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W.P.No.15487 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2024

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.15487 of 2015

K.Suresh

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Pondicherry.

2.The Managing Director,
M/s.Whirlpool of India Limited,
Thirubhuvanai,
Puducherry.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records from the first respondent and quash the award dated 24.03.2015 passed by the first respondent Labour Court in I.D.(L).No.26 of 2013 and consequently, direct the second respondent to reinstate the petitioner with full backwages, continuity of service and all other attendant benefits.

For Petitioner : Mr.Balan Haridas

For Respondents : Ms.J.Deepika for
Mr.D.Ravichander for R2



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ORDER

This Writ Petition has been filed to issue a Writ of Certiorarified Mandamus, to call for the records from the first respondent and quash the award dated 24.03.2015 passed by the first respondent Labour Court in I.D.(L).No.26 of 2013 and consequently, direct the second respondent to reinstate the petitioner with full backwages, continuity of service and all other attendant benefits.

2. Heard Mr.Balan Haridas, learned counsel for the petitioner, Ms.J.Deepika, learned counsel for R2 and perused the materials available on record.

3. The petitioner is the workman who has raised an industrial dispute in I.D.(L).No.26 of 2013, before the first respondent and the same was dismissed. The petitioner was working as an Operator from 04.03.1999 in the respondent Company and on 04.12.1999, his service was confirmed and thereafter, he was transferred as Washer on 29.05.2006 within the same factory. He was promoted to Senior Member



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SMT on 13.03.2009 and continued to work in the same factory. The petitioner was suddenly transferred from Puducherry to Chennai on 07.01.2011 with some *malafide* intention. The petitioner gave a representation on 10.01.2011 by stating that he has a small baby and he requested to cancel the transfer and allow him to continue in Puducherry. However, he did not get the cancellation order and he joined in Chennai office on 18.01.2011.

4. It is alleged by the petitioner that during that time he has given a representation in respect of non-payment of certain allowances and thereafter, he was transferred by the respondent Management with a *malafide* intention from Chennai to Faridabad on 08.07.2011. Within a period of six months of his transfer from Puducherry to Chennai and he was given with the transfer from Chennai to Faridabad, so the petitioner claims that it is a motivated one.

5. The petitioner was given with the charge of disobedience for not proceeding to join at Faridabad in obedience of the transfer order issued



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to him. At the conclusion of the disciplinary proceedings initiated against him, he was dismissed from service. The petitioner claims he was not in gainful employment at the time of his termination and seeks for payment of backwages. He has filed an industrial dispute to challenge the termination. As the Labour Court did not pass the award in favour of the petitioner, he has filed this Writ Petition, challenging the same.

6. Admittedly, the terms of the employment of the petitioner as it appears from his appointment order is that the job of the petitioner is a transferable one and he can be transferred from one division to another division or to any association of Whirlpool India Limited Company or any other group of Companies of the second respondent. Despite the petitioner had contended before the Labour Court that the transfer was motivational one, the Labour Court was not convinced. Another ground raised by the petitioner in the industrial dispute preferred by him was that the domestic enquiry has been conducted in Faridabad where he did not understand the local language. The enquiry has been conducted without complying the principles of natural justice and without affording the



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petitioner an opportunity to make any effective defence.

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7. The learned counsel for the petitioner submitted that the domestic enquiry has been conducted only in English and the petitioner was not comfortable in English. He was not given with any translated copies of the proceedings and the documents in Tamil.

8. However, the Labour Court has proceeded to record its finding by stating that the petitioner was given with the assistance of another colleague who is well versed in Tamil and English and that the enquiry was fair and proper. It is further observed that the petitioner did not make use of the assistance of the co-worker who was conversant in both Tamil and English and hence, the enquiry was completed and the enquiry report was filed.

9. The learned counsel for the petitioner further submitted that the petitioner knows some basic English and that will not be sufficient to understand the complicated proceedings which was conducted only in



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English and that too, at a far away place (Faridabad).

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10. In this regard, the learned counsel for the petitioner referred an order of this Court made in ***W.P.No.21188 of 2011 (P.A.Panneerselvam Vs. The State Bank of India and Another) dated 29.11.2011***, wherein, it is held as under:

"6. The only issue to be considered in this writ petition is as to whether the enquiry proceedings will have to be conducted in English or Tamil. It is the specific case of the petitioner that the language understood by him is Tamil. Merely because he has not objected to the charge sheet issued by the first respondent and the petitioner filed an affidavit in English, it cannot be construed that he has understood the language of English. It is settled law that in a departmental enquiry, it is for the department to prove the charges against the delinquent officer. While conducting an enquiry, every element of fairness will have to be shown in favour of the delinquent officer. The enquiry officer conducts the proceedings which have the character of a quasi judicial action. While imposing the punishment, the disciplinary authority will have to



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consider the report of the enquiry officer viz-a-viz the explanation to be given by the delinquent officer. Therefore, the report of the enquiry officer assumes importance in a departmental proceedings. It is no doubt true that the Tripartite Agreement mandates that any notice, order, charge sheet, communication or intimation meant for an individual employee, shall be in a language understood by him. When the clause specifically states that even a communication should be in a language that has to be understood by the delinquent employee, by natural corollary, the same will have to be applied in all force to the subsequent enquiry. While it can be said that a delinquent officer can give explanation to the charge sheet given in English and also file the affidavit in English by taking his own time and by consulting people, the same cannot be said about enquiry proceeding which is conducted by the enquiry officer in Camera. While initiating the proceedings, witnesses will have to be examined and therefore what is important is the demeanor of the witness concerned. Therefore until and unless a delinquent is aware of the question put to the witnesses, he may not be in a position to put forth his defence in a proper manner. A delinquent officer is not a mere spectator in an enquiry proceedings and sufficient



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opportunity will have to be given to such an officer. The fact that a delinquent officer is represented by the defence representative or by itself cannot be a ground to hold that notwithstanding the fact that the enquiry is conducted in a language which the said delinquent is not able to understand properly, the same can be allowed to go on in the presence of the defence representative. After all a defence representative is nothing but an authorised person representing the delinquent.

"...In [Raziya Umar Bakshi vs Union of India](#) (1980 Supp Scc 195) the Hon'ble Supreme Court in paragraphs 3 to 5 has observed as follows:-

Para 3: "... The service of the ground of detention on the detenu is a very precious constitutional right and where the grounds are couched in a language which is not known to the detenu, unless the contents of the grounds are fully explained and translated to the detenu, it will tantamount to not serving the grounds of detention to the detenu and would thus vitiate the detention ex facie.

Para 4: In case of [Hadibandhu Das vs District Magistrate, Cuttack](#) it was clearly held that merely oral explanation of an order without supplying him a translation in a script or language which the detenu understood amounted to a denial of right of being communicated the grounds. In the instant case, it is not even alleged in the affidavit of Mr.



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Shah that any translation or translated script of the grounds was furnished to the detenu.

Para 5: In this view of the matter the detention becomes invalid on this ground alone. I would however like to observe that in cases where the detaining authority is satisfied that the grounds are couched in a language which is not known to the detenu, it must see to it that the grounds are explained to the detenu, a translated script is given to him and the grounds bear some sort of a certificate to show that the grounds have been explained to the detenu in the language which he understands..."

Similar in [Surjeet Singh vs. Union of India](#) ((1981) 2 SCC 359), the Hon'ble Supreme Court has in the following manner:

Para 8: "In Nainmal case [Fazal Ali, J.](#), who followed [Hadibandhu](#) case held that the communication of the grounds of detention in a language understood by the detenu was as essential requirement for the validity of a detention order which, in the absence of such requirement being fulfilled, would be repugnant to the provisions of [Article 22\(5\)](#) of the Constitution and would thus stand vitiated. And that is a view which has been consistently held by this Court.

Para 9: The facts with which we are here concerned, insofar as they are relevant to the decision of the point canvassed before us, are on all fours with those of the three cases cited above. As already pointed out, the grounds of detention were supplied to the two petitioners



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in the English language a language with which they were not conversant. The service of the grounds on them in that manner could not be considered under the circumstances to be effective communication to them thereof so as to afford to them a real opportunity of making a representation against the order of detention."

Para 6: "Where it is stated that the detaining authority explained the grounds of detention to the detenu, court insists on adequate proof in the absence of any translation being furnished. Thus in [Lallubhai Jogibhai Patel v. Union of India](#) the detenu did not know English but the grounds of detention were drawn up in English and the detaining authority in affidavit stated that the Police Inspector while serving the grounds of detention fully explained the grounds in Gujarati to the detenu. Admittedly, no translation of the grounds of detention into Gujarati was given to the detenu. It was held that there was no sufficient compliance with the mandate of [Article 22\(5\)](#) of the Constitution which required that the grounds of detention must be communicated to the detenu. "Communicate" is a strong word. It requires that sufficient knowledge of the basic facts constituting the grounds should be imparted effectively and fully to the detenu in writing in a language which he understands, so as to enable him to make a purposeful and effective representation. If the grounds are only verbally explained to the detenu and nothing in writing is left with him in a language which he understands, then that purpose is not served,



and the constitutional mandate in *Article 22(5)* is infringed. This follows from the decisions in *Harikisan v. State of Maharashtra* and *Badibandhu Das v. District Magistrate*."

Considering the ratio *laid down by* the Hon'ble Apex Court, this Court in *P. Munirath* has held as follows:

23. In this context, it is clear that even though the ground that the petitioner was unfamiliar of Hindi language was raised in the appeal grounds, neither in the order of the appellate authority nor in the enquiry report, the said assertion was denied by the respondents. Hence, it can be safely concluded that the petitioner was not familiar with Hindi.

24. In the present case, the punishment meted out to the petitioner was dismissal, which is a death penalty in the industrial jurisprudence. Therefore, this Court has no hesitation to believe the statement made by the petitioner that he was denied the reasonable opportunity of defending himself in the enquiry as it was held in Hindi, the language with which the petitioner was not familiar. Any amount of statement made by the respondents about the notings made by the Enquiry Officer, which also was in Hindi, will not cure the defect crept into the enquiry record.

25. Under the above circumstances, the enquiry conducted by the respondents will have to be necessarily set aside and accordingly, set aside. The writ petition will stand allowed. The



impugned order of dismissal dated 18.12.1997 as confirmed by order dated 27.03.1998 will stand set aside. The petitioner is entitled to have all the consequential benefits. If the respondents want to conduct an enquiry afresh, that will have to be done only in the language known to the petitioner and he must be given the assistance of an agent as provided in the Rules to defend himself in the enquiry. No costs.

In S. Dhanasekaran vs Commandant 42 Bn in (W.P. No.11983 of 2003) dated 04.01.2011 it has been held as follows:

"11. In the factual matrix, by reference to the files submitted by the respondents, it is clear that there is no explanation forthcoming from the respondents to show as to whether the proceedings were translated to the petitioner in the language known to him, or not. That apart, even in respect of the charge relating to the consumption of liquor by the petitioner, there is no record to show that the respondents have taken pertinent efforts for the purpose of proving that the petitioner was intoxicated. It is also seen that the decision has been predominantly arrived at based on the preliminary enquiry and not on the basis of the proceedings conducted during the disciplinary proceedings.

12. Even in respect of the enquiry officer's report, which is stated to have been served on the petitioner, there was no occasion for the petitioner to submit a representation for the reason that in the meantime he came to be



transferred and posted at Shivpuri as admitted by the parties. In such circumstances, I am of the considered view that on the factual matrix of the case, especially relating to the language in which the disciplinary proceedings was conducted, there is no proper compliance of the principles of natural justice and therefore, the impugned orders are liable to be set aside, however, with liberty to the first respondent to conduct fresh enquiry in the language known to the petitioner, if so advised, failing which the petitioner will be entitled for all the benefits under the law.

Accordingly, the impugned orders are set aside and the writ petition stands allowed, however, with liberty to the first respondent to conduct fresh enquiry in conformity with the principles of natural justice in the language known to the petitioner, if so advised. No costs."

*7. Therefore, considering the ratio **laid down** by the Hon'ble Apex Court which has been followed by this Court on two earlier occasions, this court is of the view that the petitioner is entitled to have the enquiry conducted in the language known to him. The contention of the learned counsel for the first respondent that the writ petition as filed is premature also cannot be countenanced. When it is a specific case of the petitioner that the Tripartite Agreement governing the same has been violated which in effect leads to the infringement of the principles of natural justice, affecting the rights of the*



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petitioner, it is very well open to him to file a writ petition. In other words when there is a violation of the principles of natural justice which would have the effect of setting aside the proceedings, the same will have to be rectified at the earliest point of time. The judgment relied upon by the learned counsel for the first respondent is not applicable to the facts of the case. The issue involved therein is totally different as the challenge is made to the show cause notice on merits. In as much as this Court has not decided its merits of the case and decides the issue only on the ground of principles of natural justice, the ratio laid down by the Hon'ble Apex Court is not applicable to the case on hand."

11. In the instant case also the petitioner was working only as an Operator and not the Officer in the second respondent Company. Though the petitioner knows basic English, he may not be able to participate to understand the technical English adopted during enquiry proceedings.

12. Getting minimal pass in the language papers including English and passing the examination during the Degree Course by attempting the



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examination in a local language cannot be a reason to presume the petitioner was comfortable in English. Apart from the conduction of the enquiry in foreign language, the other allegation of the petitioner is that the transfer itself is a motivated one and the disciplinary proceedings will be vitiated in view of malice. However, the petitioner had agreed to the terms of the employment which is inclusive of likelihood of transfer anywhere in India, where the second respondent have got their offices or other establishment connecting their business.

13. The learned counsel for the second respondent submitted that the petitioner is a graduate and he is well conversant in English and that the transfer is on the terms of service and many of the employees employed in the second respondent Company have been transferred to Faridabad for administrative reasons.

14. In Clause 8 of the standing orders of the respondent Company, it is stated that "*The Management at its own discretion shall have the right to transfer any workmen from one Department to another*



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or from one Section to another or from one shift to another or from one job to another depending upon exigencies." It is claimed that there is no *malafide* intention in transferring the petitioner to Faridabad.

15. In this regard, it is appropriate to cite the judgment of the Hon'ble Supreme Court in the case of ***Caparo Engineering India Ltd., Vs. Ummed Singh Lodhi and Another, reported in 2021 SCC Online SC 973***. In the said judgment, it is held that the transfer order issued to the employee to a place of 900 Kms away from the earlier place, can be considered as a motivated transfer. Even though the petitioner's appointment is with a condition that the petitioner will be subjected to transfer to any other division or place, the petitioner being a class IV employee, he cannot be transferred to a far away place. In fact, the petitioner has been transferred to Chennai before six months of his transfer to Faridabad and within a short period of six months, he has been transferred from Chennai to Faridabad which is nearly 2000 Kms away from Chennai.



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16. The award of the Labour Court did not deal with the point of justification of transfer of the petitioner to the far away place within six months of his transfer from Puducherry to Chennai. But the learned Presiding Officer of the Labour Court has considered this transfer as a routine transfer, unmindful of the fact that the petitioner has been transferred within six months of his earlier transfer without any proper justification. In fact, from the petitioner's evidence itself, it is clear that he has been rendering his services for the past 15 years at one place and it was not necessitated to transfer him to anywhere else other than Chennai. So the frequent transfer orders issued to the petitioner and that too, for an unreasonably far away place would itself show that the petitioner has been victimized.

17. The petitioner has stated that he has been raising certain demands and was making certain representations to the second respondent Management which could have been the motive for an unreasonable transfer. In this regard, it is appropriate to refer the judgment of the Hon'ble Supreme Court in the case of *Caparo*



Engineering India Ltd., Vs. Ummed Singh Lodhi and Another,

reported in 2021 SCC Online SC 973, wherein, it is held as under:

"38. In view of the above and from the findings recorded by the learned Labour Court on the appreciation of evidence on record, it is rightly held that the order of transfer dated 13.01.2015 transferring the respective workman from Dewas to Chopanki, which is at about 900 Kms. away is in violation of [Section 9A](#) read with [Fourth Schedule of the Industrial Disputes Act](#) and is arbitrary, mala fide and victimization. As observed above, by such transfer, their status as "workman" would be changed to that of "supervisor". By such a change after their transfer to Chopanki and after they work as supervisor they will be deprived of the beneficial provisions of the [Industrial Disputes Act](#) and, therefore, the nature of service conditions/service would be changed.

39. Even from the judgment and award passed by the learned Labour Court as well as the impugned judgment and order passed by the learned Single Judge, it can be seen that the appellant/employer has failed to justify the transfer of nine employees from Dewas to Chopanki, which is at a distance of 900 Kms. and that



too at the fag end of their service career. Every aspect has been dealt with and considered in detail by the learned Labour Court as well as by the learned Single Judge of the High Court.

40. Now, so far as the submission on behalf of the appellant that the respective workmen – employees were not ‘workmen’ and, therefore, the reference to the learned Labour Court was not maintainable, has no substance at all. There are concurrent findings recorded by the learned Labour Court as well as the learned Single Judge that the concerned employees were ‘workmen’ within the definition of [Section 2\(s\)](#) of the Industrial Disputes Act. From the depositions of the witnesses, PW-1, PW-2, DW-1 and DW-2, it is established and proved that the concerned employees were ‘workmen’ and that after their transfer to Chopanki, they will be given training and they will work as a supervisor.

41. At this stage, it is required to be noted that after the conciliation had failed, the dispute, which was referred to the learned Labour Court was “whether the transfer is valid and proper?” The dispute that the concerned employee is a ‘workman’ or not was not even referred to the learned Labour Court. Even no such issue was framed by the learned Labour Court. Be that it may,



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as observed hereinabove, it has been established and proved that the concerned employees were 'workmen' within the definition of [Section 2\(s\)](#) of the Industrial Disputes Act and, therefore, were entitled to the protection under the provisions of the [Industrial Disputes Act](#)."

18. Essentially when the petitioner has come out with the case that his transfer is unreasonable and motivated, the Labour Court ought to have framed an issue to that effect and appreciated the same on merits. But the Labour Court did not venture into such an exercise and had omitted to frame any issue in this regard. Reference about an another judgment of this Court held in ***W.P.No.1561 of 2020 (Puthiya Jananayaka Thozhilalar Munani Vs. The Managing Director, Puducherry)*** dated **06.12.2021**, on this line will also assume significance. In the said case, the Court has considered the transfer of a Loadman to a place at 1200 Kms away. The Court has held that such a transfer order is punitive in nature and that would demonstrate the vindictive action taken by the Management. I feel it is relevant to extract the following paragraphs of the said order for better appreciation:



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"14. This Court, in consideration of the above case law cited on behalf of the petitioner, as well as the findings of the Labour Court, is in agreement with the submissions made on behalf of the petitioner. The Labour Court has completely erred in coming to the conclusion that the transfers were necessitated by exigency of service, and therefore, there was no victimisation at all. Such finding of the Labour Court is completely bereft of any material or understanding as to the true nature of transfers. On the other hand, the very fact that the workers have been transferred to a place 1200 Kms. away from the present place of work, by itself, is an indicative of the punitive nature of the transfers of the workmen. There cannot be a valid explanation by the Management as to how they can pick and choose few workmen to transfer them to a far away place. In fact, on behalf of the Management, nothing has been demonstrated as to the necessity or administrative requirement for transferring few workmen alone to a far away place. The Management owes a great deal of explanation in justifying such transfers, particularly, when a worker is transferred to a far away place of nearly 1200 Kms. from the present place of work.



15. The transfer involves several collateral difficulties to be faced by a workman in the new place with a different environment and conditions. That is why the Honourable Supreme Court has held in the above decision that Section 9-A of the Industrial Disputes Act is attracted in such cases. In the absence of mandatory notice to the workmen, the impugned transfer cannot be countenanced both in law and on facts. Sweeping statement made by the Labour Court that there was no substance to hold that the transfer was an act of victimisation and punishment amounting to Unfair Labour Practice, was not borne out by any records. The Labour Court has completely surrendered its judicious discretion and preferred to presume that the transfer of the work~men concerned, did amount to victimisation."

19. As the transfer of the petitioner was within six months and that too, to a remote place, the above order has got all the features of victimization. But the Labour Court did not appreciate the same on a thoroughful analysis of the events surrounding the transfer order. As the transfer order itself is tainted with motive and throws an impossibility on



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the petitioner to obey the same, the disciplinary action of the respondent becomes vitiated. Hence, I feel the award of the Labour Court is liable to be set aside.

20. In view of the above stated reasons, this Writ Petition is allowed and the Award of the first respondent in I.D(L).No.26 of 2013 dated 24.03.2015 is set aside and the second respondent is directed to reinstate the petitioner with backwages, continuity of service and all other attendant benefits. No costs.

Index : Yes /No
Speaking / Non-speaking
Neutral Citation : Yes / No
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R.N.MANJULA, J.

gsk

To

- 1.The Presiding Officer,
Labour Court,
Pondicherry.
- 2.The Managing Director,
M/s.Wirlpool of India Limited,
Thirubhuvanai,
Puducherry.

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