



W.P.No.19579 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 05.01.2024

ORDER PRONOUNCED ON : 26.02.2024

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THE HON'BLE MRS. JUSTICE N.MALA

W.P.No.19579 of 2019

and

WMP.No.19091 of 2019

The Branch Manager,
M/s.Bajaj Allianz Life Insurance Company Ltd.,
No 85, Sidel Tower,
Opp. WCC College, WCC Road, Nagercoil,
Kanyakumari District- 629001,
Represented by its authorized signatory,
S. Jeyakumar S/o. Sankarlingam.

...Petitioner

Vs.

M.Antony Dhass.

...Respondent

Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorari calling for the Award dated 5.11.2015, in I.D. No 43 of 2014, issued by Central Government Industrial Tribunal-cum- Labour Court, Chennai together with all related records, quash the same.



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For Petitioner : Mr.G.Balasubramanian
for M/s.Leela and Co.
For Respondent : Mr.K.R.Samratt
for M/s.S.Arunachalam Associates

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ORDER

Writ petition is filed challenging the order of the Central Government Industrial Tribunal-cum-Labour Court dated 05.11.2015.

2. The respondent was deputed by one of the petitioner's consultants in M/s.Foi Management Consultants Ltd., and was appointed as a Customer Support Executive in the service of the petitioner company vide appointment letter dated 22.04.2006 and joined the service with effect from 01.06.2006. While so, the petitioner on 01.06.2010 issued a warning letter to the respondent for his repeated failure to undertake telecalling and practice of forwarding official emails and communication to the external email ids. Thereafter the petitioner due to work exigency in Trichy Branch issued a transfer order dated 02.09.2010 transferring the respondent from Nagercoil to Trichy Branch. On the very next day of issuance of transfer order the respondent objected to the same. Thereafter the petitioner terminated the services of the respondent by giving a notice pay of 3



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months basic salary. Aggrieved over the termination the respondent raised the industrial dispute. The Labour Court found that the termination was illegal and hence vide order dated 05.11.2015 passed an Award directing the petitioner to reinstate the respondent in service with 50% backwages and other attendant benefits and in default of payment of backwages within time, it was ordered that interest at 7.5% per annum would be payable. Aggrieved by the Award of the Labour Court the petitioner has filed the above writ petition for the aforesaid relief.

3. The learned counsel for the petitioner submitted that the respondent was an employee of the petitioner company and was bound by the terms and conditions of his employment. The refusal to accept the transfer order dated 12.10.2010 without valid reasons amounted to blatant violation of the rules of the petitioner company. The learned counsel submitted that the non acceptance of the transfer order was a good ground for termination of employment. The learned counsel further submitted that the respondent was terminated from service in compliance with the terms and conditions of the employment by giving him notice pay of 3 months basis salary amounting to Rs.13,719/- in lieu of notice period. The learned



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counsel therefore submitted that Award of the Labour Court was unsustainable and deserves to be set aside.

4. The learned counsel for the respondent on the other hand submitted that the Labour Court had given cogent and valid reasons for interfering with the termination order. The Labour Court had considered the evidence on record in proper perspective and returned the finding that there was violation of Section 25(F) of the I.D. Act. In the absence of perversity in the findings the same could not be interfered with by this Court. The learned counsel therefore submitted that the Award passed by the Labour Court should be confirmed.

5. I have heard both the learned counsels and I have perused the entire materials placed on record.

6. It is seen that the respondent joined the services of the petitioner as customer support executive and was confirmed on 01.12.2006 vide Ex.W4. The respondent developed strained relation with the petitioner as the petitioner insisted the respondent to do telecalling work by fixing a target



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of 20 calls per day. The petitioner refused to do the work of telecalling, as according to him it was not a part of his job. There were other complaints by the respondent against the petitioner which are not dealt with in detail here. Suffice it to state that the strained relations culminated in the transfer order, transferring the respondent from Nagercoil to Trichy TLC Offsite effective from 01.09.2010 as per Ex.W8. The respondent expressed his unwillingness to accept the transfer and therefore under Ex.W12 dated 12.10.2010, the respondent services were terminated. Challenging the said termination order the respondent raised dispute.

7. The Labour Court on the basis of the materials placed on record and on the admission of MW1, that telecalling was not a part of the duties assigned to the respondent held that the respondent was justified in not accepting the telecalling work. The Labour Court rejected the plea of the petitioner that the respondent was bound to do any job assigned to him, on the ground that telecalling work had no connection to the jobs for which the respondent was appointed. The Labour Court found that the petitioner used the transfer order as a short cut to ease the respondent out of its services. The Labour Court in the absence of material evidence found



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that the petitioner had failed to prove that the office to which the respondent was transferred, namely TLC Office had no connection with the Bajaj Allianz Life Insurance Company Limited. The only reason assigned in the termination order for terminating the respondent's services was that he refused to obey the transfer order and so the Labour Court on its finding that the transfer order was a camouflage to dispense with the services of the respondent, set aside the same. The Labour Court found fault with petitioner for not conducting the enquiry before termination and also not paying the entire amount for the notice period of 3 months as per the appointment order. The Labour Court therefore found that the termination of the respondent was in violation of the I.D. Act. I find no infirmity in the appreciation of the evidence by the Labour Court.

8. Apart from the above findings of the Labour Court, One other aspect is that on 01.06.2010 a warning letter was issued to the respondent under Ex.W6, for having failed and neglected to make telecalling for renewal of insurance policies. It was stated therein that the behaviour and performance of the respondent would be under scrutiny for the next one year and the same would be periodically evaluated by the company from



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time to time. In spite of the warning letter, within 2 months thereafter, the transfer order was issued to the respondent on 02.09.2010 under Ex.W8, transferring him from Nagercoil to Trichy Offsite. The respondent vide email dated 03.09.2010 refused to accept the transfer order stating that he was not willing to go outside Kanyakumari District. Thereafter on 12.10.2010 vide Ex.W12 the termination order was issued. The ground for termination was that the respondent had refused to accept the transfer. It is to be noted here that between the transfer order and the termination order there was more than a months time for the petitioner to take disciplinary proceedings against the respondent for the misconduct of not accepting the transfer order but no enquiry was conducted. In view of the overall circumstances I find that the Labour Court rightly found that the petitioner adopted the short cut of termination just to ease the respondent from its services. In my considered view the Labour Court has appreciated the evidence on record in proper perspective and has rendered the findings on proper appreciation of the evidence. Hence I find no perversity in the findings of the Labour Court and the same does not call for any interference.



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For the aforesaid reasons, I find absolutely no infirmity, impropriety and illegality in the Award of the Labour Court and the same is confirmed. The Writ petition is accordingly dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

26.02.2024

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation:Yes/No

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To

The Central Government Industrial Tribunal- cum- Labour Court,
Chennai.



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N.MALA,J.

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Pre-Delivery Order in

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Order Delivered on

26.02.2024