



W.P.No.30658 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2025

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.No.30658 of 2018

and

W.M.P.No.35755 of 2018

The Management of Bata India Limited,
Represented by its District Manager,
24, T.T.K.Road,
Alwarpet,
Chennai – 18.

... Petitioner

Vs.

N.Magesh Babu

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for records relating to the award dated 25.07.2017 made in I.D.No.173 of 2013 on the file of I Additional Labour Court at Chennai and to quash the same.

For Petitioner : Mr.Anil Bhat
for M/s.K.Subbu Ranga Bharathi

For Respondent : Mr.P.N.George Graham
for M/s.Devadasan & Sagar



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ORDER

WEB COPY Aggrieved by the award dated 25.07.2017 passed by the I Additional Labour Court, Chennai in I.D.No.173 of 2013, the present writ petition has been filed.

2. The respondent was working under the petitioner as cashier and he was promoted as Assistant Manager and posted at Retail Outlet at Commercial Street Bangalore vide letter dated 01.02.2011. However, he failed to report for his duties at the transferred place despite repeated advises by the petitioner and continued to remain absent from his duties. Thereafter, he raised a dispute u/s 2A(2) of the Industrial Disputes Act, 1947 (in short 'the Act') before the labour court seeking to set aside the termination of the respondent and to direct the petitioner to reinstate the petitioner with continuity of service and to pay backwages and other benefits. The labour court, vide impugned order, dated 25.07.2017, allowed the dispute, directing the petitioner to reinstate the respondent with continuity of service and to pay full backwages and all other benefits from 24.02.2011 to the date of reinstatement. Challenging the same, the present writ petition has been filed.



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3. Learned counsel for the petitioner submitted that the respondent was transferred by the petitioner and his services were never terminated by the petitioner. Further, he submitted that there is no order of termination as alleged by the respondent in his claim petition. Without cause of action, the labour court entertained the dispute raised by the respondent and ordered for reinstatement with backwages, which is wholly unsustainable. Further, he submitted that once the order of transfer is effected and the same was received by the respondent, the cause of action arose as an assistant manager at Bangalore and the jurisdictional court is available only in Bangalore. Hence, the dispute entertained by the labour court in Chennai is without jurisdiction and the same is wholly unsustainable. Further, the respondent is employed in managerial capacity and he is not a workman in terms of Section 2(s) of the Act. When a person employed in managerial capacity, he is not a workman, hence, entertaining the dispute raised by a person, who is not a workman is *per se* unsustainable. Further, the respondent has not challenged the order of transfer and without any order of termination, raising a dispute before the labour court is not sustainable. All the above aspects have not been considered by the labour court while passing the impugned order. Accordingly, he prays for allowing this writ petition.



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4. Per contra, learned counsel appearing for the respondent submitted that the respondent was employed as a cashier in Chennai and without his consent, he was promoted as Assistant Manager in Bangalore, which itself is not sustainable. Even as per the standing order, the transfer has to be effected only with the consent of the employee and as per the standing order, the promotional post available from cashier is only manager and there is no post of assistant manager. When the post of Assistant Manager is not available as per the standing order, for the unavailable post, ordering transfer is a clear case of victimization. Further, the post of cashier is not in the nature of supervisory or managerial and the post of manager alone is a managerial post, thereby the post of assistant manager is not a managerial post. The issue was rightly appreciated by the labour court and ordered for reinstatement with backwages and all other attendant benefits, which does not require any interference. Accordingly, he prays for dismissal of this writ petition.

5. Heard the learned counsel appearing for the parties and also perused the materials available on record.

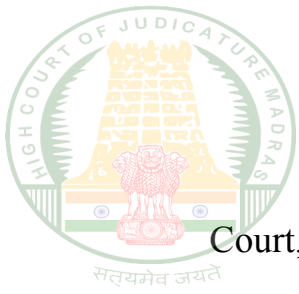


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6. When the matter was taken up for hearing, this Court, considering the issue involved and the passage of time from the date on which the workman was transferred from service from Chennai to Bangalore, as about one decade had passed since the order of transfer, had suggested that the matter may be settled by the parties by paying a consolidated amount, as no useful purpose would be served in continuing the litigation and he having not been in service, on the basis of “no work no pay” would not be entitled for backwages and cannot also be reinstated in view of the strain relationship in between them and all through these years, the workman would not have remained unemployed, as he would definitely have to have eked his livelihood by being employed elsewhere. However, the learned counsel appearing for the parties were not inclined to come for a settlement and, they, did not consent to an order for settlement, as proposed by this Court.

7. Though consent has not been given by the parties, however, this Court, sitting under Article 226 of the Constitution, is required to render substantial justice and in view of the facts narrated above and the sequence of events that have passed through the one decade, when the parties have been fighting out their rights before the judicial forum, this



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Court, in exercise of its powers if inclined to direct the petitioner

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Management to pay a lumpsum towards full quit as settlement.

8. Accordingly, this Court without interfering with the order of the labour court, directs the petitioner management to pay a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) as settlement, in full quit in favour of the respondent workman within a period of four (4) weeks from the date of receipt of a copy of this order.

9. With the above observations and direction, this Writ Petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation Case : Yes/No

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To

The I Additional Labour Court at Chennai.



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M.DHANDAPANI, J.

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