



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.12.2023

Pronounced on : 09.01.2024

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CORAM

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.18181 of 2013

1.

P.Balasubramanian
2. V.Radhakrishnan
3. G.Srinivasulu
4. V.Ravichandran
5. N.Perumal
6. A.Baskaran
7. S.Velu
8. Sudakar Arun Joseph

... Petitioners

Vs.

1. The Presiding Officer,
II Additional Labour Court,
High Court Compound,
Chennai – 600 104.

2. The Management,
S.V.Sugar Mills Limited,
Palayaseevaram Village,
Kancheepuram – 601 609.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records from the files of the first respondent in I.D.Nos.338 to 344 and 362 of 2010 and quash the impugned common award made therein dated 02.11.2010 insofar as the first respondent has negatived the claim of the petitioners for reinstatement in service, with continuity of service, with backwages and with all other attendant and



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consequential benefits.

For Petitioner : Mr.K.M.Ramesh,
Senior Counsel
for S.Apunu

For Respondents : Mr.G.Ananda Krishnan
for M/s. Agam legal

ORDER

This Writ Petition has been filed seeking the Writ of Certiorarified Mandamus, calling for the records in I.D.Nos.338 to 344 and 362 of 2010 dated 02.11.2010 and to quash the same and sought for a consequential direction for reinstatement of the petitioners into service with continuity of service, backwages and all other attendant benefits.

2. The facts of the case that are relevant for disposal of this Writ Petition are as under:-

2.1. All the petitioners herein were working in different capacities in the second respondent factory in the Maintenance Wing. While so, all the petitioners were asked to work in the farms / agricultural fields of the second respondent by transferring them to the said farms. Aggrieved by the said oral orders of transfer, the petitioners herein approached the Deputy Commissioner of Labour - II, Chennai, for conciliation and the Deputy



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Commissioner of Labour, through its Proceedings No.C1/3254/2009 dated 06.05.2009, advised the second respondent to permit the petitioners to work in the factory of the second respondent. Alleging the non-compliance with the said advice and complaining that the petitioners are not being permitted to work in the second respondent factory, all the petitioners herein raised individual dispute contending that their services were terminated by the second respondent. The said disputes were taken on record by the first respondent Labour Court in I.D.No.344 of 2010 and I.D.No.362 of 2010. The said disputes were disposed of by the learned Labour Court through the impugned order dated 02.11.2012, holding that there was no termination or dismissal of the petitioners from the services of the second respondent attracting the provision contained under Section 2-A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act, 1947' for short) and also holding that the transfer of the petitioners from the factory of the second respondent to the farms is also valid. Aggrieved by the said order dated 02.11.2012 passed by the first respondent, the petitioners approached this Court by filing the present Writ Petition.

3. Sri.K.M.Ramesh, learned Senior Counsel appearing for the



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petitioner contended that all the petitioners, while working in the Maintenance Wing of the second respondent factory, they were orally transferred to work in the farms / agricultural fields of the second respondent, though there is no work that can be turned down by the petitioners in the farms / agricultural fields, as they are all technically qualified and skilled workmen of the second respondent in different fields and that the action of the second respondent in transferring the petitioners to the farms / agricultural fields is only with a view to force them to discontinue on their own from the services of the second respondent, thereby, resorting to unfair labour practice within the meaning of Section 2(ra) of the Act, 1947. The second respondent is not entitled to resort to the unfair labour practices within the meaning of Section 25-T of the Act, 1947 and in terms of Schedule 5 of the Act, 1947, in specific, Sl.No.7, the transfer in question of the petitioner is with a *mala fide* intention. Thus, he contended that the second respondent, having orally transferred the petitioners from the second respondent factory and refused to permit the petitioners to work in the second respondent factory, thereby, discontinuing the services of the petitioners, attracting Section 2(A) of the Act, 1947. He also further contended that the certified standing orders of the second respondent factory does not provide for transfer of its workmen and therefore,



the action of the second respondent in orally transferring the petitioners to the farms / agricultural fields is illegal. He also further contended that in case, if the petitioners refuse to join at the transferred place, at the most, the same would amount to misconduct, attracting disciplinary action against the petitioners. But, in the instant case, according to the learned counsel for the petitioner, the second respondent, instead of initiating disciplinary proceedings against the petitioners in an arbitrary manner not allowed the petitioners to continue to work in the second respondent factory.

4. The learned counsel for the petitioner also placed reliance on the various decisions of the Hon'ble Apex Court in ***Rohtak and Hissar District Electric Supply Co. Ltd., -vs- the State of Uttar Pradesh*** reported in [(1966) 2 LLJ 3303 (SC)], ***India Cements Ltd., Tirunelveli -vs- Labour Court, Madurai*** reported in [(1993) 2 LLN 682], ***India Express Employees Union, Kaloor, Cochin -vs- Indian Express (Madurai) Ltd.***, reported in [(1999) 1 LLJ 490], ***State Bank of India -vs- Shri N.Sundara Money*** reported in [(1976) 1 SCC 822], ***Punjab Land Development and Reclamation Corporation Ltd., Chandigarh -vs- the Presiding Officer, Labour Court, Chandigarh*** reported in [(1990) 3 SCC 682] and ***The Management of Holy***



Faith International Pvt., Ltd., -vs- the Presiding Officer, I Additional Labour Court, Chennai reported in [(2009) SCC Online Mad 99] and

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contended that the certified standing orders does not provide for transfer of the employees as such they cannot be transferred in violation of the model standing orders as provided under the Industrial Employment (Standing Orders) Act, 1946.

5. On the other hand, Sri. G.Anandakrishnan, learned counsel appearing for the second respondent contended that the petitioners herein are taking a dual stand viz., questioning their transfer from the second respondent factory and simultaneously, they are also questioning the alleged termination of their services. According to the learned counsel for the second respondent, the petitioners are not entitled to take the dual stand and they cannot be allowed to pursue the same simultaneously. The stand of the petitioners that they are illegally transferred is to be considered, the same cannot be a subject matter of an adjudication under Section 2(A) and at the most, the petitioners may be entitled to raise a dispute under Section 2(k) of the Act, 1947. He also further contended that so long the transfer of the petitioners from the second respondent factory stands, the question of termination of their services does



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not arise and it is for the petitioners to report at the transferred place, but under no circumstances, they can insist their continuance in the second respondent factory. Thus, he contended that the validity or otherwise of the transfer of the petitioners from the second respondent factory is not the subject matter of the present Writ Petition nor it can be subject matter of the present Writ Petition. Thus, he contended that the learned Labour Court rightly arrived at the conclusion that there is no termination of the services of the petitioners herein and accordingly, the case set up by the petitioners was rejected, holding that there was no termination attracting Section 2(A) of the the Act, 1947.

6. This Court have carefully considered the submissions made on either side and also perused the entire materials on record.

7. Admittedly, there is no order of transfer, transferring the petitioners from the second respondent factory to the farms / agricultural fields belonging to the second respondent. But the petitioners themselves, while making a claim before the first respondent, claimed that they were transferred to the farms / agricultural fields of the second respondent and the same was not



disputed by the second respondent in the counter filed before the first respondent.

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8. No doubt the Conciliation Officer, through proceedings dated 06.05.2009, advised the second respondent to continue the petitioners in the second respondent factory, but the second respondent factory has not complied with the said order. The petitioners approached the first respondent Labour Court contending that they were transferred to the farms / agricultural fields of the second respondent from the factory is not fair and there is no work that can be attended by the petitioners at the agricultural fields of the second respondent. As the second respondent has not allowed the petitioners to continue to work in the second respondent factory and insisted them to work at the transferred place, the petitioners assumed that there is a cessation of employment or termination of their services from the month of May 2009 and invoked Section 2(A) and approached the first respondent Labour Court by raising the dispute.

9. The second respondent in its counter affidavit filed before the first respondent has taken a specific stand that in paragraph 5 stating that all the



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petitioners continue to remain on the roles of the second respondent as on the date of filing of the said counter affidavit. Though the petitioners filed a rejoinder in response to the said counter affidavit, they have not disputed the specific averment made by the second respondent, as noted herein above. Further, as observed by the learned Labour Court in the impugned award at paragraph 24, all the petitioners admitted in their cross-examination that they were not terminated by the Management and the Management has only transferred them to the other units. This specific finding recorded by the learned Labour Court is not disputed in the affidavit filed in support of the present Writ Petition. Further, from the depositions of the petitioners, as recorded by the learned Labour Court also, it is evident that the petitioners have admitted that their services were not terminated by the second respondent.

10. As the validity of transfer of the petitioners is not the subject matter and cannot be a subject matter of dispute before the second respondent under Section 2(A) or before this Court in the present Writ Petition, in the considered view of this Court, all the decisions relied upon by the learned counsel for the petitioners in connection with certified Standing Orders are



not relevant for consideration in the present case.

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11. In the light of the admission made by the petitioner in their cross-examination before the first respondent, and in the absence of any specific averment in the claim made by the petitioners before the first respondent about the alleged termination or cessation of employment etc., the question of the first respondent exercising its jurisdiction under Section 2(A) of the Act, 1947 does not arise. Thus, the first respondent has rightly concluded that there is no termination of services of the petitioners in terms of Section 2(A) of the Act, 1947 and dismissed the disputes raised by the petitioners herein. Further, the entire claim that was made by the petitioners before the first respondent as well as the averments made in the affidavit filed in support of the present Writ Petition and the contentions raised by the learned counsel for the petitioner are all only in respect of the transfer of the petitioners from the second respondent factory to its farms / agricultural fields on various grounds. Even assuming that the said transfers of the petitioners from the second respondent factory amounts to an unfair labour practice within the meaning of Section 2(ra) and the same is also contrary to the certified standing orders or otherwise, the same cannot be subject matter of



the dispute before the first respondent in a dispute raised under Section 2(A) of the Act, 1947.

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12. But, unfortunately, the learned Labour Court, having arrived at a conclusion that the provisions contained in Section 2(A) is not attracted in the facts and circumstances of the case, has unnecessarily proceeded to decide the validity of the transfer of the petitioner from the second respondent factory and recorded a finding that the said transfer is valid and in accordance with the orders of appointment, appointing the petitioners in different capacities of the second respondent factory.

13. From the perusal of the impugned award, it is noticed that the first respondent, on appreciation of the oral and documentary evidence placed before this Court, has rightly arrived at the conclusion that there is no termination of services of the petitioners herein, attracting Section 2(A) of the Act and rightly refused to grant any relief to the petitioners.

14. This Court, while exercising its certiorari jurisdiction is entitled to interfere with the order passed by the judicial authority, only in case, if the



findings recorded by the said authority are perverse in nature or in excess of jurisdiction etc.

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15. In the instant case, there is no such perversity and on the other hand, the findings recorded by the learned Labour Court are based on an undisputed evidence brought on record and therefore, this Court is not inclined to interfere with the impugned order, insofar as it refuses to grant relief of reinstatement to the petitioners.

16. In the light of the above, all the observations and the findings recorded by the learned Labour Court on the transfer of the petitioners from the second respondent factory and upholding such transfer are concerned, they are all outside the purview of the dispute that was raised before the first respondent Labour Court and therefore, all such observations made on the transfer of the petitioners from the second respondent factory are concerned, they are all bound to be treated as the one recorded without any jurisdiction in a dispute raised by the petitioners in their individual capacity under Section 2(A) of the Act. Accordingly, all such findings recorded on the validity of the transfer of the petitioners from the second respondent factory are all set aside.



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It is open for the petitioners to assail the said transfer in accordance with law.

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17. Accordingly, this Writ Petition is partly allowed. No costs.

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Speaking order / Non-speaking order

Neutral Citation : Yes / No



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