



W.P.No.2127 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.03.2024

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

W.P.No.21275 of 2019

and

WMP.No.20482 of 2019

The Management of Sahuwala Flour Mills,
173, Sivasakthi Colony,
Ganapathy, Coimbatore-641 006
Rep. by its managing Partner
Mr.Virender Kumar Gupta.

...Petitioner

vs

S.Murugesan

....Respondent

Writ petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, call for records relating to the Award dated 28.11.2018 passed by the Principal Labour Court, Coimbatore in I.D.No.45 of 2015 and to quash the same.

For Petitioner : Mr.R.Jayaprakash

For Respondent : M/s.D.Grace Juliet Praveena

ORDER

Writ petition is filed challenging the Award of the Labour Court dated 28.11.2018 passed in I.D.No.45 of 2015.



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2. The management has filed the above writ petition and will be referred to as petitioner and the workman will be referred to as respondent.

3. The petitioner is a partnership firm and engaged in the manufacture of Maida, Rawa, Atta and Bran. The respondent was working as Office Assistant in the petitioner's mills since 11.05.2004. The respondent requested for leave from the petitioner on 27.07.2014 over phone. The petitioner granted leave to the respondent and after expiry of the leave, the respondent did not report for work on 29.07.2014. Without prior permission from the petitioner, the respondent remained unauthorisedly absent from 29.07.2014. The petitioner contacted the respondent over phone on 31.07.2014 and 01.08.2014 and advised him to report for work. The respondent neither reported for work nor gave any explanation for his unauthorised absence. Thereafter the respondent moved the Labour officer alleging illegal termination from service. The respondent appeared before the labour officer and denied that the respondent was terminated by the petitioner from service. The petitioner further requested the labour officer to advise the respondent to report for work from afternoon of 07.11.2014. The submission of the respondent was



recorded by the labour officer, who advised the respondent to report for work but the respondent failed to report inspite of the labour officer's advise. The conciliation proceedings failed and thereafter the dispute was referred to the Labour Court, Coimbatore in I.D.No.45 of 2015. The Labour Court passed the impugned Award dated 28.11.2018 directing the petitioner to reinstate the workman into service with continuity of service, 50% of backwages and other attendant benefits. Aggrieved by the Award of the Labour Court, the petitioner has filed the above writ petition.

4. The Labour Court on the basis of materials placed before it found that it was a case of illegal termination and the petitioner had miserably failed to satisfy the Court, that it was a case of abandonment of service of the respondent.

5. The learned counsel for the petitioner submitted that the labour court failed to note that workman had taken inconsistent stand on the date of termination and further failed to note that Ex.M3, the Muster Roll for the year 2014 clearly showed that even after 20.07.2014, the alleged date of termination, the respondent had reported for duty between 21.07.2014 and



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25.07.2014. The learned counsel further submitted that inspite of the petitioners repeated request to the respondent to report for duty, he failed to report right from 29.07.2014 and therefore it was a case of abandonment of service and not mere unauthorised absence. The learned counsel for the petitioner further submitted that the petitioner had marked Ex.M6, to show that the respondent had started his own business and that was the reason he did not report for duty inspite of repeated request's of the petitioner. The learned counsel submitted that the Labour Court miserably failed to appreciate Ex.M2, sent by ESI Corporation confirming that the respondent had not taken ESI leave for 4 days as claimed by him. The learned counsel therefore submitted that Award of the Labour Court deserved to be set aside as the Labour Court had not properly considered the evidence filed by the petitioner.

6. The learned counsel for the respondent on the other hand submitted that the respondent went on leave on 26.07.2014 and 28.07.2014 and thereafter he reported for duty on 29.07.2014 but was prevented from joining work. The learned counsel submitted that on 29.07.2014, the respondent was orally terminated from service and therefore the



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contention of the petitioner that the respondent had voluntarily abandoned service was unsustainable. The learned counsel further submitted that the Labour Court had appreciated the materials on record in proper perspective and hence the Award of the Labour Court did not call for any interference.

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

8. The short point for consideration is whether the absence of the workman is unauthorised absence or abandonment of service.

9. It is an admitted fact that the respondent went on leave for two days i.e. on 26.07.2014 and 28.07.2014, as 27.07.2014 was a holiday. Whereas the petitioner claims that the respondent did not report for duty from 29.07.2014 onwards, the respondent claims that he was denied work when he reported for duty on 29.07.2014. It is seen that in the claim petition the respondent stated that on 20.07.2014 he was denied work for claiming higher salary and incentive but in the relief paragraphs of the



claim petition, the respondent claimed that he was terminated on 29.07.2014. When the respondent was cross examined on the date of termination he categorically stated that he was terminated on 20.07.2014 but it is seen from Ex.M3, Muster Roll that he worked between 21.07.2014 and 25.07.2014. Therefore as rightly contended by the learned counsel for the petitioner the claim of the respondent that his services were terminated on 20.07.2014 is false. It is further pertinent to note here that 20.07.2014 was a Sunday (Holiday) as evidenced by Ex.M3 and therefore the claim of the respondent of having reported in the factory on that day is belied by Ex.M3. The petitioner marked Ex.M6, to show that respondent was running a Auto Consultancy in the name and style of "Sri Saravana Auto Consultancy". The petitioner further submitted that as the respondent was running private consultancy, he was not interested in joining work. As rightly contended by the learned counsel for the petitioner the Labour Court did not properly appreciate Ex.M6, and the reason given by the Labour Court for rejecting Ex.M6 cannot be countenanced. In my view, the Labour Court not only failed to appreciate Ex.M3 and Ex.M6 in proper perspective, but also failed to note that eventhough the petitioner offered to take back the respondent before the conciliation officer and also before



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it, it was the respondent who refused to join work. The Labour Court found fault with the petitioner for not sending any letter to the respondent calling him to report for duty. The Labour Court therefore held that the workman was illegally terminated. It is rather strange that though the Labour Court found that the respondent was not granted leave, it nevertheless went on to hold that the absence of the respondent did not amount to abandonment of service. Admittedly from 29.07.2014 the respondent was absent and it was only on 10.09.2014 that he lodged a complaint before labour officer. There was no reason why the respondent waited for two months after the illegal termination to raise the dispute. Hence viewed from any angle, it is clear that the respondent was not interested to work with the petitioner for the obvious reason that he was running his own business of Auto Consultancy. It is also pertinent to note that even when the petitioner offered to take back the respondent in the conciliation proceedings before the labour officer, the respondent failed to report for duty. Therefore under the facts and circumstances of the case, I am of the view that this is a case of voluntary abandonment of service and not unauthorised absence. The Hon'ble Supreme Court in the case of *Vijay S. Sathaye Versus Indian Airlines Limited and Others* reported in 2013 (10) SCC 253 at para 12 held as follows:



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“12. It is settled law that an employee cannot be termed as a slave, he has a right to abandon the service any time voluntarily by submitting his resignation and alternatively, not joining the duty and remaining absent for long. Absence from duty in the beginning may be a misconduct but when absence is for a very long period, it may amount to voluntary abandonment of service and in that eventuality, the bonds of service come to an end automatically without requiring any order to be passed by the employer.”

In my view, the aforesaid Judgment squarely applies to the facts of the case, as it is evident from the materials on record that the respondent did not report for work right from 29.07.2014 that too without any sanctioned leave. The Labour Court therefore fell into error in thinking that the petitioner ought to have issued notice to the respondent to report for duty and failure to do so amounted to illegal termination of service.

For all the above reasons, the Award of the Labour Court is set aside. Accordingly writ petition is allowed. There shall be no order as to costs. Consequently connected MP is closed.

11.03.2024



dsn

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation:Yes/No



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To
The Principal Labour Court,
Coimbatore.



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N.MALA,J.

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