order passed by this Court, dated 29.03.2021. It is true, the employee has written a letter on 29.03.2021 that he was receiving the amount under protest and that he was willing to return the cheque. However, without giving the cheque back, he has remitted the amount of Rs.1.00 lakh ordered by this Court towards compensation in January,2022. The Court has categorically held that the employee is entitled to accept the amount tendered by the employer without prejudice to his rights, questioning the order.

4. In the case on hand, the employee has accepted the order, dated 29.03.2021, and waited for the employer to comply with the order and, after accepting the cheque without any protest before the learned single Judge, when the matter is posted for compliance, now, he has come forward with the present plea that he is to be reinstated in service as per the award of the Labour Court without back-wages and that



the award of compensation, ordered by this Court, is very meagre. This Court has also suggested both the parties to arrive at an amicable settlement and the employer was asked to enhance the compensation amount over and above Rs.1.00 lakh already paid. The employee contended that he must be paid a sum of Rs.5.00 lakhs towards full quit to give a quietus to the industrial dispute.

5. Taking note of the overall circumstances of the case, mentioned supra, in the light of the judgment of this Court in *The Management of Chandra Textiles Pvt. Ltd. v. N.Palaniswamy and Others*, 1987 (I) LLJ 458, the employee is permitted to receive the amount under protest, and, questioning the award, in so far as that has gone against him, is distinguishable on facts.

6. As already stated supra, in the present case, the employee has accepted the order of the learned single Judge and waited for the employer to comply with the order. On compliance, after receipt of the amount, having agreed to return the money, deposited the same, stating that the amount received was under protest. As the employee has rendered 14 months of service and also that there is a lacuna on the part of the employer in conducting a detailed inquiry, when the employer has offered employment to the employee during trial, the employee should have accepted the same at that stage without prejudice to his rights and contested the industrial dispute, so that the back-wages from the date of dismissal till the date of offer of employment alone could have been the issue, to be decided by the Labour Court. The Labour Court having



rejected the back-wages and that there is a categorical finding by the learned single Judge with regard to the offer of employment by the employer, we are of the view that the order of the learned single Judge need not be interfered with. However, we feel that the compensation awarded by the learned single Judge appears to be very meagre. Since the appellant employee has received all the terminal benefits, including Salary, P.F., Bonus etc., we enhance the compensation to Rs.2.00 lakhs, less the amount of Rs.1.00 lakh, already paid. The enhanced amount shall be paid by the respondent employer to the appellant employee within a period of 45 days from the date of receipt of a copy of this order.

7. We make it clear that if the appellant employee is going to make a protest with regard to the receipt of the enhanced amount of rupees one lakh over and above what has been already ordered by the learned single, he shall not encash the same, and, in case he is willing to accept the same, he can tender a request to that effect to the respondent Management, so that the Management can pay the same within one week from the date of request.

8. Writ Appeal is disposed of accordingly. No costs.

Index : Yes/No
Internet : Yes/No
Speaking / Non-speaking Order
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(S.V.N.,J.) (R.K.M.,J.)
20-04-2023



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W.A.No.629/2023

To
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The Presiding Officer,
II Additional Labour Court,
Chennai.



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S.VAIDYANATHAN,J.
AND
R.KALAIMATHI,J.

dixit

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