



W.P.No.18143 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.04.2023

DELIVERED ON : 25.04.2023

Coram:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P.No.18143 of 2014

and M.P.No.1 of 2014

The Management

M/s.Leder World Co

1056/E=1/2, Konamedu, Vaniyambadi, Vellore 635 751

Rep. by its Proprietor V.Shakeel Ahmed

..Petitioner

Vs.

1.The Presiding Officer

Principal Labour Court, Vellore

2.R.Jayapal

..Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to call for the records and quash the award dated 29.05.2014 passed in I.D.No.46 of 2013 by the 1st respondent, Presiding Officer, Principal Laour Court, Vellore, insofar as it relates to payment of 50% backwages, continuity of service and all other attendant benefits.

Page No.1/12



W.P.No.18143 of 2014

For petitioner

: M/s.Gupta & Ravi

For respondents

: R1-court,

R2-Mr.S.N.Ravichandran

ORDER

This writ petition is filed by the Management challenging the award passed in I.D.No.46 of 2013 insofar it relates to payment of 50% backwages, continuity of service and all other attendant benefits.

2. The 2nd respondent workman who worked under the petitioner management was denied employment. The workman who approached the labour court in I.D.No.46 of 2013, claiming reinstatement into service with continuity of service, backwages and all other attendant benefits, raised a ground that the attitude of the management is unfair.

3. The petitioner management has taken a stand that the workman entered into a settlement under section 18(1) by receiving a sum of Rs.10,000/- and thereafter, he quit the employment voluntarily and therefore, he was not entitled to any relief.



W.P.No.18143 of 2014

4. The Labour court, on going through the submissions in the ID, counter by the management, oral and documentary evidence, decided that the evidence and conduct of parties would prove the only probability that alleged resignations of the workman is not a genuine and voluntary one. It was also pointed out by the learned Judge that the workman was terminated from service for no valid reasons. On such finding, the learned Judge held that the continuity of service of the petitioner can be accounted from 01.01.2005 with all other attendant benefits. The award was passed holding that the workman is entitled to 50% of the backwages for the period between the date of termination till reinstatement with continuity of service from 01.01.2005 and all other attendant benefits.

5. Aggrieved by the said award, the management has come before this court, raising grounds to the effect that the workman resigned from service on 03.02.2010 and received a sum of Rs.24,500/- in full and final settlement of all his claims. Further, the workman rejoined the services on 01.04.2010 and again voluntarily resigned from the services on 16.02.2012 and received



W.P.No.18143 of 2014

a sum of Rs.10,000/- in full and final settlement of all his claims and also entered into a settlement under Section 18(1) of the Industrial Disputes Act, 1947. In the light of settlement, the award of the labour court without framing relevant issues has proceeded on the basis that the services of the 2nd respondent/workman were illegally terminated and hence, the award is vitiated.

6. The learned counsel for the management would submit that the management never terminated the service of the workman and it was a case of the voluntary resignation based on which settlement dated 16.02.2012 was executed between the management. He further submitted that the exhibits marked on the side of the management would clearly show that the workman had resigned from the services of the management on two occasions and unnecessarily raised the dispute in I.D.No.46 of 2013 on false and fictitious grounds.

7. It is the contention of the petitioner-management that Ex.M.15 settlement was arrived only for the reasons of resignation of the workman



W.P.No.18143 of 2014

and the workman has not proved that he was terminated from service on 15.05.2012. The learned counsel by relying on decisions, pointed out that when work is not done, remuneration is not to be paid and accordingly, the award of 50% of backwages is without proper application of mind. The learned counsel as such, prayed to set aside the award.

8. Per contra, Mr.S.N.Ravichandran, learned counsel for the 2nd respondent-workman submits that as a measure of victimization, the workman was denied employment from 15.05.2013. The Petitioner-management violated Section 25-F of the ID Act. The Labour court, passed a well reasoned Award granting 50% backwages from the date of termination with continuity of service and all other attendant benefits.

9. The learned counsel also submitted that the workman was not discharged, retrenched or terminated from service. The stand of the management with regard to resignation of the workman is not acceptable and the petitioner management now paying a paltry sum of Rs.3500/- is less than the Minimum Wages prescribed under the Statute.



W.P.No.18143 of 2014

10. Heard both sides and perused the records carefully.

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11. The submissions made on both sides would go to show that the workman raised an Industrial dispute before the Labour court, after failure of conciliation on 07.01.2023. The dispute raised before the labour court under section 2(A)(2) of I.D.Act, was taken up by the learned Judge. Based on the pleadings, submissions and evidence put forth on the side of workman and management, the learned Judge framed the points for consideration as below:-

"1. Whether the petitioner was illegally terminated from service as alleged by him?

2. Whether petitioner is entitled to get the reliefs as prayed for? "

12. The learned Judge, has pointed out that the admitted signature of the workman in Ex.M.15-18(1) settlement is the culmination of the resignation submitted by the workman. Ex.M.15 appears to be a printed form and in the said form there is no mention about the resignation. So the burden is upon the management to prove that Ex.M.15 settlement was arrived due to



W.P.No.18143 of 2014

submission of resignation letter by the workman. Whenever resignation letter was submitted by an employee that has to be accepted by the respondent(management) and the acceptance should also be conveyed to the employee. But there is no document produced to show that the management has conveyed their acceptance to the petitioner-workman. The learned Judge, on appreciating the evidence of workman held that though the workman has received Rs.10,000/- as agreed in agreement, his contention that the management used to give small amount in the manner of settlement at every short period of service, in order to ensure that there is no continued service; 18(1) settlement is only a formality and even after that the workman was allowed to work in the respondent's factory. Workman also produced pay slips to prove his contention that he had been in the service of the management even after the alleged date of 16.02.2012. The management denied the genuineness of Wage slips and stated that those documents are creation of the workman.



13. On the above discussion, learned Judge, held that resignation is only a formal one and the same is made to be done as a ritual by the management in order to save their own interest; workman continued to be in employment even after the settlement, but kept out of record. The learned Judge pointed out that burden of proof is upon the management to prove Ex.M.15 settlement was arrived at between the employer and the employee only for the reasons of resignation, but the same was not discharged. Further, the communication of resignation as to whether accepted by the management, was not informed to the workman.

14. The learned Judge further held that the non production of original wage slips by the management, absence of communication of acceptance of resignation and non mention of the resignation in Ex.M.15 settlement will be adverse to the submissions of the management. The learned Judge categorically held that the preponderance of probabilities is in favour of the workman and his specific plea that the management is in the habit of disrupting the continuity of service of the employees by stage managing and



W.P.No.18143 of 2014

such resignations has not been disproved by the management by substantiating evidence.

15. The award was thus passed holding that the petitioner is entitled to continuity of service from 01.01.2005 with 50% of backwages for the period between the date of termination till reinstatement and all other attendant benefits.

16. It is settled proposition of law that the courts must always keep in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee/workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the workman his dues in the form of full backwages. ***[DEEPALI GUNDU SURWASE VS KRANTI JUNIOR ADHYAPAK MAHAVIDYALA (D.ED) AND OTHERS [(2013) 10 SCC 324].***

17. The award was passed by the labour court after giving reasonable opportunity to both parties to examine and cross examine the witnesses. The



W.P.No.18143 of 2014

award was passed on 29.05.2014 by the labour court holding that the workman is entitled to reinstatement with 50% backwages and other benefits.

The petitioner-management approached this court by filing the present writ petition and obtained interim stay of the award on 09.07.2014.

18. After admission of writ petition and issuance of notice on 09.07.2014, the matter was listed on 15.09.2022 on which date, at the request of the learned counsel for the petitioner, the matter stood adjourned on 15.09.2022. Thereafter on 23.09.2022, 07.11.2022, 16.11.2022 at the request of the petitioner, the matter was adjourned. On 29.11.2022, when the matter was posted, learned counsel for the petitioner was absent, hence, this court directed the Registry to post the matter for dismissal, again on 01.12.2022, 12.12.2022, 21.12.2022, 06.01.2023, 25.01.2023, 30.01.2023, 13.02.2023, 21.02.2023, 13.03.2023, 24.03.2023 the matter was adjourned based on the request of the petitioner counsel and finally on 03.04.2023 the matter was argued by the petitioner counsel. Mr.S.N.Ravichandran, learned counsel for 2nd respondent-workman was also heard. It is relevant to note herein that the



W.P.No.18143 of 2014

termination suffered by the workman and his family would have faced grave difficulties and deprived of good food, education and would have borrowed money from relatives and friends to avoid starvation and also to defend his case before this court after getting award in his favour. In such circumstances, there is no justification to prolong the agony of the workman.

19. This court is in complete agreement of the reasonings of the learned Judge, labour court, and the findings are very clear and well founded and did not call for any interference. In the result, this writ petition is dismissed. The award passed by the labour court is confirmed. The petitioner-management shall implement the award within eight weeks from the date of receipt of a copy of this order, failing which, the petitioner shall pay interest at the rate of 9% per annum from the date of workman's termination till the date of actual reinstatement. No costs. Interim stay stands vacated.

25.04.2023

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Page No.11/12



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W.P.No.18143 of 2014

J.NISHA BANU, J.

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To

1.The Presiding Officer

Principal Labour Court, Vellore

W.P.No.18143 of 2014

25.04.2023