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W.P.Nos.20331 and 8621 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	8/1/2024
Delivered on	12/7/2024

C O R A M

THE HONOURABLE Dr.JUSTICE D.NAGARJUN

Writ Petition Nos.20331 and 8621 of 2015
a n d
M.P.No.1 of 2015

W.P.No.20331 of 2015

Harish Kumar ... Petitioner

Vs

1. The Presiding Officer
I Additional Labour Court
Chennai.
2. The Managing Director
WABCO-TVS (India) Limited
Plant 1, Plot No.3 (S.P)
III Main Road, Industrial Estate
Ambattur
Chennai 600 058.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India
for the issuance of a writ of certiorarified mandamus to call for the
records from the first respondent relating to the impugned award dated



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24/11/2014 in I.D.No.165 of 2012 and quash the same only that portion of the award denying reinstatement with continuity of service and denial of 50% backwages and direct the second respondent to reinstate the petitioner in service with full back wages, continuity of service and other attendant service benefits.

A n d

W.P.No.8621 of 2015

WABCO-TVS (India) Limited
rep. By its Managing Director
(formerly known as EABCO – TVS (India) Limited
Plant 1, Plot No.32 (S.P)
III Main Road,
Ambattur Industrial Estate
Chennai 600 058. ... Petitioner

Vs

1. The Presiding Officer
First Additional Labour Court
Chennai.
2. Harish Kumar ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a writ of certiorari to call for the records of the first respondent in I.D.No.165 of 2012, quash the award dated 24/11/2014.



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For petitioner

...

Mr.S.Ravi
for M/s.R.Rajaram
(in W.P.No.20331 of 2015)

Mr.Michael Amalraj
for M/s.T.S.Gopalan & Co
in W.P.No.8621 of 2015

For respondents

...

Mr.Michael Amalraj
for M/s.T.S.Gopalan & Co
for R.2
in W.P.No.20331 of 2015

Mr.S.Ravi
for M/s.R.Rajaram
for R.2
in W.P.No.8621 of 2015

COMMON ORDER

Writ Petition No.8621 of 2015 is filed by the Management against the workman challenging the Award dated 24/11/2014 passed by the first respondent in I.D.No.165 of 2012, awarding 50% of the backwages as compensation.

2. W.P.No.20331 of 2015 is filed by the workman, challenging the Award dated 24/11/2014 passed by the first respondent in I.D.No.165 of 2012, questioning the Award for not granting relief of reinstatement, continuity of service and restricting only for 50% of backwages.



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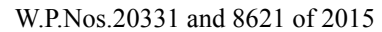
Management has assumed that he is not interested in continuing the employment. Since he was a Probationer, resignation was accepted with immediate effect, as requested by the workman and relieved him from the services.

7. In the month of November 2010, workman has issued a legal notice to the Management stating that the Management has coerced the workman to submit the resignation. The Management has sent a suitable reply. The workman has raised a Industrial Dispute which was taken on file as I.D.No.165 of 2012 on the file of the first respondent. After conducting an enquiry, the said Industrial Dispute was allowed holding that resignation submitted on 5/2/2010 by the workman to the Management was not voluntary and that the said resignation was accepted prior to expiry of the notice period and further directed the Management to pay the compensation of 50% of backwages with effect from 5/2/2010 to till the date of order, within sixty days, from the date of the order dated 24/11/2014. Aggrieved by the same, Management has filed writ petition.



8. Facts in W.P.No.20331 of 2015: The workman was employed originally as a Trainee Apprentice on 30/3/2005 in Sundaram Clayton Limited, Brakes Division. On completion of the training period, he was appointed as Workman Trainee, as per the order dated 3/11/2007. Subsequently, on account of merger, the workman's services were transferred to the Management by an order dated 27/3/2008. On satisfied with the service, Management appointed the workman as an Operator by an order dated 1/10/2009.

9. The workman found that food that was being served in the canteen was in a bad quality and hygiene is not maintained. Hence, the workman made an oral complaint to the General Manager (Industrial Relations) on 25/1/2010 about unhygienic and bad quality of the canteen food. The General Manager (Industrial Relations) asked the workman not to come to work from the following day onwards. Identity Card of the workman was taken. After ten days, he was asked to meet the General Manager (Industrial Relations) in this regard. After ten days, when he met the General Manager on 2/2/2010 he was asked by the General Manager (Industrial Relations) to resign from the job. He has pleaded that he cannot afford to lose the job as his marriage was fixed on



10. The workman was afraid of taking legal action against the management as he does not want to invite any trouble before his age. No notice was given. No enquiry was conducted against the workman.

The termination therefore, amounts to retrenchment which comes within the meaning of 2 (oo) of the Industrial Disputes Act. The provisions of 25 F of the Industrial Dispute Act were not followed. The termination of the workman is illegal.

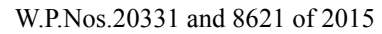
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14. On the other hand, learned counsel appearing for the workman has submitted that he was forced to submit the resignation on 2/2/2010 for making a complaint in respect of inferior quality and unhygienic conditions of the canteen and that he has not initiated the legal action immediately, as he got married in the month of March. It is submitted by the learned counsel for the workman that the impugned award is erroneous and first respondent should not have granted compensation in lieu of reinstatement and submitted further that once the labour Court has come to the conclusion that resignation is illegal, as a normal course, the workman should have been reinstated with full backwages, except in exceptional cases.

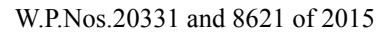
15. There is no dispute that originally the Management was known as Sundaram Clayton Limited and subsequently, merged into WABCO India Limited. The workman joined the Management on 1/10/2009 as a Trainee and subsequently, absorbed as a Probationer. According to the workman, he was appointed as workman Trainee as per order dated 3/11/2009 and finally, he was appointed as workman Trainee as per order dated 3/11/2007 and finally, he was absorbed appointed as Operator



Trainee. However, there is no record before the Court to show that he was a permanent employee.

16. According to the workman, on 25/1/2010, workman went to the General Manager (Industrial Relations) and made oral complaint about unhygienic and unfair quality of the canteen food, on which the General Manager has become furious and asked him not to come for the work from the next day onwards. After ten days from 2/2/2010, he was called again by the General Manager (Industrial Relations) and forced him to submit the resignation and when he has requested that he cannot resign, he was threatened that Police complaint will be given in case if he is not submitting the resignation.

17. The labour Court, while appreciating the issue of submitting the resignation has observed that the resignation letter was submitted on 5/2/2010, however, there was no endorsement made by the Management and it was accepted on the same day. It is also observed in the impugned order that Ex.M.2 Acceptance letter does not reveal that it was given to the workman on the very same day as there was no acknowledgment on the said letter and thereby submitting the resignation on force by the



18. On going through the above referred finding of the labour Court in the impugned order, this Court is of the opinion that finding of the labour Court is totally perverse. In order to decide whether the resignation is voluntary or involuntary, workman is expected to prove under which circumstances, he had to resign and submit the evidence to show as to how he was either coerced or forced or threatened, etc. But simply explaining the facts as to what allegedly has happened on 2/2/2010, the labour Court has concluded that the submission of the resignation under duress could have been probable. The labour Court should have concluded about the resignation basing on the evidence placed before it, however, basing on surmises and conjectures and on probabilities, finding was given to the effect that resignation is not voluntary.

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canteen, the General Manager stated to have shouted on him and asked him to come to the work on the next day. This appears to this Court is very silly. If at all a complaint is made with regard to the food to the General Manager, there was no necessity for the General Manager to go to the extent of directing the workman not to come to work and consequently, to resign. It is not the case of the workman that subsequent to making such complaint, an altercation took place between them or exchange of words have taken place, etc. But at any stretch of imagination, it cannot be concluded that merely because a complaint is made in respect of a canteen food, the General Manager asked a Probationer not to come to the work and submit the resignation and also go to the extent of threatening him that he will file a complaint in case if the resignation is not submitted. This Court is not in agreement with the conclusion made by the labour Court in that regard.

20. Another ground to come to the above mentioned conclusion is that the incident took place initially on 25/1/2010 and subsequently, resignation was demanded and allegedly given on 2/2/2010. In order to prove both the incidents, workman has not produced any of his colleagues to prove that such a thing has happened.



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21. Another ground on which the contention of the workman cannot be accepted is that the alleged incident has taken place on 2/2/2010, and he has raised a dispute only in the month of November 2010 that means after 9 months of alleged incident, workman has sent a legal notice to the Management for the first time mentioning that resignation is not voluntary. The workman though tried to explain the delay stating that his marriage was scheduled in the month of March, thereby, the Industrial Dispute was not raised. If at all the marriage was scheduled in the month of March, he should have made a complaint in the month of April and subsequent thereof. The contention that with an intention that he should not land in trouble after the marriage, thereby he could not raise the Industrial Dispute is not at all convincing.

22. In respect of not giving one month notice for accepting the resignation is concerned, neither the workman nor Management have followed any Rules regarding the submission of resignation and its acceptance. According to the workman, he was appointed as Operator from 1/10/2009 for which no record is filed before this Court. According to the Management, the workman was working as a Probationer. The



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workman has taken the plea that Management has allowed him to work only as a Probationer which signifies that his services were not confirmed. The services of a Probationer can be terminated without giving any notice.

23. Even otherwise, if the workman is a permanent employee, it is for the Management to accept the resignation immediately or to wait for a month period. This kind of Regulations will be incorporated to see that there shall not be any vacuum in respect of work of the workman, if he suddenly submits the resignation and left the Company. It is also for the reason that Company would like to settle the accounts of the workman and take all the belongings of the Company from the workman. Therefore, option is with the Management either to wait until one month to accept the resignation or to accept it immediately. According to the Management, since the workman has requested to relieve him with immediate effect, then the Management has relieved him without waiting for one month period. Therefore, this Court finds no abnormality in accepting the resignation letter on the very same day. On this account, it cannot be said that the resignation is involuntary.



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24. Since this Court has come to the conclusion that the resignation submitted by the workman was voluntary, the plea raised by the workman seeking full wages, reinstatement, continuity of service, need not be discussed. These aspects required to be discussed and finding required to be given in case if this Court concludes that resignation submitted by the workman is not voluntary.

25. In the impugned order, the labour Court has mentioned many aspects which were not raised by the workman. The main contention of the workman is that he was forced to submit the resignation. Once resignation submitted is found to be voluntary, the question whether he was retrenched against the provisions of 25 F and other connected issues will not arise. In view of the discussion made above, writ petition filed by the Management succeeds, and the writ petition filed by the workman will have to be dismissed.



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26. Accordingly, W.P.No.8621 of 2015 is allowed and W.P.No.20331 of 2015 is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

12/7/2024

mvs.

Index: Yes/No

Neutral Citation: Yes/No

To

1. The Presiding Officer
I Additional Labour Court
Chennai.



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W.P.Nos.20331 and 8621 of 2015

Dr.D.NAGARJUN,J

mvs.

Pre-delivery common order made in
W.P.Nos.20331 and 8621 of 2015

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