



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF SEPTEMBER, 2023

BEFORE

THE HON'BLE MS. JUSTICE JYOTI MULIMANI

WRIT PETITION NO.13192 OF 2020 (L-TER)

BETWEEN:

M/S. POWERICA LIMITED (DTA UNIT)
TUMKUR ROAD, 31ST KM,
BOMMANAHALLI VILLAGE,
NELAMANGALA TALUK,
BENGALURU DISTRICT - 562 123.
REPRESENTED BY ITS VICE PRESIDENT,
SRI UMASHANKAR.S.NAYAR.

...PETITIONER

(BY SRI. SOMASHEKAR., ADVOCATE FOR)

AND:

SRI MANJUNATH PATTAR
S/O SRI GANGADHAR,
AGED ABOUT 50 YEARS,
C/O SRI V.RAMIAH,
NO.560, 3RD CROSS,
BHUVANESHWARINAGAR,
T.DASARAHALLI,
BENGALURU - 560 057.

...RESPONDENT

(BY SRI. ADINARAYANA., ADVOCATE FOR
SRI. D.S.MALIPATIL., ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 227 OF THE CONSTITUTION OF INDIA, SEEKING CERTAIN
RELIEFS.

THIS WRIT PETITION IS COMING ON FOR PRELIMINARY
HEARING IN 'B' GROUP, THIS DAY, THE COURT MADE THE
FOLLOWING:





ORDER

Sri.Somashekar., learned counsel for the petitioner has appeared through video conferencing. Sri.Adinarayana., learned counsel on behalf of Sri.D.S.Malipatil., learned counsel for the respondent has appeared in person.

2. The brief facts are these:

The petitioner is a limited company incorporated under the Companies Act, 1956. The petitioner is engaged in the manufacture and sale of diesel generators and employs around 180 employees including engineering graduates. The petitioner has provided all statutory benefits under the labor laws including canteen and welfare facilities to the workmen.

The respondent is a graduate of ITI Electrical and had worked in several companies between 2001 to 2011 for more than eleven years and applied for the post of Supervisor. Accordingly, the respondent was appointed as Supervisor on probation on a salary of Rs.8,000/- (Rupees Eight Thousand only) with effect from 10.04.2012.

As things stood thus, on 23.08.2012, a show cause notice was issued to the respondent as he was found gambling



(money betting) with five workers on the shop floor in Control Panel Shell Assembly Section (Shed-8). It was pointed to the respondent that he being a Supervisor, it is his duty and responsibility to supervise the work of the workers and take out maximum production from the workmen, but the respondent failed to discharge his duty as supervisor. He submitted a reply to the show cause notice stating that five workers were playing money betting and that he was not aware of the same as he was busy otherwise. It is also stated that if he had noticed, he would have complained to his superiors and he would see that such things do not happen in the future. Taking note of the reply, the petitioner issued a strict warning by letter dated 04.09.2012 that any repetition would be viewed seriously. The petitioner by letter dated 21.10.2013 extended the probationary period for six months from 01.10.2013 to 31.03.2014 as per Clause 2 of the appointment order which was duly acknowledged by the respondent. Similarly, on 01.04.2014, the probationary period of the respondent was further extended from 01.04.2014 to 30.09.2014 as per clause 2 of the appointment order. When the petitioner company wanted to terminate the service of the respondent at the end of



an extended period of probation on 30.09.2014, the respondent requested for extension of the probationary period until he can secure another alternate job elsewhere. On humanitarian grounds and to enable the respondent to secure alternate employment, the petitioner granted an extension of his probation period up to 31.08.2015.

It is said that the respondent did not secure alternate employment as promised, therefore the petitioner on 31.08.2015 called upon the respondent to produce the NOCs from the concerned departments and collect his final dues as the petitioner could not extend the probationary period of the respondent. The respondent neither produced the NOC from the concerned departments nor came to the Company to collect his final dues. On the other hand, the petitioner received a letter dated 04.09.2015 from the respondent alleging that his services were terminated by refusing employment with effect from 31.08.2015.

The respondent raised a dispute before the Labour Court at Bengaluru and the same was registered as Reference No.34/2016. Subsequently, the matter was transferred to the



First Additional District & Sessions Judge, Bengaluru Rural District, Bengaluru. The Court passed the award on 31.08.2019 and directed the petitioner Company to reinstate the respondent into original post with continuity of service and consequential benefits without any back wages. It is this Award that is called into question in this Writ Petition on several grounds as set out in the Memorandum of Writ Petition.

3. Learned counsel Sri.Somashekar., presenting his arguments submits that the respondent was appointed as a Supervisor and he was paid a monthly salary of more than Rs.10,000/- (Rupees Ten Thousand only). In view of Section 2(S)(iv) of the I.D Act, he cannot be considered as a workman. He contends that non-extension of the period of probation does not amount to termination or refusal of the employment. Hence, the respondent could not have raised the dispute. Learned counsel further submitted that the respondent is gainfully employed and is running the business in the name of "Sri Vishwakarma Enterprises" dealing with all types of power tools sales and service at No.1, 8th Cross, Mallanna Building, Pipeline, Mantapa Road, Mallasandra, T.Dasarahalli, Bengaluru 560 057. He argued by saying that the respondent is covered



under GST bearing No.29AYMPM0216G1ZG, as per the statement containing GST particulars. Counsel therefore, submits that the Award of Labor Court is unsustainable in law. Hence, the same is liable to be set aside.

4. Counsel Sri.Adinarayana., for the respondent sought to justify the Award passed by the Labour Court. He submits that the respondent was appointed as a Supervisor, and he is a Workman as defined under the I.D Act. He denied the contention regarding gainful employment. Learned Counsel vehemently contended that the Labor Court extenso referred to the material on record and justified in directing the petitioner to reinstate the respondent into service. Therefore, he submits that the petition is devoid of merits and accordingly same may be dismissed.

5. Heard, the contentions urged on behalf of the respective parties and perused the Writ papers with utmost care.

6. The point that requires consideration is whether the Award of the Labour Court requires interference by this Court.



7. The facts have been sufficiently stated the same does not require reiteration.

Suffice it to note that the petitioner is a limited company incorporated under the Companies Act, 1956 and the petitioner is engaged in the manufacture and sale of diesel generators. It is not in dispute that the respondent was appointed as Supervisor by the petitioner - company in the Bengaluru factory with effect from 10.04.2012.

The true copy of the appointment letter is furnished along with the writ petition and the same is marked as Annexure-B. A perusal of the same would reveal that the respondent was appointed as a "Supervisor". The terms and conditions of the appointment letter would also reveal that the appointment can be terminated during the probation period without giving any notice/reason or pay in lieu thereof, by either side.

8. It is pivotal to note that the probationary period of the respondent was extended from time to time. The petitioner wanted to terminate the service of the respondent at the end of the period of probation which is on 30.09.2014, at this juncture, the respondent requested for extension of the



probation period until he can secure another alternate job. The petitioner granted the extension of the probation period up to 31.08.2015 on humanitarian grounds to enable the respondent to secure alternate employment. It is the specific contention of the petitioner that after the completion of the period of probation on 31.08.2015, the respondent was called upon to produce the NOCs from the concerned departments and collect his final dues as the petitioner could not extend the probationary period of the respondent. The respondent neither produced the NOC's nor collected his final dues. Strangely, he raised a dispute in the year 2016 alleging that his service was terminated by refusing employment with effect from 31.08.2015.

9. A good deal of arguments is canvassed on Sections 2(S) and 2(S)(iv) of the I.D Act. Learned counsel Sri.Somashekar., in presenting his arguments submits that a memo has been filed furnishing the details of the salary sheet of the respondent from June 2015 to July 2015 and August 2015 to show that the respondent was drawing a salary of more than Rs.10,000/- (Rupees Ten Thousand only) per month.



Counsel therefore, submits that the memo may be placed on record and an appropriate order may be passed.

Submission is noted. The memo is placed on record.

It is pivotal to note the respondent has not filed any statement of objections.

A perusal of the memo and the salary sheet would reveal that the respondent was paid a salary of more than Rs.10,000/- (Rupees Ten Thousand only) per month. It is not in dispute that the respondent was appointed as a Supervisor but, he was paid a salary of more than Rs.10,000/- (Rupees Ten Thousand only) per month. Hence, in view of Section 2(S)(iv) of the I.D Act, he cannot be considered as the workman. Furthermore, a perusal of the Writ Papers would reveal that certain documents are filed to show that the respondent is gainfully employed. Annexure-R is the statement containing GST particulars in GST bearing No.29AYMPM0216G1ZG. It reveals that the respondent is covered under GST bearing No.29AYMPM0216G1ZG. As already noted above, the respondent has not filed any objections denying the averments made by the petitioner.



10. The law is well settled that if a person is gainfully employed, question of reinstatement does not arise. That apart, it is not in dispute that the respondent was on probation period and his service was not confirmed. Hence, the question of reinstatement does not arise. The Labour Court has overlooked these aspects and has erroneously went ahead and decided the dispute. The same is erroneous and illegal. In any view of the matter, the award of the Labour Court cannot be sustained. The Award of the Labour Court is otherwise erroneous and unjust.

11. For the reasons stated above the Writ Petition deserves to be allowed and the Award passed by the First Additional District & Sessions Judge, Bengaluru Rural District, Bengaluru in Reference No.34/2016 is liable to be set aside. Accordingly, it is set aside.

12. The Writ of Certiorari is ordered. The order dated 31.08.2019 passed by the First Additional District & Sessions Judge, Bengaluru Rural District, Bengaluru in Reference No.34/2016 vide Annexure-S is set aside.

13. Resultantly, the Writ Petition is ***allowed.***



In view of the disposal of the Writ Petition, all the pending Interlocutory Applications stand disposed of accordingly.

**Sd/-
JUDGE**

MRP
List No.: 1 Sl No.: 12