



WEB COPY



W.P.Nos.31175 of 2014 & 15508 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.11.2023

PRONOUNCED ON : 29. 04.2024

CORAM:

THE HON'BLE Dr. JUSTICE D.NAGARJUN

W.P.No.31175 of 2014
and W.P.No.15508 of 2016

Kocon India Pvt. Limited,
Rep., by its Senior Manager,
Mr.N.M.Sridhar,
820/15, Kuthamabakkam village,
Poonamalle Taluk,
Tiruvallur District-602 107.

...Petitioner in W.P.No.31175 of 2014

S.Settu

...Petitioner in W.P.No.15508 of 2016

versus

1.C.Settu

2.The III Additional Labour Court,
Family Court Building,
High Court Campus,
Chennai-600 104.
2014

... Respondents in W.P.No.31175 of

1. The Presiding Officer,
III Additional Labour Court,
Chennai-600 104.



W.P.Nos.31175 of 2014 & 15508 of 2016

2. The Management,
Kocon India Limited,
No.820/15, Kuthambakkam Village,
Poonamallee Taluk,
Thiruvellore District 602 107. ...Respondents in W.P.No.15508 of 2016

Prayer in W.P.No.31175 of 2014: This Writ petition has been filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records relevant to the award dated 09.09.2014 passed in I.D.No.50 of 2008 on the file of the III Additional Labour Court at Chennai.

Prayer in W.P.No.15508 of 2016: This Writ petition has been filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus after calling for the records relating to the Award of the 1st respondent dated 09.09.2014 in I.D.No.50 of 2008, quash that portion of award declining to grant reinstatement with continuity of service with backwages and other attendant benefits and consequently direct the 2nd respondent to give reinstatement with continuity of service with backwages and other attendant benefits to the petitioner.

In W.P.No.31175 of 2014:

For Petitioner : Mr.A.Edwin Prabakar



WEB COPY



W.P.Nos.31175 of 2014 & 15508 of 2016

For Respondents : Mr.S.T.Varadarajulu for R.1

: R.2 Labour Court

In W.P.No.15508 of 2016:

For Petitioner : Mr.S.T.Varadarajulu

For Respondents : Mr.A.Edwin Prabakar for R.2

: R.1 Labour Court

ORDER

Writ Petition No.15508 of 2016 is filed for issuance of a certiorarified mandamus to quash the award in ID No.50 of 2008 dated 09.09.2014 and consequently to direct the respondent to reinstate the workman with continuity of service back wages etc.

2. The workman joined the service of second respondent management on 17.02.2006 as a Technician. He was posted as probationer for a period of one year. He sustained injury while in service and he was treated at Vijay Hospital and also in ESI hospital on 01.06.2007, he was denied employment on certain



allegations. The Manager of the second respondent Management has requested him to resign on 31.05.2007, but the workman refused. Thereby from 01.06.2007 onwards no employment was given to the workman.

3. The workman has approached the union and the President of the union has addressed a letter to the management to take the workman back in service. However, the management has replied by way of a letter dated 25.06.2007 stating that the workman was irregular in work and refused to take him for work. The workman has raised Industrial Dispute and conciliation proceedings were failed and thereby he has filed ID.No.50 of 2008. After conclusion of enquiry, the first respondent/Labour Court has passed the impugned award stating that the termination of the petitioner was illegal. However, instead of reinstatement, he was only awarded fifty percentage of wages from May 2007 until the date of award. Aggrieved by the same, W.P.No.15508 of 2016 is filed by the workman.

4. W.P.No.31175 of 2016 is filed by the management seeking for writ of Certiorari to quash the impugned award passed on 09.09.2014 in ID.No.50 of 2008 on the file of the III Additional Labour Court at Chennai.



5. According to the affidavit filed along with this Writ Petition, the workmen was offered employment basing on the application as a Probationer which extends for a period of one year. The workmen was joined the petitioner's company on 17.02.2006 and he continued as a Probationer until his termination. He is not a workmen as per Section 2(s) of the industrial dispute. The service of the workmen was terminated from his work on 31.06.2007. He was counselled for his unsatisfactory performance, irregularity in work, not undergone training as per the schedule and failing to improve his performance. Complaint was given against the unsatisfactory work of the workmen by his unions. He was given a letter of termination considering overall performance. In the conciliation proceedings also the Manager has referred about the unsatisfactory work of the workmen. The workmen did not inform about the injuries at the work place. The termination is proper direction to pay back wages at the rate of 50% from the year 2007 is a regular.

6. Since, these two Writ petitions are inter-connected, one filed by the workmen and the other filed by the Management, both the writ petitions are disposed by a common order. During the course of discussion whenever



management referred to it refers to the Kocon India Pvt. Ltd., and whenever workmen is referred to, it refers to C. Settu.

7. According to workmen, he has joined respondent on 17.02.2016 as a Technician. Initially, he was posted as a probationer for one year and allowed to continue beyond one year however without any reason, declined to continue his services from 01.06.2007. Since he has completed 240 days his termination is irregular and his termination is against the spirit of Section 25 of the Industrial Dispute Act and thereby sought for reinstatement by setting aside the termination order.

8. The Management on the other hand has taken a stand that the petitioner was initially appointed as a probationer, he was not regular employee and many of his managers have given opinion that his performance was very poor, he has not undergone mandatory training and that he was terminated as a probationer itself, thereby he is not a workmen under of Section 2(s) of the Industrial Dispute Act and thereby he is not entitled for any benefits.

9. The Labour Court after conducting full-fledged enquiry has held that



he is a workmen under Section 2(s) of the Industrial Dispute Act, that his termination is illegal. However instead of reinstating the petitioner he was awarded compensation at the rate of 50% of wages from the year 2007 until the date of award.

10. He was appointed on 17.02.2006 and was terminated on 31.05.2007. Though it is submitted by the Management that the workmen was not regular, it cannot be said that he has not worked more than 240 days continuously in a year. Section 25(f) of the Industrial Dispute Act is attracted to the facts of this case, as the petitioner has worked continuously for a period of 240 days in a year. Once Section 25(f) of the Industrial Dispute Act is attracted the workmen cannot be terminated without following procedure of giving either one month notice or one month of his salary and payment of compensation depending upon the number of years he has worked. Though the Management has submitted that the petitioner is not a workmen under Section 2(s) of the Industrial Dispute Act, no substantial efforts were made to prove that he is not a workmen. According to Management, the workman was a probationer. However even according to the Management, probationary period will last only for one year and admittedly he worked more than one year, thereby beyond



period of one year, his status cannot be a probationer. However it is submitted by the Management that still he was under probationer and unless and until his probation is declared, he will not become the workmen under Section 2(s) of the Industrial Dispute Act, thereby Industrial Dispute Act is not applicable.

11. In the impugned order, the Labour Court has cited the decision of the Hon'ble Supreme Court reported in 2002 LLM 47 wherein, it is observed that a probationer is like a temporary servant and entitled for some protection and his services cannot be terminated arbitrarily or in a punitive manner without complying principles of natural justice. In the case on hand, even if the workman was a probationer, notice was not given to him prior to termination, therefore, termination of the petitioner is *per se* in regular.

12. In a decision of the Hon'ble Apex Court, in ***TELECOM DISTRICT MANAGER AND OTHERS {2008 (3) LLN – 676}***, at para 23 and 24, it has been held thus:-

“23. Even if the provisions of Section 25F of the Industrial Disputes Act had not been complied with,



WEB COPY



W.P.Nos.31175 of 2014 & 15508 of 2015

respondent was only entitled to be paid a just compensation. While, however, determining the amount of compensation we must also take into consideration the stand taken by the appellants. They took not only an unreasonable stand but raised a contention in regard to absence of jurisdiction in the Tribunal. They admittedly did not comply with the order passed by the Tribunal for a long time. It had raised contention which are not otherwise tenable.

24. We, therefore, are of the opinion that in the peculiar facts and facts and circumstances of the case interest of justice shall be subserved if respondent is directed to be paid a compensation of Rs. 1,50,000/- (Rupees one lakh fifty thousand only). The said sum should be paid to him within four weeks failing which it will carry interest @ 9% per annum.”

13. In another decision of the Hon'ble Apex Court, in ***BHARAT SANCHAR NIGAM LTD Vs. MAN SINGH (Civil Appeal No.8747 of 2011)***, at para 6, it was observed thus:-

“6.In view of the aforementioned legal position and the



WEB COPY

W.P.Nos.31175 of 2014 & 15508 of 2015



fact that the Respondents - workmen were engaged as 'daily wagers' and they had merely worked for more than 240 days, in our considered view, relief of reinstatement cannot be said to be justified and instead, monetary compensation would meet the ends of justice."

14. Once termination is set aside as a normal rule of thumb is he should have been reinstated. However, the law after its evolution have reached to a stage where even if the termination is held to be irregular, the reinstatement is not mandatory. Basing on The facts and circumstances of each case, the lump sum amount can be awarded. In the case on hand, the petitioner has served one year and termination was taken place on 17.02.2006 and now 2024 is more than 18 years, the petitioner who was 39 years as on the date of filing of this writ petition and now he is around 58. Therefore, at this stage, there is no point in giving a direction for the petitioner reinstatement, thereby, the Labour Court has rightly concluded that there is no need to issue direction for reinstatement.

15. In respect of compensation also, the Trial Court has rightly calculated the compensation at the rate of 50% of the backwages from May 2007 till the date of passing of orders i.e., 09.09.2014 and it also granted nine percent



W.P.Nos.31175 of 2014 & 15508 of 2015

interest if not paid within sixty days and Rs.3,000/- were ordered towards costs.

Therefore, considering the submissions instead of full back wages as a lump sum compensation at the rate of 50% is granted and thereby this Court is of the opinion that the impugned award of the Trial Court is balanced and not perverse and not against the recorded evidence and thereby the same cannot be interfered with.

16. In view of the above, these two writ petitions are dismissed. No costs.

29.04.2024

Index : Yes / No
Speaking/Non-speaking Order
Neutral Citation: Yes/No
jai

Dr.D.NAGARJUN, J.
jai

To
1. The III Additional Labour Court,
Family Court Building,
High Court Campus,
Chennai-600 104.

2. 1. The Presiding Officer,
III Additional Labour Court,
Chennai-600 104.



WEB COPY



W.P.Nos.31175 of 2014 & 15508 of 2016

Pre-Delivery Order
W.P.Nos.15508 of 2016 and 31175 of 2014

29.04.2024