



W.P.Nos.14278 and 19813 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	14/12/2023
Delivered on	14/6/2024

C O R A M

THE HONOURABLE Dr.JUSTICE D.NAGARJUN

Writ Petition Nos.14278 and 19813 of 2014

W.P.No.14278 of 2014

R.Sivalingam ... Petitioner in
W.P.No.14278 of 2014

Vs

1. The Presiding Officer
Labour Court
Coimbatore.
2. The Management of
Auto Die-casting Company
SF No.440 Athipalayam Road
Ganapathy
Coimbatore 6.

... Respondents in
W.P.No.14278 of 2014

a n d

W.P.No.19813 of 2014

The Management of
Auto Die-casting Company
SF No.440 Athipalayam Road
Ganapathy
Coimbatore 6.

... Petitioner



W.P.Nos.14278 and 19813 of 2014

Vs

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1. The Presiding Officer
The Labour Court
Coimbatore.

2. R. Sivalingam ... Respondents

Prayer in W.P.No.14278 of 2014: Petition filed under Article 226 of the Constitution of India for the issuance of a writ of certiorarified mandamus to call for the records pertaining to the award dated 17/7/2013 passed by the first respondent in I.D.No.294 of 2005 and communicated to the petitioner by the office of the Labour Officer in Na.Ka.No.140 of 2014 dated 27/3/2014, quash the same and consequently, direct the second respondent to pay the petitioner full backwages for the period of suspension and non-employment from the date of dismissal to the date of award in addition to the relief already granted by the first respondent in I.D.No.294 of 2005.

Prayer in W.P.No.19813 of 2014: 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.294 of 2005 and quash its award dated 17/7/2013.



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For petitioners

...

Mr.V.Ajay Khose
(in W.P.No.14278 of 2014)

Mr.S.Ravindran
Sr.Advocate
for Mr.S.Bazeer Ahmed
(in W.P.No.19813 of 2014)

For respondents

...

Labour Court – R.1

Mr.V.Ajay Khose
for R.2
(in W.P.No.14278 of 2014)

Mr.S.Ravindran
Sr.Advocate
for Mr.S.Bazeer Ahmed
for R.2
(in W.P.No.19813 of 2014)

COMMON ORDER

W.P.No.14278 of 2014 is filed by the workman against the second respondent Management, aggrieved by the award passed by the first respondent Labour Court in I.D.No.294 of 2005, wherein the labour Court, while directing the Management to reinstate the petitioner with continuity of service has declined to grant back wages.



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2. W.P.No.19813 of 2014 is filed by the Management against the workman aggrieved by the award passed by the first respondent Labour Court in I.D.No.294 of 2005, whereunder the labour Court has directed the Management to reinstate the workman with continuity of service.

3. Since both the writ petitions are filed challenging the same award, they are being disposed of by way of a common order.

4. During the course of discussion, instead of mentioning as the petitioner and respondent, workman and management are being mentioned.

5. The workman was employed in the second respondent Management in the year 1991. No Union was functioning in the respondent Management. Some of the senior workers used to make demands and hold talks with the Management in respect of revision of wages and other conditions of service. The workman has also taken initiative and took leave during the course of those discussions. In the year 2004, workman has demanded revision of wages and improvement on other conditions of service. The Management has assured the



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workman that they will increase the wages and will also improve the conditions of service. However, the Management has not kept up the promise.

6. The workman was transferred from Tool Room Section to Stores by an order dated 28/1/2005. The second respondent Management refused to hold the talks. The workman went on stay in strike protesting the transfer of workman and also have increased the wages and other benefits. The Proprietor of the second respondent Management called all the workers and requested to call off the strike. The workman continued to work in the Tool Room Section where he was working earlier, however, he was not assigned with any work during the month of February 2005.

7. The workman was placed under suspension, as per the order dated 1/3/2005 on the ground that workman has not reported to the Stores to which Section the workman was transferred. The workman has submitted his explanation on 3/3/2005 and denied the charges. An enquiry was ordered. Management has appointed an Advocate for conducting an enquiry. Enquiry Officer submitted the report, after



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holding the enquiry that the workman is guilty of all the charges. The Management has accepted the same and workman was asked to submit his explanation. The explanation was offered. Finally, the workman was dismissed from service on 11/6/2005.

8. The workman has raised Industrial Dispute before the Labour Court, Coimbatore, in I.D.No.294 of 2005. Initially, first respondent labour Court has passed orders in respect of preliminary issue holding that enquiry was not done in a fair and proper manner, thereby, opportunity was given to both sides to lead evidence.

9. On behalf of Management, 16 documents were marked and two witnesses were examined. On behalf of workman, four documents were marked and workman was examined to rebut the evidence of the Management. The labour Court has ultimately passed the award on 17/7/2013, setting aside the dismissal order, dated 11/6/2005 directing the Management to reinstate the workman and held that workman is not entitled for backwages. Aggrieved by the same, workman has filed W.P.No.14278 of 2018.



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10. Management has filed W.P.No.19813 of 2014, wherein in the affidavit it is stated that the respondent Management is engaged in manufacturing of Aluminium diecastings and has employed 22 employees at the relevant time for manufacturing activity. As per the practice and certified orders, workman and supervisors are liable to be transferred from one Department to other Department basing on exigency. On 28/1/2005, as there was an urgent work in the Stores Department, workman was transferred to Tool Room Department to Store Department. The workman has refused to obey the orders of transfer and continued to report at Tool Room Department without any work. The workers went on indulgence strike. On 1/3/2005, workman was placed under suspension. He was charge sheeted for mis conduct of disobeying the transfer orders. Enquiry was conducted by an independent advocate. On the basis of the report of the Enquiry Officer, workman was dismissed from service. The workman has raised an Industrial Dispute in I.D.No.294 of 2005. The labour Court has passed the impugned award on 17/7/2013, directing the management to reinstate the workman, however, workman was denied with the backwages. Being aggrieved, Writ Petition No.19813 of 2014 is filed.



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11. Heard Mr.V.Ajay Khose, learned counsel for the workman and Mr.S.Ravindran, learned Senior Advocate for the Management.

12. It is submitted by the learned counsel for the workman that in spite of many demands, Management has never increased the wages and never improved other conditions. Since the workman has taken the leadership of demanding the Management on behalf of workers, as a measure of victimisation, Management has transferred the workman from Tool Room to Stores Department, by way of an order, dated 28/1/2005. Aggrieved by the transfer order, workers went on stay in strike. The management has called the workers for discussion and during the course of discussion, Management informed that transfer order was cancelled and workman was allowed to work in the Tool Room Department. However, workman was not assigned with any work. Subsequently, workman was placed under suspension. Enquiry was initiated. Charge memo was issued. Earlier, enquiry was initiated charges were proved and he was dismissed from service. It is further submitted vehemently that once the dismissal order is set aside, since the workman was not gainfully employed and during the period of suspension and enquiry, labour Court should have granted backwages.



13. The learned counsel representing the Management has submitted that workman was suspended on account of disobedience of transfer order and he has instigated the workers to go on strike. However, the Management has not accepted the request of the workman to cancel the transfer order. The transfer order is not to victimise the workman. It is further submitted by the learned counsel appearing for the Management that Enquiry Officer who was unbiased and basing on the evidence placed before him, he has found the workman guilty.

14. The main contention of the workman is that though he was transferred from Tool Room to Stores Department, on 28/1/2005, on account of strike by the workman, transfer order was withdrawn. However, it is the contention of the Management that transfer order was not withdrawn. When the workman was asked to report at Stores Department, he has denied to report at Tool Room and committed misconduct and thereby he was placed under suspension on 1/3/2005. Therefore, it has to be examined as to whether there is any material to hold that transfer of workman dated 28/1/2005 from Tool Room to Stores was revoked. The workman has not filed any document or proceeding of the Management to show that transfer order was withdrawn.



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15. It is to be noted that workman was transferred on 28/1/2005. If at all the management has agreed to withdraw the transfer, there shall be a similar proceedings in writing withdrawing the transfer order dated 28/1/2005. Since the Management has denied the contention of the cancellation of transfer order, burden lies on the workman to hold that transfer order was issued on 28/1/2005 and the same was withdrawn and as already observed, there is no written proceedings in respect of cancellation of transfer order.

16. As per the impugned order, Ex.M.9 is the photo copy of the letter, dated 27/4/2005 submitted by the workers to the Enquiry Officer, it is mentioned that when the workers have resorted to strike, Management assured that all the issues will be sorted out through settlement and instructed the workman to go to Tool Room, thereby, all the workers have returned to duty. By way of this letter, workman wanted to impress upon the Court that the transfer order was cancelled. Even if Ex.M.9 letter is accepted, still it cannot be said that Management has withdrawn the transfer order of the workman.



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17. According to Ex.M.9 letter, Management has assured to the workers that problems will be resolved and asked the workman to go to Tool Room. Even if the management has asked the workman to go to Tool Room, it does not mean that his transfer order from Tool Room to Store Room is cancelled. Further, if at all the Management has asked the workers that transfer order is revoked or cancelled, then, they should have demanded something in writing. Even according to the workman, even in the Tool Room, he was not given any work. This also signifies that Management does not want to cancel the transfer order of the workman. If at all the Management has agreed to cancel the transfer order, Management should have entrusted some work to the workman. Therefore, not entrusting any work to the workman in the Tool Room also go to show that workman is working in a wrong place in Tool Room instead of Store room. Therefore, contention of the workman that his transfer order was cancelled, cannot be accepted.

18. However, it is clear that workman has demanded the Management on behalf of the workers for wage revision and improving the conditions. The Management has made several promises and all of



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them were not fulfilled. At this juncture, since the workman has been repeatedly pressurizing the Management for improving the conditions and revision of wages, workman was transferred from Tool Department to Store Department. Learned counsel for the Management has submitted that as per the prevailing practice and Standing Orders, any workman can be transferred to any Department. The very timing of transfer of the workman from one Department to the other Department clearly amounts that his transfer order was only to victimise the workman in order to see that the workman is not representing the other workers in respect of the demands. Therefore, this Court is in agreement with the findings of the labour Court that as a measure of victimisation, he was transferred from Tool Department to Store Department. Therefore, this Court is of the opinion that transfer of workman should not have been done and thereby disobedience of transfer does not amount to any mis conduct.

19. In respect of backwages are concerned, it is now settled that payment of backwages whenever reinstatement was ordered is not a thumb rule. There are many parameters and circumstances which are



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required to be considered by the Court, while awarding backwages.

Some times, basing on the circumstances, 50% of the backwages or some times, some of the backwages are being awarded and in some circumstances may be 50% and in some deserving cases, backwages are also awarded in full. The labour Court, after citing many decisions of the Hon'ble Apex Court, has come to the just conclusion that in the circumstances of the case on hand, payment of backwages is not required to be ordered. Having gone through the entire impugned award, this Court is the opinion that orders of the labour Court are not perverse. Unless the award is patently perverse and shocks the conscience of this Court or if the award is passed against the settled principles, award cannot be interfered with.

20. As already observed, labour Court has passed a reasoned order in all respects including the reinstatement of the workman, continuity of service, etc., and also rightly declined the backwages. Considering the above discussion, award of the labour Court cannot be interfered with.

21. In the result, both the writ petitions are dismissed. No costs.



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mvs.

Index: Yes/No

Neutral Citation: Yes/No

To

1. The Presiding Officer
The Labour Court
Coimbatore.

Dr.D.NAGARJUN,J



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mvs.

Pre-delivery common order made in
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14/6/2024