
(2013) 07 MAD CK 0005

In the Madras High Court

Case No : Writ Petition No's. 31889 of 2003, 15353 of 2010 and 905 of 2011

Sitra Employees' Union

APPELLANT

Vs

The Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 15-07-2013

Acts Referred:

Citation : (2013) LLR 1058

Hon'ble Judges : S. Nagamuthu, J

Bench : Single Bench

Advocate : V. Prakash, for Mr. K. Ramkumar, for the Appellant; S. Ravindran, Advocate for T.S. Gopalan and Co., for the Respondent

Judgement

S. Nagamuthu, J.—The petitioner in W.P. No. 31889 of 2003 is a Trade Union, known as, ""SITRA Employees" Union"". One Mr. N.R.

Raja was a member and also an office bearer of the said Trade Union. Mr. N.R. Raja is the petitioner in W.P. No. 905 of 2011. Mr. N.R. Raja

was employed as a Scientific/Technical Assistant under the second respondent Establishment in W.P. No. 31889 of 2003, known as, ""The

Management of South India Textiles Research Association (SITRA)"". The said Establishment has come up with W.P. No. 15353 of 2010. The

facts leading to these three Writ Petitions are as follows:--

(i) The South India Textiles Research Association (SITRA) (petitioner in W.P. No. 15353 of 2010) is a Society formed with the object of carrying

research and other scientific work for textile trade and industry handloom industry and other trade or industry allied therewith or necessary thereto.

Mr. N.R. Raja is a post-graduate in Social Work and he was appointed as a Laboratory Assistant Trainee in the said Establishment on 13.7.1979.

On 1.1.1986, he was promoted as Scientific/Technical Assistant. According to the Establishment, in course of time, Mr. N.R. Raja had gained

vast field experience in interview techniques and methods in various projects undertaken by the Establishment. It is also stated by the Establishment

that during 1990s, due to recession in textile industry, his services were underutilized.

(ii) During the year 1997-1998, the South India Textiles Research Association established a branch for research work at Tufanganj, Cooch Behar

in West Bengal State. The same was established there having regard to the fact that in the said area near the border of State of Assam,

predominantly jute was cultivated. One Dr. A.K. Mitra was appointed as Project Consultant from the month of July, 1998 to take forward the

research activities in the cultivation of jute by the farmers in Cooch Behar. The Establishment utilised the services of Dr. A.K. Mitra, as Consultant

to conduct the said project. During September, 1998, Dr. A.K. Mitra was promised to be provided with an Office Assistant from local area and a

qualified Technical Assistant to conduct research work. It is the further case of the Establishment that it is because of the said necessity, by order

dated 12.1.1999, Mr. N.R. Raja was transferred to Cooch Behar to work under Dr. A.K. Mitra.

(iii) Challenging the said transfer, the Trade Union (petitioner in W.P. No. 31889 of 2003) raised an Industrial Dispute before the Labour Officer

on 18.1.1989. The conciliation failed. Based on the failure report of the Conciliation Officer, the Government issued G.O. (T) No. 373, Labour

and Employment" Department, dated 8.5.2000, making a reference of the Industrial Dispute. The dispute referred to was to the following effect:"

Whether the transfer of Mr. N.R. Raja from Coimbatore to Cooch Behar is justifiable? If not, to what remedy he is entitled for?"". The Labour

Court Coimbatore, took up the said dispute in I.D. No. 183 of 2000 on 1.8.2000 and proceeded with the enquiry. Finally, the Labour Court

dismissed I.D. No. 183 of 2000, by award dated 18.8.2003, and upheld the transfer of Mr. N.R. Raja to Cooch Behar. The award of the Labour

Court was duly published by the Government in the Official Gazette on 3.10.2003. Thereafter, the Trade Union filed W.P. No. 31889 of 2003

before this Court, challenging the said award of the Labour Court, Coimbatore in -- I.D. No. 183 of 2000. That is how the said W.P. No. 31889

of 2003 is before me for disposal.

(iv) On admitting the said Writ Petition, this Court in W.P.M.P. No. 38688 of 2003, by order dated 7.11.2003, granted interim stay. On account

of the said interim order of stay, Mr. N.R. Raja did not go over to Cooch Behar to report for duty. Subsequently, the Establishment filed a petition

in W.V.M.P. No. 2269 of 2003, seeking to vacate the said interim order. By order dated 29.12.2003, this Court vacated the said interim order.

Even thereafter, Mr. N.R. Raja did not choose to go over to Cooch Behar to report for duty. Finally on 4.3.2004, Mr. N.R. Raja reached Cooch

Behar and reported for duty. The arrangement for his travel was made by the Establishment. On 30.3.2004, Mr. N.R. Raja applied for medical

leave for ten days and on 31.3.2004, he left Cooch Behar on health grounds. Again, Mr. N.R. Raja applied for medical leave on 9.4.2004,

24.4.2004, 27.4.2004 and 17.8.2004. The Trade Union filed a modification petition in W.P.M.P. No. 44089 of 2004 to modify the order made

in W.V.M.P. No. 2269 of 2000. That petition was dismissed on 4.3.2005. Despite these orders, Mr. N.R. Raja did not report for duty at Cooch

Behar. On 23.3.2005, the Establishment sent a letter to Mr. N.R. Raja informing him that he was absenting unauthorisedly continuously and the

Establishment had reasons to assume that he had no interest in joining duty. For the said letter, Mr. N.R. Raja sent a letter on 23.4.2005, wherein,

he expressed his willingness to continue to work and not to leave the job. In those circumstances, finally on 16.5.2005, the Establishment sent a

letter to Mr. N.R. Raja Informing him that on account of his continued absence, he had ceased to be an employee under the Establishment.

(v) Construing the said letter dated 16.5.2005 issued by the Establishment as an order of termination, Mr. N.R. Raja raised an Industrial Dispute in

I.D. No. 228 of 2006 before the Labour Court, Coimbatore, The Establishment took a stand that Mr. N.R. Raja was not at all terminated from

service and instead, on his own accord he failed to report for duty and he ceased to be an employee of the Establishment, The Labour Court

allowed the parties to let in evidence. Accordingly, Mr. N.R. Raja as well as the Establishment let in evidence in extenso. The Establishment in

particular let in evidence to justify the letter, dated 16.5.2005. Having considered all the above, the Labour Court Coimbatore, passed an award

on 29.1.2010 in I.D. No. 228, of 2006, by which, Labour Court ordered for reinstatement of Mr. W.R. Raja, in service, but, without back-

wages. In the same award, however, liberty was given to the Establishment to initiate appropriate disciplinary proceeding against Mr. S.R. Raja, to

hold enquiry and then to pass an appropriate order.

(vi) It needs to be mentioned that this liberty came to be issued, because, before the Labour Court in the said Industrial Dispute, it was mainly

contended by Mr. N.R. Raja that there was no charge issued to him and no opportunity was afforded to him to defend the allegations. This

contention was accepted by the Labour Court. It was because of this finding, the Labour Court granted liberty to the Establishment to hold

appropriate enquiry and then to pass an appropriate order.

(vii) Challenging the said award of the Labour Court in I.D. No. 228 of 2006, wherein, the Labour Court has ordered for reinstatement in service,

the Establishment has come up with W.P. No. 15353 of 2010. Similarly, challenging the denial of back-wages and other reliefs, Mr. N.R. Raja

has come up with W.P. No. 905 of 2011. That is how these two Writ Petitions are before me for disposal.

(viii) After the admission of these two Writ Petitions, Mr. N.R. Raja reported for duty, at Cooch Behar on 1.10.2010. The Establishment allowed

him to join duty in pursuance of the award in I.D. No. 228 of 2006, dated 29.1.2010, but, without prejudice to the contentions of the

Establishment in the Writ Petition against the award. But from 17.10.2010 onwards Mr. N.R. Raja again absented from duty continuously. His

date of retirement on attaining the superannuation fell on 30.6.2013. In view of the pendency of all the above three Writ Petitions, the

Establishment did not pass any order permitting Mr. N.R. Raja to retire. It is also brought to my notice by the learned counsel on either side that,

Mr. N.R. Raja has not been paid the gratuity and provident fund dues to him so far. In the above said circumstances, these three Writ Petitions

have come up for final hearing before me.

2. I have heard Mr. V. Prakash, learned senior counsel appearing for the Trade Union and Mr. N.R. Raja, and Mr. S. Ravindran, learned counsel

appearing for the Establishment. I have also perused the records carefully. Since, these three Writ Petitions are inter-linked with each other, I have

heard them together and dispose of the same by means of this common order.

3. W.P. No. 31889 of 2003:-For the sake of convenience, let me first take up W.P. No. 31889 of 2003. As I have already pointed out, in this

Writ Petition the transfer of Mr. N.R. Raja from Coimbatore to Cooch Behar is under challenge by the Trade Union. According to the Trade

Union the transfer of Mr. N.R. Raja from Coimbatore to Cooch Behar was as a measure of victimization, because, he was very actively involved

in the Trade Union activities and raised several Industrial Disputes in respect of revision of wages of certain workmen etc. It is also the contention

of the Trade Union that there was no necessity to transfer Mr. N.R. Raja to Cooch Behar at all. It is also the case of the Trade Union that Mr.

N.R. Raja, admittedly, has got no knowledge of Bengali language. In other words, he cannot understand others speaking Bengali and he cannot

speak Bengali also. The project work in Cooch Behar, which was done under the consultancy of Dr. A.K. Mitra was to make research in the jute

cultivation in the said area. According to the Trade Union, the said research work requires collection of data's and interaction with farmers, who

are involved in the cultivation of jute. It is the further stand of the Trade Union that man who does not know to speak Bengali cannot interact with

the farmers who are mostly illiterates who know to speak only Bengali and, therefore, it would not be possible for him to collect data's which are

required for the research activities. Thus, according to the Trade Union. Mr. N.B. Raja was transferred to Cooch Behar only because he was

involved in the Trade Union activities. Therefore, according to the Trade Union, the transfer order ought to have been set aside by the Labour

Court.

4. But the Establishment would refute the above allegations. According to the Establishment, admittedly, Dr. A.K. Mitra, a Project Consultant,

was given the job of doing research work on behalf of the Establishment. When Dr. A.R. Mitra was engaged, he was promised to be provided

with an Office Assistant from local area and a qualified Technical Assistant to conduct research work. It was the further case of the Establishment

that during the year 1990s in Coimbatore region, the textile industry had suffered downfall due to recession and as a result, the services of Mr.

N.R. Raja were underutilized. In those circumstances, the Establishment thought

it fit to transfer Mr. N.R. Raja to utilize his services to an optimum level in Cooch Behar and also by satisfying the commitment made to Dr. A.K. Mitra to be provided with a Technical Assistant. Mr. N.R. Raja had vast field experience, more particularly, in interview techniques and methods in various projects conducted by the Establishment in Coimbatore area. It was because of these reasons Mr. N.R. Raja was considered to be the fittest man to work under Dr. A.K. Mitra until the project was completed.

5. The Labour Court, Coimbatore, considered the above contentions based on the evidences let in before it. The Labour Court finally found that the transfer cannot be stated to be a measure of victimization. On a perusal of the points raised before the Labour Court and the grounds raised in these Writ Petitions and in the counter filed, it is seen that the respective learned counsel would agree with one legal position that this Court while exercising its power under Article 226 of the Constitution of India cannot convert itself into a Court of Appeal, so as to re-appreciate the entire evidence let in before the Labour Court, so as to substitute its views in the place of the views expressed by the Labour Court. The power of this Court is certainly very limited. As per the settled law unless, it is shown to this Court that the award of the Labour Court is perverse in legal sense, it is not permissible for this Court to interfere with the said award of the Labour Court.

6. In this case, Mr. V. Prakash, the learned senior counsel appearing for the Trade Union would submit that the award of the labour Court suffers certainly from perversity whereas, according to the learned counsel appearing for the Establishment there is no perversity at all in the award. I have perused the entire award of the Labour Court and I have also perused the entire evidence let in before the Labour Court. It was not in dispute before the Labour Court that Mr. N.R. Raja had vast experience in interview techniques and in various projects undertaken at Coimbatore by the Establishment. The correspondences between Dr. A.K. Mitra and the Establishment, which have been exhibited by way of documentary evidence, would go to show that Dr. A.K. Mitra wanted a qualified Technical Assistant to conduct research work. Therefore it cannot be said that there was no necessity for a Technical Assistant at Coimbatore to assist Dr. A.K. Mitra. Of

course it is true that Mr. N.R. Raja was incidentally an active member and also an office bearer of the Trade Union. Simply because Mr. N.R. Raja happened to be in the Trade Union and he was very actively involved in the Trade Union activities and raised several Industrial Disputes before the Conciliation Officer in respect of revision of wages of certain workmen etc., one cannot rush to the conclusion that Mr. N.R. Raja was transferred only as a measure of victimization. The very fact that there was no other qualified person available in Cooch Behar and Mr. N.R. Raja was the only person available in Coimbatore, whose services could be effectively utilized in Cooch Behar, he, was transferred and his transfer was only for the purpose of completing the jute project which commenced in July 1998.

7. But, the contention of the learned senior counsel appearing for the Trade Union is that a man who does not know to speak and write Bengali language cannot do any useful service in Cooch Behar and thus, knowing fully well that he could not discharge any of his duties in Cooch Behar, he was transferred. Though, there appears to be some substance in this argument, in my considered opinion, it does not persuade this Court at all. As it is seen from the records a local man was also engaged as an Office Assistant. His services could have been utilized for the purpose of interaction with the farmers. Even otherwise, after having gone to Cooch Behar, if Mr. N.R. Raja had any difficulty, he could have informed the same to the Establishment, in which event, the Establishment could have engaged some other person or appointed a translator for the purpose of translation of Bengali language and to help him in the project work, but, Mr. N.R. Raja even without reporting for duty at Cooch Behar stayed away and approached the Trade Union and through the Trade Union raised the Industrial Dispute. Thus, in my considered opinion, the Establishment was justified in transferring Mr. N.R. Raja to Cooch Behar.

8. Having regard to the above submissions of the learned counsel on either side and after having perused the award of the Labour Court, I find that there is no perversity at all in the award of the Labour Court calling for interference at the hands of this Court. It is common knowledge that transfer is an incident of any service or work. It is not, as though, there is any legal prohibition for transferring Mr. N.R. Raja from Coimbatore to

Cooch Behar. The learned senior counsel appearing for the Trade Union would, however, submit that Mr. N.R. Raja, who is a permanent resident

of Coimbatore and having a big family, including children, should not have been transferred to Cooch Behar. Of course, it is difficult for a person

from Coimbatore to go all the way to Cooch Behar leaving behind his family at Coimbatore and to stay at Cooch Behar and work. But, this

difficulty is no answer to the necessity for his work at Cooch Behar. In view of the above, I hold that the award of the Labour Court in I.D. No.

183 of 2000, dated 18.8.2003, cannot be stated to be perverse in legal sense. As rightly pointed out by the learned counsel on either side,

perversity means, ""an unreasonable conclusion"", which would not have been taken by a reasonable man. Applying the above standard, if we look

into the award of the Labour Court, it cannot be said that the award of the Labour Court suffers from any perversity. Thus, I do not find any

reason to interfere with the award in I.D. No. 183 of 2000, dated 18.8.2003. Therefore, I hold that W.P. No. 31889 of 2003 deserves to be

dismissed.

9. W.P. Nos. 15353 of 2010 and 905 of 2011:--For the sake of convenience, in these two Writ Petitions, Mr. N.R. Raja is hereinafter referred to

as the petitioner and the SITRA is referred to as the Establishment. As I had already pointed out in W.P. No. 31889 of 2003, an interim order of

stay was granted in W.P.M.P. No. 38688 of 2003, thereby, staying the order of transfer of the petitioner to Cooch Behar. Therefore, the

petitioner did not report for duty. However the interim order of stay was vacated on 29.12.2003 in W.V.M.P. No. 2269 of 2003. In pursuance of

the same, the petitioner reported for duty on 4.3.2004. However thereafter the petitioner continuously absented and he was sending repeated

leave letters on medical grounds. The medical leave was also sanctioned from 30.3.2004 to 17.8.2004. After that the petition in W.P.M.P. No.

44089 of 2004 filed by Mr. N.R. Raja for modification of the order in W.V.M.P. No. 2269 of 2000 was dismissed on 4.3.2005. Even thereafter

admittedly the petitioner did not turn up for duty at Cooch Behar. Therefore the Establishment issued a letter dated 23.3.2005 informing that the

petitioner was unauthorisedly absenting which made the Establishment to assume that the petitioner had no interest to work. The petitioner had sent

a letter dated 23.4.2005 stating that he had no intention to leave the job. Finally the letter dated 16.5.2005 came to be issued by the

Establishment. The said letter reads as follows:--

We refer to your letter of 23rd April, 2005.

It is now settled that your place of work is Cooch Behar and you have not, been attending duty at Cooch Behar since 17th May, 2004. As such it

only shows that you are not interested to work at Cooch Behar. Mere assertion that you are continuing in employment would be of no avail. Being

reason of your persistent refusal to report for duty at Cooch Behar we are certainly entitled to draw the inference that you are not interested an

continuing in our employment.

In view of your prolonged absence from your place of work you are ceased to be in our employment and it is upto you to apply for settlement of

your dues.

10. According to the petitioner the said letter amounts to termination from service. But according to the Establishment, as I had already pointed

out, it is not an order of termination at all. It is only a letter informing the petitioner that he had ceased to be an employee on account of his

continuous absence which shows that he had no intention to work. The Labour Court had extensively gone into the and said issue and has come to

the conclusion that the said letter dated 16.5.2005 is nothing short of termination order.

11. The learned counsel appearing for the Establishment would submit that the Labour Court was not right in construing the said letter as an order

of term, nation. He would further submit that if an employee continuously absents himself from service, - then, his name may be removed from the

roll of employees after a reasonable time. In the case on hand, according to the Establishment, by letter dated 16.5.2005, the Establishment simply

recorded that the petitioner had ceased to be an employee that means, the petitioner was removed from the roll of employees of the Establishment.

In this regard, the learned counsel placed reliance on a judgment of this Court in Ammapet Handloom Weavers" Co-operative Production and

Sales Society, Ltd. Vs. Kadalaimuthu (K.S.) and Others, .

12. In this regard, the learned senior counsel appearing for the petitioner would submit that the letter dated 16.5.2005 amounts only to termination

from service. According to him, by letter dated 23.4.2005, the petitioner informed the Establishment that he had no intention at all to leave the job.

When that be so, the assumption of the Establishment that the petitioner had no interest to work and he had abandoned the job cannot be

countenanced. In my considered opinion the letter dated 23.4.2005 (W-50/228) sent by the petitioner to the Establishment is reply to the letter of

the Establishment dated 23.3.2005 would go to show that the petitioner had no intention to leave the job. When that be so it is not appropriate for

the Establishment to assume that the petitioner had no intention to work and he had abandoned the job. As a matter of fact, there are lot of

materials by way of evidence before the Labour Court that the petitioner had no intention to abandon his job. At the most one can say that the

petitioner had committed misconduct by unauthorisedly absenting himself for such a long time. In view of the same, I uphold the finding of the

Labour Court, that the letter dated 16.5.2005 is an order of termination.

13. The contention of the learned senior counsel appearing for the petitioner is that before passing the termination order, there was no charge

framed and no opportunity was given to him to defend the allegations. The labour Court has accepted the said contention. It is because of this

reason the Labour Court interfered with the order of the Establishment. But the learned counsel appearing for the Establishment would contend

that having come to the conclusion that the letter dated 16.5.2005 amounts to termination, the Labour Court ought to have gone into the merits of

the order of termination; by evaluating the evidence let in by the Establishment.

14. The learned counsel for the Establishment would submit that there was no opportunity given to the Establishment by the Labour Court calling

upon the Establishment to let in further evidence after coming to the conclusion that the letter dated 16.5.2005 amounts to termination from service.

But this contention is only to be rejected for the simple reason that in the counter the Establishment did not ask for any opportunity to let in any

evidence, in the event, the Labour Court was pleased to come to the conclusion that the, letter dated 16.5.2005 was an order of termination. But,

the learned counsel appearing for the Establishment would refer to paragraph No. 10 of the counter filed before the Labour Court to substantiate

his contention that as a matter of fact such a plea was made. But, I have gone

through the same. In my considered opinion, the averments found in paragraph No. 10 of the counter do not indicate that any such positive plea was made by the Establishment asking for further opportunity to let in either oral or documentary evidence to justify the order of termination. Thus, in my considered opinion, the Labour Court had given enough opportunity to the Establishment to let in evidence during the enquiry itself.

15. The next contention of the learned counsel for the Establishment is that having come to the conclusion that the letter dated 16.5.2005 is in fact an order of termination from service, the Labour Court ought to have at least considered the evidence already let in by the Establishment. In this regard the contention of the learned senior counsel appearing for the petitioner is that the Labour Court has considered the same. In my considered opinion, the Labour Court had gone on the footing that there was no charge framed and there was no enquiry held. It is not as though, the petitioner was terminated either under any standing order or regulation or as per law for his absence. The petitioner was terminated by way of penalty. If the termination is by way of penalty, in my considered opinion sufficient opportunity should have been given to the petitioner by framing appropriate charges. That is the reason why the Labour Court gave liberty to the Establishment to hold appropriate enquiry. Thus, in the findings of the Labour Court that the order of termination is not sustainable and that the Establishment is at liberty to hold enquiry. I do not find any perversity so as to interfere with the same.

16. Now coming to the back-wages, the petitioner has filed W.P. No. 905 of 2011 seeking denial of back-wages. In my considered opinion, back-wages cannot be ordered in an automatic manner. It is for the petitioner to plead and prove that he was prevented from working during the relevant period. But, in this case, the entire record would go to show that the petitioner on his own accord did not go over to Cooch Behar to work. Therefore, the Labour Court was right in denying back-wages.

17. Having come to the above conclusions, now, I have to decide as to what is the relief that could be given to the petitioner by holding the relief.

As I have already pointed out, the petitioner has already attained the age of superannuation on 30.6.2013 itself. Therefore the petitioner should be permitted to retire from 30.6.2013 and he should be given the monetary benefits

such a gratuity and provident fund. Insofar as the back-wages, prior to 29.1.2010, the lower Court has denied back-wages to him. I have already come to the conclusion that this finding of the Labour Court does not require any interference at the hands of this Court and that is the reason why I am inclined to dismiss W.P. No. 905 of 2011.

18. For the subsequent period, viz., from 30.1.2010, the question is, whether the petitioner is entitled for the wages? Admittedly, after the award of the Labour Court on 29.1.2010, the petitioner reported for duty on 1.10.2010, but, absented from 17.10.2010. But for his absence from duty till 30.6.2013, no action was taken to terminate his services. Therefore, in my considered opinion, for the period from 29.1.2010 till 30.6.2013, the petitioner is entitled for monetary benefits. But, admittedly, the petitioner did not work did not do any useful work to the Establishment.

19. Having regard to all the above facts, for the period from 29.1.2010 till 30.6.2013, it would be in the interest of justice to direct the Establishment to pay a sum of Rs. 1,00,000 (Rupees One Lakh only) as compensation, so as to give a quietus to the whole issue. In view of all the above, I am inclined to pass the following order:--

i. W.P. No. 31889 of 2003 is dismissed and the award of the Labour Court in I.D. No. 183 of 2000, dated 18.8.2003, is confirmed. No costs.

ii. W.P. No. 905 of 2011 is dismissed and thus, the award of the Labour Court in I.D. No. 228 of 2006, dated 29.1.2010, denying back-wages to the petitioner until the date of the award is confirmed. No costs.

iii. W.P. No. 15353 of 2010 is disposed of by modifying the award of the Labour Court in I.D. No. 228 of 2006, dated 29.1.2010, wherein, the

Labour Court, Coimbatore, has directed, reinstatement of the petitioner in service. Instead of reinstatement of the petitioner in service, it is directed

that the Establishment shall pay a compensation of Rs. 1,00,000 (Rupees One Lakh only) in full quit of all claims which the petitioner has against

the Establishment, besides, gratuity and provident fund. The Establishment is, therefore, directed to pay a sum of Rs. 1,00,000 (Rupees One Lakh

only) as compensation and settle the gratuity and provident fund due to the petitioner, within a period two months from the date of receipt of a

copy of this order. No costs.