



WEB COPY



W.A.Nos.2625, 2629 and 3049 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 01.08.2024
Pronounced on: 13.11.2024

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU
AND
THE HONOURABLE MR.JUSTICE P.DHANABAL

W.A. Nos.2625, 2629 and 3049 of 2023
and
C.M.P. Nos. 22131, 22142 and 25277 of 2023

W.A. Nos.2625 and 2629 of 2023

Management of Apex Knowledge
Technology Pvt. Ltd.,

Appellant in W.A.2625 and
2629 of 2023

vs.

1. The Special Deputy Commissioner of Labour
(Appellate Authority under the Shops and
Establishments Act) 1947,
Teynampet, Chennai-600 006.

2. Rajeev B. Agarwal

... Respondents in
W.A. 2625 and 2629 of 2023

Common Prayer in W.A. Nos.2625 and 2629 of 2023:- These Writ
appeals have been filed under Clause 15 of the Letters Patent praying to set
aside the order dated 01.08.2023 in W.P. Nos.7785 and 7784 respectively.



W.A.Nos.2625, 2629 and 3049 of 2023

WEB COPY

For Appellant : Mr. Anand Gopalan
for M/s. Agam Legal Advocates

For Respondents : Mr. T. Chezhian,
Additional Government Pleader
[for R1]
Mr. Balan Haridas [for R2]

W.A. No.3049 of 2023

Rajeev B. Agarwal S/o. B.G. Agarwal ... Appellant

vs.

1. Management of Apex Knowledge
Technology Pvt. Ltd.,
represented by its Authorized Signatory.

2. Special Deputy Commissioner of Labour
(Appellate Authority under the Shops and
Establishments Act) 1947,
Teynampet, Chennai-600 006. ... Respondents

Prayer:- This Writ appeal has been filed under Clause 15 of the Letters Patent praying to set aside the order dated 01.08.2023 in W.P. No.7784 of 2016 in so far as declining the relief of reinstatement and awarding lump sum payment of Rs.20 lakhs as full and final settlement as illegal, arbitrary and without any basis and consequently, direct the 1st respondent to reinstate the appellant with full back wages, continuity of service and all other attendant benefits, award costs.



W.A.Nos.2625, 2629 and 3049 of 2023

WEB COPY

For Appellant : Mr. Balan Haridas
For Respondents : Mr. Anand Gopalan
for M/s. Agam Legal Advocates
[for R1]
Mr. T. Chezian,
Additional Government Pleader
[for R2]

COMMON JUDGMENT

J.NISHA BANU, J.

The above Writ appeals are preferred as against the common order passed in W.P. No.7784 and 7785 of 2016 dated 01.08.2023, whereby, the learned Single Judge held that the ouster of the employee would squarely be termed to be termination and not resignation from service and further in lieu of reinstatement, directed the management to pay Rs.20,00,000/- (Rupees Twenty Lakhs only) to the employee towards full and final settlement.

2. Challenging the said order, the Management has preferred W.A No. 2625 and 2629 of 2023; Aggrieved by the said order, the employee has filed W.A. No.3049 of 2023.



W.A.Nos.2625, 2629 and 3049 of 2023

WEB COPY

3. The employee-appellant in WA.3049 of 2023 was appointed as chief operating officer in the Management of Apex Knowledge Technology Private Limited in the month of July 2006. He was responsible for the development and profit margin of the Chennai Unit. The employee-appellant was appreciated for his performance and his salary package was revised to Rs.22 Lakhs per annum and performance bonus revised to Rs.3 Lakhs. Whiles, he was compelled to resign by his management. In return the management promised him to give the following:

- i. Performance pay Rs.3 Lakhs
- ii. Severance sum Rs.10 Lakhs
- iii. Reducing the vesting period of C-vest shares from 36 months to 23 months and permitting him to encash the same.

On trusting the same, the employee-appellant had submitted his letter of resignation on 30.04.2009, stating that he may be relieved from service with dignity with suitable severance pay and considering accelerated vesting of stock options.

4. Contrary to the assurance, the management went back on its promise. In such circumstance the employee-appellant through electronic



W.A.Nos.2625, 2629 and 3049 of 2023

WEB COPY

medium, communicated his withdrawal of resignation communications before 30.04.2009 that is before accepting his resignation and continued his employment. It is also pertinent to note that as per clause 14 of the appointment order, the said letter of resignation dated 30.04.2009 will take effect only by 30.06.2009. However, the management terminated him and also given a cheque to the tune of Rs.6,76,097/- and thereafter, payment of Rs.1,31,445/- was also paid by way of demand draft on 23.07.2009 towards full and final settlement. The employee received all the amounts/cheques and signed the statement of account towards receipt of the same. Thereafter, on 22.06.2009, the employee purported to withdraw the resignation on the ground that it was given only on the assurance of payment of compensations, which was not accepted by the management.

5. According to the Management, since the resignation of the employee was accepted by the Management and the retirement benefits also settled, thereafter no relationship between the employer and employee, therefore withdrawal of resignation was not accepted by them. However, the letter of resignation dated 30.04.2009 will take effect only from 30.06.2009. Therefore, the contention of the management that the



W.A.Nos.2625, 2629 and 3049 of 2023

resignation letter had become final is without substance.

WEB COPY

6. The learned counsel for the employee would submit that the Management had given two months notice on 30.04.2009, which expired on 30.06.2009 on the assurance that he will be pay Rs.3 lakhs towards performance pay, a sum of Rs.10 lakhs towards severance pay and reducing the vesting time with regard to the shares allotted to him. However, the promise was not honoured by the management. Therefore, the letter of resignation dated 30.04.2009 was withdrawn well before accepting the notice period and withdrawal of the same would deem that the employee continues in service.

7. It is further submitted by the learned counsel for the employee that the employee was prevented by the security personnel from attending work that too when he withdrawn the resignation before acceptance of the said resignation by the management and that will not amount to termination of service.

8. The employee filed a petition before the Special Deputy



W.A.Nos.2625, 2629 and 3049 of 2023

WEB COPY

Commissioner of Labour/Appellate Authority under the Shops & Establishment Act, 1947, questioning the denial of employment by filing an appeal under section 41(2).

9. The Appellate Authority passed order directing the Management to reinstate the employee into service. In respect to that the management reinstated him on 02.07.2018. However, after briefly engaging him for 9 months viz., upto 03.04.2019, the management failed to provide employment and terminated him illegally, stating that his company named Geo Spatial Information Service has been sold. Therefore, challenging the said order, Management filed WP.Nos.7784 and 7785 of 2016.

10. The learned Single Judge, by order dated 01.08.2023, confirmed the order passed by the Authority and held that in all terms, service of the employee was terminated. Further, the learned Single Judge modified the order passed by the Appellate Authority and directed the management that in lieu of reinstatement, Rs.20 lakhs is to be awarded towards compensation as full and final settlement. The employee further contented that he is entitled for more than Rs.20 Lakhs of Compensation as granted



W.A.Nos.2625, 2629 and 3049 of 2023

WEB COPY

by this Hon'ble Court. They did not pay the current wages which will be more than Rs.6 Lakhs per month on the contrary paid only the last drawn wages of Rs.2,12,667/-. Even if Rs.2,12,667/- is taken into account, the amount of 14 years come to more than Rs.3,56,28,056/-. He was not gainfully employed as claimed by the management. Even before the authority, in his cross examination, he stated about his attempts to do business, which ended in vain. Thus, the employee is entitled for the full relief of reinstatement, back wages and all other attendant benefits as the termination is held to be illegal.

11. Mr.Anand Gopalan, learned counsel appearing for the Management would submit that the employee resigned his job and the same was accepted; he also received the retirement benefits and thereafter the question of reinstatement of service will not arise. After resignation, there is no relationship between the employer and employee. Therefore, the withdrawal of resignation letter given by the employee cannot be considered. Therefore, awarding Rs.20 lakhs as compensation by the learned Single Judge, is not sustainable.



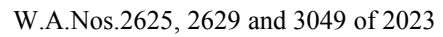
W.A.Nos.2625, 2629 and 3049 of 2023

WEB COPY

12. The learned counsel for the Management would further submit that after the order passed by the Appellate Authority, the employee was reinstated and employed at Hyderabad unit. However, thereafter, due to administrative reasons, the unit was closed. But after termination from the closure unit, the employee has not challenged the said termination.

13. Moreover, he has been self-employed and also employed with L&T and ESSEL Group and he was paid for his contribution in his Universal Account No. 10063975150, but the same was not disclosed before this Court and also he obtained GST w.e.f. 01.07.2017 and established his business. Therefore, even if it is held that there was termination of service on 30.04.2009, the employee would not be entitled to any other monetary relief as he has been gainfully employed at all points of time and after the order, the Management reinstated the employee and it is only the respondent who did not report for work.

14. Heard the arguments and perused all the materials available on record.



16. It is also relevant to note that the Management has preferred Writ Petitions as against the order of reinstatement passed by the Appellate Authority. The Appellate Authority held that “*before accepting the resignation, the employee had withdrawn his resignation and therefore,*



W.A.Nos.2625, 2629 and 3049 of 2023

WEB COPY

the employee has to be reinstated.” The Writ Court also accepted the reasons stated by the Appellate Authority. However, the Writ Court modified the order of the Appellate Authority and held as follows:-

"this Court is ordained with the task of finding out a via-media solution, as much water had flown under the bridge, as the order of the 1st respondent is of the year 2015 and almost eight years has passed by now and giving any affirmative direction for reinstatement would not be in the interest of either party, as much bitterness had been spewed by each side on the other. On a conceptual understanding of the case, non-payment of the entire monetary consideration was the issue, which had resulted in the 2nd respondent withdrawing the resignation. At this length of time, it would not be conducive even for this Court to order the reinstatement of the 2nd respondent in service on the basis of the order of the 1st respondent. Further, the intervening eight years, the 2nd respondent also would not have sat idle, as being a technological savvy person, he would definitely have involved himself in some commitments with bigger and brighter objectives. So this Court is of the considered view that the interests of either parties to the lis would be subserved, if a lumpsum compensation is directed to be paid by the petitioner to the 2nd respondent in lieu of reinstatement, which would only be said to be substantive justice that could be meted out to both the parties".



W.A.Nos.2625, 2629 and 3049 of 2023

WEB COPY

17. It is admitted by both sides counsel that after the order of reinstatement, the employee was reinstated into service and again due to some administrative reasons and the closure of unit, he was terminated from service. If so, it is for the employee to take appropriate steps in accordance with law in respect of the 2nd termination.

18. As regards the 1st termination, the order passed by the Appellate Authority has been complied with and the employee was reinstated; thereafter, again he was terminated due to closure of the unit and thereby, the order of the learned Single Judge, in awarding a sum of Rs.20 lakhs as compensation to the employee is an appropriate relief and we do not find any infirmity in the said determination made by the learned Single Judge.

19. As far as the Writ Appeal filed by the employee is concerned, it is to be noticed that the Appellate Authority passed order for reinstatement in the year 2015 and thereafter, the management also offered employment to the employee, but immediately, he has not joined his duty; after 3 years, he joined the duty and thereafter, due to closure of the unit, now he is not in employment under the Management. Therefore, considering the facts



W.A.Nos.2625, 2629 and 3049 of 2023

WEB COPY

and circumstances of the case and that the employee was also employed in another company, we are of the opinion that the order passed by the learned Single Judge warrants no interference.

20. In the result, Writ Appeals filed by the Management as well as the employee are dismissed. The common order passed by the Writ Court dated 01.08.2023 in W.P. Nos.7784 and 7785/2016 is confirmed. The lumpsum full and final settlement of Rs.20,00,000/- [Rupees Twenty Lakhs only] shall be paid by the Management within two weeks from the date of receipt of a copy of this judgment. No costs. Connected miscellaneous petitions are closed.

(J.N.B.J.) (P.D.B.J)
13.11.2024

nvsri
Internet : Yes
Index:Yes/No



WEB COPY



W.A.Nos.2625, 2629 and 3049 of 2023

J.NISHA BANU,J
and
P.DHANABAL,J

nvsri

To

The Special Deputy Commissioner of Labour
(Appellate Authority under the Shops and
Establishments Act) 1947,
Teynampet, Chennai-600 006.

Judgment in
W.A.Nos.2625, 2629 and 3049 of 2023

13.11.2024