



WEB COPY



W.P.No.17631 of 2018 & W.M.P. Nos.20894 & 28433 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.10.2023

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

W.P.No.17631 of 2018 &
W.M.P. Nos.20894 & 28433 of 2018

The Management of
Dynamatics Technologies Ltd. (JKM Automative)
JKM Park, F-67 & F-68,
SIPCOT Industrial Park,
Irungattukottai, Sriperumbudur,
Kanchipuram District.

... Petitioner

Vs.

1. D. Sridhar
2. The Presiding Officer,
I Additional Labour Court,
Labour Court, Chennai

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari or any other appropriate writ or direction to call for the records from the file of the 2nd respondent herein in C.P. No.331 of 2015 dated 22.12.2017.

For Petitioner	: Mr. M.Vijayan for King & Partridge
For R1	: Mr. V. Prakash, Senior Counsel for M/s. K. Sudalai Kannu



W.P.No.17631 of 2018 & W.M.P. Nos.20894 & 28433 of 2018

ORDER

WEB COPY

This Writ Petition is filed by the Management of Dynamatic Technologies (JKM Automative) Limited, Challenging the orders dated 22.12.2017 passed by the Presiding Officer, I Additional Labour Court, Chennai, in C.P. No.331 of 2015.

2. Briefly the facts of the case are as follows:

2.1. The 1st respondent was employed as an Operator trainee by the petitioner Company on 11.02.2002 and was confirmed in service after the probation period on 11.08.2005. In the year 2014 when the petitioner Company was not doing well, due to recession and lack of adequate orders, the Company in order to curtail the expenses on account of electricity, canteen, etc., exempted a few of the workmen from reporting to duty vide a letter dated 11.06.2014 (Ex.P4). They were declared to be on paid holidays till further instructions. Accordingly twenty five workmen were exempted from coming for duty with effect from 13.06.2014 out of which, the 1st respondent was one. However, all of them were paid the salary as usual since it was a Management decision.



W.P.No.17631 of 2018 & W.M.P. Nos.20894 & 28433 of 2018

2.2. According to the petitioner Company it had issued a deputation order dated 16.07.2014 (Ex.R11) transferring the 1st respondent to the Coimbatore unit for a period of 3 months and in the same letter it was also mentioned that he was eligible one time allowance of Rs.3,000/- towards incidental expenses and a transfer allowance of Rs.1,000/-. However, the 1st respondent failed to report for duty at Coimbatore unit which prompted the petitioner to issue a reminder on 27.10.2014 (Ex.R14) followed by another reminder on 23.12.2014 (Ex.R15). Since the 1st respondent did not report for duty at the Coimbatore Unit he was not paid salary/wages from August 2014 onwards as it was treated as 'no work no pay'. He was paid wages for July 2014 on pro-rata basis. According to the petitioner Company the respondent was not taken to task by way of initiating any disciplinary action keeping in mind the need to maintain a cordial industrial relations that too at a time when the Industry was reeling under recession.

2.3. The aggrieved 1st respondent approached the Labour Court seeking the payment of arrears of full wages from July 2014 to May 2015 working out to Rs.2,83,980/- citing that he was the sole bread winner in the family and was put to severe mental agony and financial hardship. It



W.P.No.17631 of 2018 & W.M.P. Nos.20894 & 28433 of 2018

was also his contention that he was not aware of the deputation order dated 16.07.2014 (Ex.R11) and came to know of it only on 27.10.2014 and therefore cannot be deprived of his wages from August 2014. The Additional Labour Court, Chennai, in C.P. No.331/2015 gave an Award of Rs.2,83,980/- at the rate of Rs.27,280/- per month from July 2014 to May 2015 after deducting Rs.16,100/- pro-rata wages which was paid for July 2014 (for the period upto 18th July 2014).

3. Mr. M.Vijayan, learned counsel for the petitioner Company would contend that the 1st respondent had wilfully disobeyed the instructions of the petitioner by not reporting at the new place of posting, i.e., Coimbatore, thereby causing disruption in the assignment planned for him at Coimbatore. He also argued that wages can never be paid for a period when the 1st respondent has wilfully abstained from work and such denial is based on the principle of 'No work No pay'. It was also argued by him that even as per the admission of the 1st respondent he came to know about the deputation on 27.10.2014 and therefore he is entitled to receive wages upto that date only. He also pointed out that the 1st respondent was admonished for the irregular attendance on many occasions earlier. His further contention was that the application under



W.P.No.17631 of 2018 & W.M.P. Nos.20894 & 28433 of 2018

Section 33 (C) (2) of Industrial Disputes Act, 1947 is not maintainable since there is no pre-existing right in the instant case. Therefore he prayed for setting aside of the Award of the Labour Court.

4. Per contra, Mr. V. Prakash, learned Senior Counsel, assisted by for Mr. K. Sudalai Kannu, learned counsel for the 1st respondent would contend that he was kept in dark about the deputation order deliberately only with the intention of denying him wages for the intervening period. It was his further contention that the said deputation order dated 16.07.2014 (Ex.R11) was despatched to a different address and got returned by the Courier with an endorsement 'Left' and thereafter, even according to their own submission, the petitioner Company did not even attempt to reach the 1st respondent again to intimate about the deputation. According to the learned counsel for the 1st respondent, the 1st respondent was exempted from reporting for duty vide letter dated 11.06.2014 in which it was clearly stated that he will be paid full salary for the said period. It was his further contention that this particular letter addressed to the 1st respondent did not specifically mention the period of such exemption and it only stated that the exemption from reporting for duty was with effect from 13.06.2014 until further orders. Therefore, it



W.P.No.17631 of 2018 & W.M.P. Nos.20894 & 28433 of 2018

was argued that this application under Section 33 (C) (2) of the Industrial Disputes Act, 1947, was very much maintainable as there was a pre-existing right and as such the Award of the I Additional Labour Court, Chennai, is perfect and needs no intervention.

5. This petitioner had challenged the order passed by the Labour Court, Chennai, in C.P. No.331/2015. The petitioner Company has contended that the 1st respondent was irregular in attendance and was admonished many times earlier by them. Similarly, the petitioner Company has also repeatedly averred that they have been very lenient in dealing with the 1st respondent even when he failed to report for duty at the Coimbatore unit pursuant to the order of deputation dated 16.07.2014 (Ex.R11). It is to be noted that though the petitioner Company had on one hand exempted 25 of the employees from coming to work from 13.06.2014 onwards, on the other, transferred the 1st respondent, a month later, on 16.07.2014. Thus it clearly appears that there has been no real exemption from work granted to the respondent. It is understood that it is the prerogative of the petitioner Company to utilise the services of their employees in whatsoever manner as deemed fit. Therefore, though this aspect has to be noted, the action of the petitioner Company



W.P.No.17631 of 2018 & W.M.P. Nos.20894 & 28433 of 2018

cannot be termed as erroneous. However, the all important aspect of whether the deputation order issued to the 1st respondent was received by him is the crux of the issue discussed by the Labour Court. The Labour Court analysed the depositions of P.W.1 (the 1st respondent herein) and also R.W.1 and R.W.2 representing the petitioner Company. Mr.K.V.Gopalan (R.W.2) had clearly deposed that the deputation order dated 16.07.2014 (Ex.R11) was never served on the 1st respondent and that it was sent to an address No.37, Rajaji Street, Anakaputhur, Chennai and was returned with an endorsement 'Left'. In this context R.W.2 also deposed that no further steps were taken by the petitioner Company to serve the deputation order after it was returned for the reasons stated above. Had the Company been serious about the deputation, they ought to have ensured the service of the deputation order to the 1st respondent which they failed to do. Thus it is clear that the deputation order was not received by the 1st respondent to make him known that he has been deputed to Coimbatore. Another important aspect dealt with by the Labour Court is the fact that the assignment which was to be completed by the 1st respondent was completed by other employees and it was not as if the work got stuck.



W.P.No.17631 of 2018 & W.M.P. Nos.20894 & 28433 of 2018

5.1. The 1st respondent has averred that he came to know of the deputation order only on 27.10.2014. In this context it is pertinent to note that the first letter of the petitioner Management dated 11.06.2014 reads as under :

11.06.2014

To
Mr.D. Sridhar
Emp. No.253

Dear Mr.D.Sridhar,

You are aware that the industry has been besieged with acute recession and this has affected the Company's order position very badly. Hence, the Company is unable to provide an employment to suit the technical capability of you and all the other employees in all the three shifts and the employees are also idling most of the time. At times, this idleness results in various unwanted/undesirable activities by section of employees and this affects the Industrial peace in the Company.

In the above circumstances, until the order position improves, the Management has decided to declare paid holidays to its employees on a rotational basis.

In the light of the above,you are exempted from reporting for duty with effect from 13th of June 2014 until further orders.

Till then you will be paid full salary.

For Dynamitic Technologies Limited

*S. UPPILI
EXECUTIVE DIRECTOR*



W.P.No.17631 of 2018 & W.M.P. Nos.20894 & 28433 of 2018

WEB COPY

Thus it is clear that the 'paid holidays' to the respondent was from 13.06.2014 till further orders thereby substantiating the existence of pre-existing rights. The argument that the salary if at all payable can be paid upto 27.10.2014 only is also not reasonable. Therefore, I do not find any infirmity in the orders passed by the Labour Court.

6. In view of the above discussions, the Writ Petition is dismissed. No costs. Consequently, connected Writ Miscellaneous Petitions are closed. The orders dated 22.12.2017 passed by the Presiding Officer, I Additional Labour Court, Chennai, in C.P. No.331 of 2015, is confirmed.

16.10.2023

bga
Index : yes/no
Speaking /Non speaking Order

To

The Presiding Officer,
I Additional Labour Court,
Labour Court, Chennai



WEB COPY



W.P.No.17631 of 2018 & W.M.P. Nos.20894 & 28433 of 2018

R.HEMALATHA, J.

bga

W.P.No.17631 of 2018 &
W.M.P. Nos.20894 & 28433 of 2018

16.10.2023