



W.P.No.3786 of 2012

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 19.12.2023

ORDERS PRONOUNCED ON : 11.01.2024

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.3786 of 2012

and

M.P.No.1 of 2014

The Managing Director,
M/s.Arcot Kannan Chit Funds,
No.881 (Upstairs), Kalavai Road,
Arcot, Vellore District.

... Petitioner

Vs.

1.S.Kanniyappan (Deceased)

2.The Presiding Officer,
The Principal Labour Court,
Vellore.

3.Jayanthi

4.Prasanna Kumar

5.Harini

6.Subathrai ... Respondents

/RR3 to 6 – are substituted as LRs of R1 as per order dated



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27.11.2023 in W.M.P.No.33082 of 2023 in W.P.No.3786 of 2012]

Prayer: Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari, calling for the entire records in pursuant to the award dated 06.06.2011 made in I.D.No.205/2010 on the file of the Principal Labour Court, Vellore and quash the same

For Petitioner : Mr.T.P.Prabakaran

For Respondents : Mr.J.Saravanel – for R4

: R2 – Court

ORDER

This writ petition has been filed seeking a Writ of Certiorari to call for the records in connection with award dated 06.06.2011 in I.D.No.205 of 2011 on the file of the Principal Labour Court, Vellore and to quash the same.

2. The brief facts that are relevant for the disposal of this writ petition are as under:



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Respondent No.1 herein claiming that while he was working as Clerk cum Bill Collector with the petitioner, his services were terminated orally with effect from 01.02.2007, raised a dispute before the Labour Officer-I, Vellore for conciliation and on failure of the said conciliation proceedings, approached the Principal Labour Court, Vellore, by filing a petition under Section 2A of the Industrial Disputes Act, 1947. Respondent No.1 claimed that the petitioner herein having extracted more work including on holidays and festival days and having deducted the contribution towards ESI and PF, failed to remit such contributions to the concerned Organisations and when the petitioner made a demand for complying with such statutory requirements, the petitioner herein orally terminated the services of Respondent No.1.

3. On the other hand, the petitioner herein filed a counter affidavit stating that the Respondent No.1 herein having quarrelled with the Manager and other staff of the petitioner, on his own volition, discontinued his services with the petitioner and joined some other Finance Company and



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there was no termination of whatsoever nature of the services of the Respondent No.1. Respondent No.1 herein examined himself as workman witness and the employee of the petitioner herein was examined as management witness. Ex.W1 to Ex.W3 were marked on behalf of the Respondent No.1 herein and Ex.M1 to Ex.M3 were marked on behalf of the petitioner herein before the Principal Labour Court, Vellore. The learned Principal Labour Court, having appreciated the oral and documentary evidence placed before it, framed the following points for consideration:

“1. Whether the termination of the petitioner by the management on 1.2.2007 is justified?

2. Whether the allegation of the respondent management that the petitioner abandoned his service from 1.2.2007 onwards true or not?

3. Whether the petitioner is entitled to get direction, directing the respondent to reinstate in service with full back wages, continuity of service and all other attendant benefits?

4. To what reliefs, the petitioner is entitled to?”



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4. Having framed the points above, the learned Principal Labour Court considered Points No.1 to 4 together. Having come to the conclusion that the petitioner-Management failed to prove that Respondent No.1 had voluntarily abandoned his services from 01.02.2007, allowed the industrial dispute, directing reinstatement of Respondent No.1 into service with continuity of services and other benefits with 50% of back wages only. The learned Principal Labour Court came to such conclusion on two counts: firstly on the ground that the petitioner herein failed to initiate disciplinary proceedings against Respondent No.1 on his alleged discontinuance from services voluntarily; and secondly on the ground that the petitioner failed to respond to Ex.W1-Notice got issued by the Respondent No.1 herein dated 03.08.2007.

5. As already noted above, it is the specific contention of the petitioner herein that the Respondent No.1 herein having discontinued from the services of the petitioner herein, has joined with another Finance



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Company on his own and there was no termination of his services at all.

Admittedly, the services of Respondent No.1 were discontinued with effect from 01.02.2007. Ex.W1-notice was got issued by the Respondent No.1 only on 03.08.2007, i.e., after a lapse of six months since the date of alleged termination. In the oral evidence of Respondent No.1, who got himself examined as Workman Witness-1, categorically admitted that he had worked for six months with third party after discontinuing from the services of the petitioner herein.

6. As already noted above, Ex.W1-legal notice has got issued by the Respondent No.1 after a lapse of six months since the date of his alleged discontinuance of services. If that be the undisputed fact situation, the same would strengthen and *prima facie* establish the contention of the petitioner herein that the Respondent No.1, on his own volition, discontinued the services with the petitioner herein and joined some other company. But unfortunately, the learned Principal Labour Court took a strange and absurd view by observing that the petitioner herein ought to have initiated



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disciplinary proceedings against the unauthorised absence of the Respondent No.1 herein and ought to have got issued a notice to the Respondent No.1 calling upon him to join his duties with the petitioner. When it is the specific case of the petitioner herein that the Respondent No.1 herein having quarrelled with the Manager and other staff of the petitioner, left the services of the petitioner voluntarily, this Court is unable to understand as to how the learned Principal Labour Court expected the petitioner herein to issue a notice to Respondent No.1 herein or to initiate disciplinary proceedings against Respondent No.1 herein. It is always the discretion of the employer either to initiate disciplinary proceedings or to require the employee who is unauthorisedly absent to join back duty or to leave it without initiating any such action. The petitioner herein has chosen the third option and has kept quiet without initiating disciplinary proceedings or issuing notice to the Respondent No.1 herein. But, under no circumstances, that itself can be the basis to conclude that the petitioner herein has terminated the services of the Respondent No.1.



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7. Then coming to the next aspect of the Respondent No.1 getting a notice in Ex.W1 issued to the petitioner herein. No doubt there is no dispute about the issuance of Ex.W1 notice to the petitioner and the silence on the part of the petitioner herein thereafter. But, that mere silence on the part of the petitioner herein cannot be a ground to conclude that the petitioner herein had terminated the services of the Respondent No.1 especially in the context of the categorical admission made by the Respondent No.1 that he had joined the services with some third party after 01.02.2007 and worked for six months. Perhaps, it is only after working for some time with some other employer, the petitioner thought it fit to initiate proceedings against the Respondent No.1 herein. Surprisingly, having got issued a notice in the year 2007, the Respondent No.1 had approached the Conciliation Officer only in the year 2010 and approached the learned Principal Labour Court thereafter by raising the industrial dispute in question. Further, the alleged motive for the alleged termination of services of the Respondent No.1 was totally lost sight of by the learned Principal Labour Court and the Respondent No.1 also failed to establish the so-called



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motive for termination and not even an attempt was made to *prima facie* establish the same. Therefore, the conclusion arrived at by the learned Principal Labour Court are totally based on no evidence and perverse in nature.

8. Added to this, Respondent No.1 herein having entered appearance in the present writ petition and having filed an application for vacating the interim stay granted by this Court on 17.02.2014 in M.P.No.1 of 2012 and having got the said interim order modified by an order dated 11.04.2014 in M.P.No.1 of 2013 in M.P.No.1 of 2012, did not pursue the matter further for complying with the said modified interim order dated 11.04.2014. If the Respondent No.1 is not otherwise gainfully employed, any normal prudent workman/employee definitely would have initiated steps for implementation of the beneficial interim order dated 11.04.2014 passed by this Court. But, strangely Respondent No.1 kept quiet without taking any further steps for almost a decade.

9. Be that as it may, the petitioner herein having approached this



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Court by filing the present writ petition and having obtained an interim stay initially on 17.02.2012, as modified by order dated 11.04.2014, failed to comply with the said order dated 11.04.2014. The order dated 11.04.2014 reads as under:

“Taking note of the fact that the payment of last drawn wages under Section 17-B of the Industrial Disputes Act, 1947, is mandatory, the Management is directed to pay the arrears of 17-B wages that has accrued from the date of filing of the writ petition till April 2014 within a period of eight weeks from the date of receipt of a copy of this order. Thereafter, the Management shall pay the same during the pendency of the writ petition, on or before first week of every month.

2. On such compliance, interim stay already granted is made absolute and the vacate stay petition is dismissed.

3. Post the writ petition for final disposal in the 1st week of August, 2014.”

10. No doubt, the petitioner herein filed an application in M.P.No.1 of 2014 seeking modification of the order dated 11.04.2014, but has not



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pursued the same and the same is still pending as on date. The net result is that the petitioner having invited an order dated 11.04.2014, failed to comply with the said order, but enjoyed the benefit of the said interim order.

11. Though this Court, on the facts and circumstances of the case, is not convinced with the conclusion arrived at by the learned Principal Labour Court, is inclined to dismiss the writ petition only on the conduct of the petitioner herein, who failed to comply with the orders passed by this Court, after having invited such orders in the present writ petition. In the absence of complying with the interim order passed by this Court, this Court, in normal circumstances, would not consider the case of the petitioner further on merits. In the light of the conduct of the petitioner herein as noted hereinabove, the petitioner is liable to be proceeded against under the provisions of the Contempt of Courts Act, 1971 *suo motu*. Of course, the Respondent No.1 herein, who is the beneficiary of the order dated 11.04.2014, had not initiated any such contempt proceedings against the petitioner herein during his life time, who died in the year 2020. But,



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WEB COPY this Court having noticed that the petitioner herein failed to comply with the order dated 11.04.2014, passed by this Court and committed contempt with all impunity, is not ready to remain as a silent spectator and in fact, it is a fit case where *suo motu* contempt proceedings can be initiated against the petitioner.

12. But, taking into consideration the fact that the Respondent No.1 has not initiated any such steps during his life time and also the fact that the Respondent No.1 is no more, this Court is not inclined to further keep the issue pending and in the facts and circumstances of the case, this Court is of the considered view that in order to meet the ends of justice, the petitioner herein should be made liable to pay an amount of Rs.50,000/- (Rupees Fifty Thousand only) to Respondents No.3 to 6, who are the legal heirs of the Respondent No.1, instead of dismissing the writ petition.

13. Insofar as the reliance placed by the learned counsel for the Respondent No.1 on a decision of the Hon'ble Apex Court in *Anoop*



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Sharma vs. Executive Engineer, Public Health Division No.1, Panipat

(Haryana) reported in ***(2010) 5 SCC 497*** is concerned, the same has no application to the facts of the case on hand, as the conclusions arrived at by the learned Principal Labour Court are found to be perverse in nature and based on no evidence. It is settled law that the scope of jurisdiction of this Court while exercising certiorari jurisdiction can be exercised only in certain limited circumstances and one such circumstances is that perverse findings or the findings recorded by the lower Court based on no evidence. The same is very much subsisting in the instant case.

14. In the light of the above, the impugned award dated 06.06.2011 made in I.D.No.205 of 2010 is liable to be set aside and the same is accordingly, set aside. However, the petitioner herein shall pay an amount of Rs.50,000/- (Rupees Fifty Thousand only) to Respondents No.3 to 6 within a period of two months from the date of receipt of a copy of this



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15. Accordingly, this Writ Petition is allowed as indicated above.

Consequently, connected miscellaneous petition is closed.

11.01.2024

NCC : Yes/No

Index : Yes/No

Internet : Yes

ABR

To

The Presiding Officer,
Principal Labour Court,
Vellore.

MUMMINENI SUDHEER KUMAR, J.

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Pre-delivery Order made in
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