
(2009) 12 MAD CK 0238

In the Madras High Court

Case No : Writ Petition No. 7781 of 2003 and W.P.M.P. No. 10000 of 2003

Management of Micro Electric Controls

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 23-12-2009

Acts Referred:

Evidence Act, 1872 — Section 73

Industrial Disputes Act, 1947 — Section 2A(2)

Citation : (2010) 3 LLJ 823

Hon'ble Judges : N. Kirubakaran, J

Bench : Single Bench

Advocate : S. Elambharathi, for the Appellant; S. Vaidyanathan, for the Respondent

Final Decision : Dismissed

Judgement

N. Kirubakaran, J.—The Management is aggrieved by the award passed by the Labour Court reinstating the second respondent workman with backwages and continuity of service.

2. The facts of the case are as follows:

The second respondent joined the petitioner concern as turner in the year 1990 and promoted as milling operator. The second respondent absented from work on July 22, 1998 and on July 29, 1998. Further he submitted his resignation and the same was accepted on July 30, 1998. The second respondent was relieved on July 30, 1998.

3. After a lapse of seven months, the petitioner submits that the second respondent raised a dispute alleging refusal employment from February 4, 1999 onwards. As conciliation proceedings failed the second respondent raised an industrial dispute u/s 2-A(2) of I.D. Act. On appreciation of the pleadings and evidence, the Labour Court found that the petitioner denied employment to the second respondent properly and reinstated him as backwages and continuity of

service. The said award is being challenged by the Management.

4. The learned Counsel for the petitioner: submitted that the second respondent himself voluntarily submitted resignation as early as on July 29, 1998 and the same was accepted on July 30, 1998 relieving him on the same day. After lapse of seven months, the second respondent with a view to create problems to the petitioner initiated the proceedings. The learned Counsel attacked the award passed by the Labour Court contending that it is contrary to the evidence. When the second respondent on his own resigned from the petitioner company through Exhibit P-3, the second respondent could not seek for employment especially when he was relieved on July 30, 1998. The Labour Court rejected Exhibit M-3 (resignation letter) stating that there was a difference between the signature found in the Exhibit M-3 and therefore did not accept the contention of the petitioner that the second respondent resigned on it's own.

5. The learned Counsel further submitted that u/s 73 of the Evidence Act, the Court is entitled to compare the disputed signature with the admitted signature on it's own. In stead of doing that, the Labour Court erroneously held the burden of proof was cast upon the petitioner management to prove the resignation letter. The Labour Court failed to take note of the submission of Form-10 to the Provident Fund Office and the same was marked by the petitioner as Exhibit M-7. With regard to comparision of signatures the learned Counsel relied upon the judgment of this Court in R. Saravanan v. P.N. Peruvazhuthi 2009 (5) CTC 593, wherein it was held that the Court could resort to comparison recording the signatures and arrive at its own conclusion when other materials produced and evidence adduced are corroborative of such comparison. Relying on the said judgment, the learned Counsel submitted that the Labour Court could have resorted to comparison of the signature and without doing that the Labour Court gave finding against the petitioner. In nutshell the learned Counsel submitted the award is contrary to the evidence available on record and therefore sought for setting aside the award.

6. On the other hand Mr. S. Vaidyanathan, learned Counsel for the second respondent submitted that the award is based on evidence and on proper appreciation facts and evidence alone the award was passed. He contended the Labour Court correctly gave a finding recording the burden of proof with regard to proving of document namely resignation letter was cast upon the petitioner. Secondly, he submitted if the second respondent really resigned, he would not have been allowed to work. The second respondent has worked up to July 21, 1998. If really the second respondent did not report to the duty the petitioner could have issued notice to the second respondent for not reporting to the duty, the Labour Court observed. The learned Counsel further submitted that the second respondent did not send the resignation letter and as per evidence, the Labour Court found that there was differences between the admitted signature and the disputed signature. Moreover, the learned Counsel submitted that the petitioner management deliberately refused to take the second respondent for

work from February 04, 1999. In the absence of any termination order, the second respondent cannot be denied work. He relied upon the judgment of Hon"ble Supreme Court in Agnani (W.M.) v. Badridas and Ors. 1963 I LLJ 684 (SC), and submitted that interference by this Court under Article 226 is very limited for judicial review of the Labour Court award.

7. A perusal of the records would show that the point for consideration is with regard to resignation letter dated July 29, 1998 (Exhibit M-3). According to the second respondent, he was denied work and that was the reason why he filed the petition before the tribunal. In the counter statement in paragraph 4 it has been categorically stated by the petitioner herein as follows:

The petitioner Came to the company on July 29, 1998, submitted his resignation stating that he is not willing to work and asked the respondent to accept his resignation, relieve him and settle his: accounts. The respondent considered his resignation, accepted the same and relieved him of his duties from the morning of July 30, 1998 vide the respondent's relieving order dated July 30, 1998.

When a categorical stand is taken in the counter statement pleading resignation of the second respondent, it is bounden duty of the management to prove the said fact. In other words the burden of proof was cast upon the person who relies upon the said document. Though law of evidence is not strictly followed in the Labour Court, still its rudimentary principle that a person who relies upon the material has to prove the due exhibition. In this case the Labour Court gave cogent reasons elaborately as to why the theory of resignation could not be accepted by it in paragraphs 10, 12, 13, 14 and 16. The Labour Court based on M.W.2 (petitioner's witness) admission observed as follows:

Vernacular matter omitted.

8. The petitioner could have sent the alleged resignation letter to hand writing expert to confirm the signature found in Exhibit M-3 is that of the second respondent. However, the petitioner miserably failed to do same.

9. In paragraph 11 of the award, the Tribunal held that if the petitioner wrote to the labour authorities through Exhibit P-1 and P-2 and therefore there was no possibility of sending the resignation letter by the second respondent. Moreover, in paragraph 13, the Labour Court thoroughly examined about Form-10 which ought to have been sent to the Provident Fund Authorities. Though it was contended by the petitioner that form 10 through Exhibit M-9 was sent, the Labour Court found that there was no proof for having sent Form-10 to the said authority and therefore it was rejected by the Labour Court.

10. Apart from that if the second respondent voluntarily resigned on July 29, 1998, the second respondent's accounts could have been settled by the petitioner and there was no proof having settled the second respondent accounts by payment or by any other document. The above was taken note of by the Tribunal in paragraph 15 of award correctly.

11. The Labour Court is the last forum of determination of facts. A finding of fact has been given with regard to the resignation letter relied upon by the petitioner that there was no possibility of submitting the resignation by the second respondent. Such a finding cannot be found fault with as it is based on evidence and the finding is based on cogent reasons and the same cannot be found fault.

12. The jurisdiction of this Court under Article 226 is very limited. This Court is not an appellate forum, as decided by the Supreme Court in a number of Judgments. Only, in case of miscarriage of justice and the award passed is contrary to evidence or on no evidence the same can be set aside. In this case no such thing has happened.

13. In view of that, the award of the Labour Court is confirmed and the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous petition is closed.