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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2024

**CORAM:
THE HONOURABLE MS.JUSTICE R.N.MANJULA**

W.P.No.24814 of 2008

The Management of
National Engineering Industries Limited,
7A, Wellington Plaza,
24C, C.N.C. Road,
Chennai - 600 105. ... Petitioner

versus

1.The Presiding Officer,
Principal Labour Court,
Chennai.

2.S.Krishnan ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records of the first respondent in I.D.No.464 of 2000 and quash its award dated 29.02.2008.

For Petitioner : M/s.P.Raghunathan
for M/s.T.S.Gopalan & Co.
For Respondent No.2 : Mr.K.M.Ramesh Senior Counsel
for M/s.K.Bharathi

ORDER

This Writ Petition has been filed challenging the order of the learned
Presiding Officer, Principal Labour Court, Chennai, made in I.D.No.464 of



2000 dated 29.02.2008.

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2. Heard Mr.P.Raghunathan, learned counsel for the petitioner and Mr.K.M.Ramesh, learned Senior Counsel for the second respondent and perused the materials available on record.

3. The second respondent, who has filed I.D.No.464 of 2000 under Section 2-A(2) of the Industrial Disputes Act, 1947 against the petitioner / Management seeking reinstatement with continuity of service, full backwages and all other attendant benefits and got an award in his favour.

4. By virtue of the award dated 29.02.2008, the Labour Court has directed the petitioner to reinstate the second respondent with continuity of service and all other attendant benefits but without backwages. Aggrieved over the same, the petitioner has filed this Writ Petition stating that there was no dismissal or retrenchment of the second respondent but mere a transfer order has been construed as retrenchment, which is not legal.

5. Mr.P.Raghunathan, submitted that the Management has got every right to issue transfer order and it is the part of the second respondent's service condition and the same has not been properly appreciated by the Labour Court. It is further submitted that the petitioner has filed a detailed counter stating that the second respondent has been given only with the charge sheet for not



obeying the orders of transfer and he has not been terminated from service at any point of time in order to raise an industrial dispute and the same has also not been considered.

6. In this regard, reference was placed on the judgment of this Court held in *Caravan Goods Carriers (Private) Ltd. Vs. Labour Court and another* reported in **1976 SCC Online Mad 105** wherein this Court has held as under:-

“8. I am unable to accept the argument of the learned counsel for the respondent that since the management relied upon the standing orders for transferring the workmen, unless there are standing orders to that effect, it could not do so. It is well settled that so long as the management has got the power, the power in the instant case being power inherent in the nature of employment, as has been repeatedly laid down by this Court, it does not matter whether the management resorts to that power or the standing orders. This is on the basis that there are standing orders to that effect, and on that score the order does not become illegal. For all these reasons, I have no other option but to set aside the impugned award in so far as it relates to the transfer of the five workmen (except K.G.Gopinath) and it is accordingly set aside. The matter is remitted for fresh consideration in the light of the principles stated above and also with reference to the case-law set out in para.10 of the impugned order.”



WEB GATE

7. Mr.P.Raghunathan further submitted that the investigation as to whether the transfer has been given either as part of service or whether it was to victimize the workman can be done only under Section 2(k) of the I.D.Act and the respondent cannot raise an I.D. under Section 2(A) of the I.D.Act. In this regard, attention was invited to the judgement of the Hon'ble Supreme Court held in **Bharat Iron Works Vs. Bhagubhai Balubhai Patel & Ors** reported in **1976 (1) SCC 518** wherein the Hon'ble Supreme Court has held as under:-

“7.What is victimisation is again a multiheaded monster to tackle with. The word 'victimisation' is not defined in the Industrial Disputes Act. An attempt to describe 'unfair practices by employers' by a deeming definition was made under Section 28K in Chapter III B of the Indian Trade Unions (Amendment) Act 1947 (Act XLV of 1947) but we understand, it has not yet been brought into force. The concept of victimisation is to a large extent brought out under section 28K of that unenforced law and it may be worthwhile to quote the same as it throws sufficient light on the topic and will offer guidance to tribunals in adjudicating a ticklish issue of this nature.”

8. Mr.Raghunathan submitted that the Presiding Officer has not given any valid reasons for the findings that the second respondent has been subjected to victimization in pursuant to the transfer order. He submitted that the second



respondent has gainfully employed elsewhere.

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9. Mr.K.M.Ramesh, learned Senior Counsel for the second respondent submitted that in the claim petition filed by the second respondent before the Labour Court, he has stated that he has been kept under service till 31.08.1993 by the petitioner without making him permanent and all of a sudden, the second respondent was dismissed from service on 31.08.1993.

10. Mr.K.M.Ramesh further submitted that 2nd respondent has filed an industrial dispute in I.A.No.241/1994 challenging the illegal termination in which an award has been passed for granting the relief of reinstatement along with back wages. However, the backwages were computed at Rs.91,622/-, and for the balance of the backwages, he filed a claim petition. The petitioner got enraged in view of the fact that the 2nd respondent was transferred to Jaipur from Madras; So, the above order is nothing but an unfair labour practice; thereafter, the 2nd respondent was denied employment from 19.01.2000;

11. The consolidated submission of Mr.K.M.Ramesh is that the labour Court after having thoroughly dealt with the merits of the case, has passed an



award in favour of the 2nd respondent.

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12. The core submission made by the petitioner is that the learned presiding officer of the labour Court had construed that the order of transfer as a termination/retrenchment, by misdirecting himself. The 2nd respondent has been employed as driver in the petitioner's company since 1990. At one stretch, the petitioner claims that he is the employer of the 2nd respondent and he is entitled to issue transfer orders depending upon the demands of the company. In the affidavit submitted by the petitioner, it is stated that the 2nd respondent is not an employee under the petitioner's corporation; but, he was employed by the officer of the company by name Sandeep Goyal and that the 2nd respondent's employment had come to an end in the year 1993 when Santheep Goyal left the services. As the 2nd respondent's service has not been utilized subsequent to Santheep Goyal's tenure, the 2nd respondent has filed an industrial dispute claiming reinstatement.

13. The above Industrial Dispute, which was taken on file in I.D.No.241/1994 was awarded in favour of the 2nd respondent. Subsequent to that, the 2nd respondent has been reinstated into service. The conduct of the



petitioner by reinstating the 2nd respondent has already established the employer-employee relationship between the petitioner and the 2nd respondent.

14. Without admitting the relationship between the petitioner and the 2nd respondent, the petitioner cannot even take up the argument that the transfer order issued to the 2nd respondent was in pursuant to the exercise of authority by the petitioner as the 2nd respondent's employer. The 2nd respondent is a skilled driver, and the job assigned to the 2nd respondent is driver, and his service has been utilized only at the Madras office. While so, he was issued the transfer order on 28.12.1999 with a direction to assume charge at the Jaipur factory by stating that the Madras office did not have any cars.

15. The basic service, like the service of the driver, normally would be availed locally, even if the company has branches across many places. Admittedly, the 2nd respondent is a skilled worker, and he has got nothing to do with the file management or the other management connecting to the company. So it is difficult to believe that the 2nd respondent has been transferred due to the demand of the petitioner's company business at Jaipur. The point of time during which the transfer order was issued to the 2nd respondent would assume



relevance in order to find out whether the transfer was a routine transfer given by the company to the the 2nd respondent or whether it is an act of revenge or an unfair labour practice due to some motive.

16. In this regard, the 2nd respondent has already established that he has already filed an industrial dispute against the petitioner and got an award in his favour. He also filed a computation petition for claiming the balance in backwages after his reinstatement in accordance with the direction passed in the award. In fact, the 2nd respondent was reinstated into service consequence to the award passed in I.D.No.241/1994 on 20.10.1999 and his transfer order came to be passed just two months after his reinstatement. So in all probabilities, the order of transfer could have been a vindictive action taken by the petitioner against the 2nd respondent for having dragged him to the Court. In fact, the 2nd respondent has also filed a claimed petition, claiming the difference in backwages paid to him subsequent to this award. So at the point in time when the 2nd respondent was dismissed, it would also strengthen the submission of the 2nd respondent that the order of transfer was a vindictive one and is not a routine transfer.



17. As already mentioned, the job of a driver being a basic skilled service, the persons who have the local residence will alone be normally selected as drivers of the company. Strangely, the 2nd respondent has been transferred from Madras to Jaipur, which was a faraway place from Chennai. Even though the petitioner claims that he has exercised his powers for transfer as the employer, the manner in which the transfer order was effected and the time and background in which the transfer order came to be passed would only substantiate the fact that the transfer order was an intentional one and it is not a routine transfer. So, the labour Court has gone into the merits of the matter most specifically and to hold that the other respondents have been given a stay order.

18. The learned trial Judge has properly thoroughly appreciated the facts and evidence available on record and granted the award in favour of the workmen by holding that the transfer is nothing but an indirect termination. Even though the learned labour Court Judge has adopted the old retrenchment as well, the implication of the observation would only show that the Court is convinced about the unfair labour practice in the name of transfer played by the petitioner.



19. Under such circumstances, I do not find any valid reason to interfere with the impugned award, which, in my opinion, is not incorrect or illegal.

Hence dismissed.

With the above observation, this Writ Petition is **dismissed**. No costs.

29.08.2024

Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

sri/jrs



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To

The Presiding Officer,
Principal Labour Court,
Chennai.



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R.N.MANJULA, J.

sri/jrs

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