



W.P.No.17501 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2024

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CORAM:

THE HONOURABLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

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The Management of
Luk India Private Limited
(formerly known as Rane Luck Clutch Ltd)
P.B.No.20, Rayakotta Road
Hosur 635 109.

... Petitioner

Vs.

1.The Presiding Officer
Labour Court, Salem.

2.P.Balasubramaniya Ilango

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the first respondent in I.D.No.383 of 2000 and quash its order dated 22.11.2007.



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For Petitioner : Mr.G.Anand Gopalan
for M/s.T.S.Gopalan & Co

For Respondents : R1 – Labour Court
Mr.C.K.Chandrasekar for R2

ORDER

This Writ Petition is filed challenging the award of the Labour Court made in I.D.No.383 of 2000 dated 22.11.2007. By the said award, the workman was directed to be reinstated with backwages and continuity of service.

2. The factual background of which this Writ Petition arises is that the Workman was originally appointed as an apprentice for a period of three years in the petitioner management with effect from 25.10.1995. The Workman joined service on 30.10.1995. The apprenticeship period of the Workman came to an end on 29.10.1998. Thereafter, the Workman was appointed on regular basis by an order dated 30.10.1998 and he was placed on probation for a period of six months on a consolidated salary of Rs.1,200/-



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per month. Thereafter, when the probationary period was to be over on 30.04.1999, on the last day i.e., on 30.04.1999 the probation was extended for another six months. The said order itself was issued only on 07.06.1999. Thereafter, a day prior to the completion of the extended period of six months on 28.10.1999 the Workman was terminated from service. Aggrieved by the same, the Workman raised a dispute on 20.12.1999. The conciliation proceedings failed on 18.04.2000. Thereafter, the present claim petition was filed under Section 2-A of the Industrial Disputes Act, which was taken on file on 03.08.2000.

3. It is the case of the Workman as per the claim petition that all along he was discharging his duties and his service was appreciated by the management. On being satisfied with his service during the period of apprenticeship, he was appointed on regular basis. As a matter of fact, when the Workman joined as an apprentice, he was given training only for a period of one week and thereafter, the Workman was deployed in the concerned work and he was working as any other regular Workman even during the period of apprenticeship. The action of the management in terminating the



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services of the Workman is nothing but an act of victimization and only to make unlawful gain after extracting the work for low wages.

4. The claim petition was resisted by filing a counter. The management had stated that it had acted only as per the certified Standing Orders. The Workman was engaged only as an apprentice for a period of three years. Since the Workman learnt the work, the management appointed him on regular basis and he was put on probation on 30.10.1998 by an order dated 30.04.1998 and his probation was extended for another six months as his performance was not up to the mark and to the expectation. The extended period of probation of service was also not satisfactory and hence, the Workman was not confirmed by any order in writing and accordingly he was discharged from Service. This would not amount to a dismissal or retrenchment. Therefore, the action is in accordance with law, hence, the claim petition has to be rejected.

5. On the said pleadings, the Labour Court took up the enquiry, the Workman examined himself as *P.W.1* and ***Ex.P1 to Ex.P5*** were marked.



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S.Madheswaran and *Suresh* were examined as *R.W.1* and *R.W.2* on behalf the management and *Ex.R1 to Ex.R12* were marked. After considering *Ex.R2, Ex.R6 and Ex.R7*, which are the performance reports, and considering the fact that the Workman was working as an apprenticeship for a period of three years and only after satisfying with his performance, he was regularly appointed and also considering the fact that the probation is not extended as per the Standing Orders before a period of one week from the last date of the expiry of probation, the Labour Court, held that the impugned action is illegal and directed reinstatement of the Workman into service with continuity and backwages with cost of Rs.500/-. Aggrieved by the same, the management has filed the present Writ Petition.

6. Heard, *Mr.G.Anand Gopalan*, the learned counsel appearing on behalf the petitioner management and *Mr.C.K.Chandrasekar*, learned counsel appearing on behalf of the second respondent workman.

7. *Mr.G.Anand Gopalan*, the learned counsel appearing on behalf of the petitioner management would submit that firstly the non satisfaction



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need not be recorded in *Ex.R6 and Ex.R7*, which are only the orders of extension of probation and the copy of the relieving order. The Workman's performance was not satisfactory. The management witnesses have spoken to with reference to the same. It can be seen that when the Workman probation was earlier extended by the order dated 30.04.1999, the Workman did not challenge the same. As per Clause 2 of the Certified Standing Orders, the seven days is mentioned only for extension of probation and not for termination of probation. Unless the order of the declaration of probation is made by the company is in writing, the Workman will not become a permanent employee and will only continue as a probationer. Being a probationer in due exercise of its powers, as per the Standing Orders, the Workman has been discharged and relieved from service. The Workman having accepted the earlier extension of probation was working without any murmur till the date of relieving from service, cannot now plead that his earlier extension of probation is illegal and therefore, the present order is consequently invalid.



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8. Per contra, *Mr.C.K.Chandrasekar*, the learned counsel

appearing on behalf of the second respondent Workman would submit that the Standing Orders are very clear and categorical that if the probation is not extended at least one week before the normal date of the completion of probation, in the absence of any such intimation, the Workman shall be deemed to have satisfactorily completed his probation. Then as on date of passing of the relieving order he was not a probationer, but has already completed his probation. There is no question of any acquiescence or acceptance of the extension of probation which was done high handedly by the management. The learned counsel for the second respondent workman would submit that the Workman had immediately raised the dispute and has been duly following up the dispute and merely because there is a time lag for the Labour Court and thereafter for the High Court to decide the matter, the Workman should not be denied reinstatement. As on date, the minimum salary in the petitioner management is Rs.60,000/-. The similarly situated employees as that of the Workman are now even receiving salary of more than Rs.1,00,000/-. It is the management which deliberately non employed the Workman and therefore, the Labour Court has rightly ordered



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reinstatement with continuity of service and backwages and there is nothing for this Court to interfere by way of this Writ Petition.

9. Pending the present Writ Petition which is of the year 2008, the Workman has been receiving 17-B wages as ordered by this Court. Now the learned counsel for the management would submit that he has already filed an application to prosecute the Workman for perjury on the ground that even though he was receiving 17-B wages, they have evidence to show that during the Covid period, the Workman was working in a concern called as *M/s.Luk India Private Limited* from the year 2021 onwards. It is seen that the Workman has been receiving the last drawn wages at the rate of Rs.1700/- per month.

10. I have considered the rival submission made on either side and perused the material of the case.

11. The following questions arise here to be decided in this Writ Petition;



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1) Whether or not the discharge of the Workman from service is illegal;

2) To what relief the Workman is entitled to;

12. The facts are not in dispute in this case. The relevant Standing Orders which reads as follows:

“1. A 'Permanent' employee is one who has completed satisfactorily a specified period on probation in continuous service with the company and has been declared in writing by the company to be permanent employee of the company.

(b) A 'Probation' is one who is provisionally employed to fill a permanent vacancy post and has not completed the period of probation which shall be three months in the case of unskilled workmen and six months in respect of those other than unskilled.

Provided, in any particular case, the management may extend the period of probation of any workman up to a further period equivalent to the period of probation prescribed, if they are not satisfied with the work and / or conduct of any workman during the period of probation. In any case where the period of probation is extended the concerned workman shall be informed in



writing at least one week before the normal date of the completion of probation and in the absence of any such intimation the workman shall be deemed to have satisfactorily completed his probation on the normal date. If a permanent workman is employed in a different post, he may, at any time during the probationary period, be reverted to his old permanent post.”

13. Admittedly, the second respondent is an unskilled Workman.

Originally by an order dated 30.10.1998, he was offered an employment under the category of Probationary Workman on a consolidated salary of Rs.1700/- and he was placed under probation for a period of six months. The six months was to expire on 30.04.1999. On 30.04.1999 the following order is reportedly passed and it is essential to extract the picture image of the said order:

Rane Luk Clutch Limited

PB.No.20, Royakottah Road,
Hosur – 635 109
Tel : 04344-22505/22313/27578/21579
Fax : 04344-22296

RLCL/PF/418/99
April 30, 1999

Mr.P.BALASUBRAMANIA ELANGO
Token No.81



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Sub: EXTENTION OF PROBATION

With further reference to our Appointment Order # RLCL/PF/418/98 dated 30th October 1998, as per clause 2 of the above order we are pleased to inform that your probationary period is extended for another 6 months with effect from 30th April 1999.

The other terms and conditions as mentioned in the above appointment order remain unaltered.

For RANE LUK CLUTCH LIMITED

**K.RAJA GOPAL
D.G.M – FINANCE & SECRETARY**

14. While it is the contention of the management that it was passed on 30.04.1999, the Workman has signed by stating that he received on 07.06.1999. Thereafter, an order was passed on 28.10.1999 whereby the Workman was relieved from service. The said order reads as follows:

“ You were engaged as a probationer vide order of the management in Ref.No.1, cited above for a period of six months.

During the period of probation since your performance was not satisfactory, your probation was further extended by another six months vide order in Ref.No.2 cited above.

Even during the extended period of probation your performance was not upto mark and expectation of the Management.



Hence, invoking clause Nos.3 & 4 of the probationary order cited above, your probation period comes to an end with effect from 29.10.1999 at the closing hours of shift.

You are advised to contact the accounts department for the settlement of your account if any.”

15. Under the said background, if the relevant Standing Order is considered, it can be seen that any skilled worker can be placed on probation for a period of six months. If the management is not satisfied, at least one week prior to the expiry of the period of probation the Workman has to be intimated in writing that his probation is extended. In this case, it is the case of the Workman that the extension order was served on him only on 07.06.1999. It is the case of the management that the order was passed on 30.04.1999 itself. Even taking the case of the management that the order was passed on 30.04.1999, admittedly the same was not before a period of one week from 30.04.1999 and therefore, by a deeming provision, the probation is deemed to have been completed. When the certified Standing Order contains a deeming provision by which the Workman automatically completes his probation, thereafter, there is no question of the Workman relinquishing his



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right. He is deemed to have completed the probation as per the certified Standing Orders.

16. The learned counsel appearing on behalf of the management would submit that as per the definition of the permanent employee contained in Standing Orders, there are two essential requisites, firstly, he should have completed the probation satisfactorily and there should be a declaration in writing by the company and unless the declaration of probation is there in writing, he cannot be deemed to be a permanent employee. It may be so, but not passing an order of declaration is only inaction of the management and that would not and cannot work to the detriment of the Workman whose rights otherwise got crystallised as per certified Standing Orders No.2 of the certified Standing Orders. In view thereof, I do not find any error in the order of the Labour Court in having held that the termination of the Workman as illegal and accordingly answer the question that the order of mere relieving of service on 28.10.1999 is unsustainable and illegal.



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17. Having answered the first issue in favour of the Workman

then this Court has to look into as to whether the relief that is granted by the Labour Court in ordering reinstatement, backwages and continuity of service, is in order. While considering this question, this Court is not only testing the order of the Labour Court, but also takes into consideration of all the subsequent developments and the time lag in the matter. The contention of the learned counsel for the Workman that the industrial adjudication, by keeping the matter pending and thereafter taking the time lag, the Court should not side step the core values of adjudication is also kept in mind.

18. The following are the factors which are taken by this Court:

- * The Workman worked from 1995 to 1998 as apprenticeship and thereafter, he was a probationer for a year and his services got terminated in the year 1999.
- * The Workman was paid backwages but only at the rate of Rs.1700/- per month all along.
- * It is alleged by the management that he has willfully suppressed the alternate gainful employment from the year 2021. It is the submission of the Workman that during the Covid period, only to escape from hunger and to



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save his own family, he had to take up the alternate employment and the affidavit of non employment was filed much prior to that and there was no intention to willfully suppress the same before this Court.

* This Court also takes into consideration that now 25 years have gone by from the date of discharge from service as probationer.

* In **Ex.R2**, month on month, a non satisfactory performance of the Workman has also been recorded. This Court also takes into consideration that when other such apprentices were also regularly absorbed and all of them were continued in the employment while the Workman alone was discharged from service.

* Even as per the claim statement in paragraph 6, the Workman is only attacking the mindset of the Indian employers to exploit the Workman and no particular reason was given for victimization of the Workman.

19. Considering the above, I am of the view that in this case, the ordering reinstatement with backwages and continuity of service may not be the appropriate relief that is to be granted to the Workman and the order of termination is set aside only on technical grounds. In view thereof, I am of the view that this is a fit case to order compensation in lieu of reinstatement with backwages. In this case, the regular formula as mentioned in **OP**



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Bhandari's case cannot be followed as the relieving from service happened in the year 1999 and at the relevant point of time only Rs.1700/- was monthly wages and it would be extremely unfair to be calculated on the said basis. It is said that the other Workmen are receiving a sum of Rs.60,000/- per month roughly today in the petitioner management. In that scenario, by taking into account the present day wages and reasons for discharging, the period of non employment, and also the period of other alternative employment which is taken up by the Workman etc., I am of the view that the management can be directed to pay a sum of Rs.8,50,000/- as compensation. The said sum shall be paid within a period of 8 weeks from today.

20. With the above directions, this Writ Petition is disposed of.

No costs.

19.12.2024

Neutral Citation : Yes
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To

16/17



The Presiding Officer
Labour Court, Salem.

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D.BHARATHA CHAKRAVARTHY, J.

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