

LABOUR DEPARTMENT

From
Labour Officer
Tirupur

To
S.Eswaran
101 Bharathi Nagar
15 Velampalayam
Tirupur

D.No.40/2017 Dated 2017

Sir,

Sub:Court Judgment from Labor Court, Coimbatore

S.Easwaran

VS

Wellnet Industries, No.61. 15 Velampalayam,

Main Road, Anuparpalayam,

Tirupur.641 652

Case ID No: 251/2007Dated: 27.09.2016 Judgment received- reg

Ref: Letter 21507/D/D1/2016-1 Dated 24.01.2017 from Joint Secretary of Labour & Employment Department, Chennai.

Sir,

With reference to the letter 21507/D/D1/2016-1 Dated 24.01.2017 from Joint Secretary of Labour & Employment Department, Chennai, pertaining to the subject as found above, Case ID No: 251/2007Dated: 27.09.2016, a copy of which is displayed at this office herewith has been sent you.

Labour Officer (In charge)
Tirupur

Encl:

Copy of Coimbatore Labour Court judgment

Case ID No: 251/2007Dated: 27.09.2016

Copy to:

Management

Wellnet Industries, No.61. 15 Velampalayam,

Main Road, Anuparpalayam,

Tirupur.641 652

LABOR COURT, COIMBATORE

In Presence of :Thiru M.Srinivasan BSc., B.L.,
Chief Operating Officer (Full Responsibility)
Labour Court, Coimbatore

Year 2017, September Month, date 27, Tuesday

Industries Dispute No: 251/2007

S.Easwaran -----petitioner
110 Bharathi Nagar,
15, Velampalayam,
Tirupur

Vs

Wellnet Industries, No.61. 15 Velampalayam, -----Respondent
Main Road, Anuparpalayam,
Tirupur.641 652

On 16.09.2016 when this case came for final hearing at this court, Thiru.D.Sathish Shankar on behalf of the petitioner and Adv.Thirumathi.M.K.Nagarathinam on behalf of the respondent were present. Based on the investigation and enquiries, case details being filed, response, evidence, relevant supporting documents, this court now render final judgment as follows,

FINAL JUDGMENT

Under Industries Dispute Act-1947 Sec 2a 2, the petitioner appealed the Court to order the Company Management to withdraw their oral termination of employment order on 10.10.2006 they conveyed to the petitioner and to assure continued job along with salary for the duration of termination along with all other benefits as applicable.

Request/ statement being altered:

2) The petitioner has been working in the respondent's Banian Company "Well Knit Industries" The petitioner joined as cutting master on 01.02.1999 at the respondent's company. Since he joined the company to until he was terminated 10.10.2006, the petitioner was getting salary of rs. 3640/- Totally 8 years the petitioner had worked in the company. The petitioner was recruited as permanent worker and ESI, PF deduction was

also done. On 10.10.2006, the respondent, without any prior notice, has terminated the petitioner orally. The petitioner stated that since he requested the Company Management his Leave wages, Bonus, pending wages, and also emphasized on signature in salary register which the company management refused to do so and out of vengeance, the company management denied my wages and terminated him, he added. Due to this unexpected termination, the petitioner struggled without salary. He approached the company management several times but ended in vain. He also tried with Trade Union for amicable settlement, but the management ever turned. In addition, the petitioner and the Trade Union sent registered posts on 31.01.2007 & 09.02.2007 respectively. But the management, the respondent never responded, he added. This caused mental agony to the Petitioner and hence the petitioner filed a case to this Labor Office with the intention to get back his job, he mentioned.

As per the reply of the company management, the respondent, the petitioner has voluntarily resigned his job and all the settlements were done with him. There is no point of giving him job again, he added. The petitioner denied this statement as ask for proof of evidence such as the resignation letter, receipt of settlements received if actually done. And hence the petitioner again filed a case demanding for job. The respondent, the company management could not produce the documents to the Labor Officer as required by the petitioner. Therefore no amicable compromise held in front of the Labor Officer.

Compromise Cancellation Order by Labor Officer Dated 10.10.2007 no: 200/2007
Right from the date 10.10.2006 the respondent, the company management terminated the petitioner orally, afterwards, the petitioner desperately seek for job but could not get a job as cutting master eventually, the petitioner along with his wife and Children struggle for life.

The petitioner mentioned that he was working extra 240 days per year as an average in the respondent's company until oral termination on 10.10.2006. On 01.02.1999 while the petitioner joined the company as cutting master, his name was registered as S.Moorthy and ESP & PF was deducted. Later days, with the intention to break the job continuity of the petitioner illegally, the company management has opened another PF account in the year 2001 onwards in the name of Easwaramoorthy without prior information to the petitioner. In the year 2001 and afterwards, the company management has maintained all records in names as Eswaran and Easwaramoorthy. Also the company management with the intention forced the petitioner to sign in letters and other documents once in 2 or 3 years to break the tenure continuity illegally of the petitioner. The petitioner's actual name is S.Eswaran but the company management maintained the petitioner's name as Eawsaran, Easwaramoorthy and Moorthy in their records. Whatever acts the company management has done with the intention to break the tenure of service in the said company by the petitioner and to deny all legal benefits in line with the Labor protection

law and schemes and thus the company is found of guilty of illegal activities. Therefore the petitioner claim for continued job in the said company with wages for the termination period with all legal benefits from the company management along with the expense made by him for filing case in this Labor Court. So the case is filed.

Statement of Respondent

3) As per the documents the case is not legally binding. Whatever is been filed, the petitioner is obligated to prove it. The petitioner Thiru. Easwaran has been working since 01.12.2001 in the company being run by the respondent and was drawing monthly salary of rs.3,640/- per month. On 16.12.2005, the petitioner himself has resigned duties. Whatever the petitioner's statement found his joining date in the company as 01.02.1999 and was orally terminated without any prior information on 10.10.2006 and his experience with the company is 8 years are not true. This is completely against the truth that the company management has terminated the petitioner since he requested the Company Management his Leave wages, Bonus, pending wages, and also emphasized on signature in salary register which we, company management refused to do so and out of vengeance, we, company management denied his wages. The petitioner has drawn monthly salary and all other benefits such as leave wages, bonus by signing in the registers and it is conscious. The company management found no reason to terminate him, the management added. The PF deduction of the petitioner has been maintained in the registers and other documents. The petitioner after receiving all the legal benefits with the salary after his resignation, later days while he approached the company for job requirement we have clearly explained that it was not possible. But later, strangely, he filed that he was terminated by the company purposely and seek for re entry to the company. During the enquiry of the Labor court in presence of the Labor officer, the company management stated that the petitioner has resigned the job with his willingness and has received all the settlements through his request letter and there is no chance for him for re entry to the company. Having resigned the job with own willingness, after receiving all the legal settlements from the company, demand by the petitioner for compensation wages and re entry for job is not legally binding. Therefore this case must be withdrawn.

4) Documents and evidence submitted by both the petitioner and the respondent were clarified

5) Questions rose.

1. Is the oral termination of petitioner on 10.10.2006 nullified?
2. Is the petitioner liable to get re entry to the job along with wages for the termination tenure and other benefits?
3. What are the other remedies for the petitioner?

6) The petitioner joined as cutting master on 01.02.1999 at the respondent's company. Since he joined the company to until he was orally terminated 10.10.2006, the petitioner was getting salary of rs. 3640/- per month. On 01.02.1999 when the petitioner joined the company as cutting master, his name was registered as S.Moorthy and ESI & PF card was issued (refer receipts attached) The petitioner's stated that his actual name is S.Easwaran but the company management maintained the petitioner's name as Eawsaran, Easwaramoorthy and Moorthy in their records.

Document No:1 Being issued by ESI Corporation in which the registration date is mention as 01.10.1999. As per this document,

Petitioner Family Name Detail: Wife: Devi Father: Subramaniyam Mother: Kannayal Son: Dhamotharan. It was stated by the respondent, the company management that the petitioner has produced a resignation letter (refer document) to the management on 17.12.2005. But on the contrary, no such sentence found except thanks by the petitioner for his tenure between 20.10.1998- 16.12.2006 with the company. Only the signature is found in the receipt which the respondent, the company management claim to be the final settlement to the petitioner (refer document). Whatever documents the company management produced as proof of final settlement to the petitioner found inadequate. The document produced by the respondent as proof of document the petitioner has given a request to the management stating that the petitioner worked between 1999- 2005, 7 years, for which leave wages, gratuity, compensation were requested. But it was revealed that the name mentioned as S.Easwaran and within brackets as S,Moorthy ((refer document). EPF format was also attached (refer document) in which the photograph of the petitioner is found and comparing this with photographs being found in other documents is is certain that S.Moorthy & S.Easwaramoorthy are same person. Based on document no:5 (refer document) which states the joining date of the petitioner to the company is 01.12.2001. The final settlement receipt reveals that rs.5590/- has been paid to the petitioner (refer document) but the dates in proof for which period is not mentioned.

7) The petitioner stated that he has joined the company on 01.02.1999. On the contrary, the respondent, the company management states that the petitioner has joined the company on 01.12.2001. As per the statement of the respondent, the company management, the petitioner has resigned the job by himself on 16.02.2005. On the contrary, the petitioner stated that the company management has terminated him orally on 10.10.2006. As per the ESI card (refer document), the said card is issued on 01.10.1999. With reference with whatever documents produced by both the petitioner and the respondent, date of joining by the petitioner to the company is uncertain. As per the petition, date of joining is mentioned as 01.02.1999. But as per the document produced by the petitioner himself, document no.4 (refer document) the date of joining is January 1999. Therefore no concrete evidence in support for date of joining is produced. Also, the petitioner stated that the company has terminated him orally on 10.10.2006 on the contrary, the respondent, the company management stated that the petitioner has resigned job by himself on 16.12.2005. (refer document 1). But in the same document it was mentioned that the petitioner has joined the company on 20.10.1998. On behalf of the petitioner, Coimbatore- Periyar, Nilgris District Pothu Tholilar Sangam (TU) has sent a letter to the company management on 31.01.2007 (refer document 3) in which it is mentioned that the petitioner has been terminated by the company management on 10.10.2006 without any prior notice and hence compensation, leave wages, bonus and assurance of rejoining has been demanded. This same letter was sent to the respondent by the petitioner on 09.02.2007. (refer document 4). Based on the Company Document evidence (refer document 1) the petitioner has not given any such resignation letter.....Actually, Document 1 is ESI card issued to the petitioner in which name of the petitioner is mentioned as Moorthy and date of joining in the firm as 01.01.1999.....ESI contribution amount was actually deposited in the account of receipt mentioned in document 1 (refer document 1).....When an employee goes out from a company Gratuity should be paid to him. The petitioner has not resigned every year of his tenure but the company management stated that they paid Gratuity and also the company stated that every year they close account while they pay Gratuity while distributing bonus to the employees. Even though an employee continues tenure after one year, we normally settle accounts of employee of each year and new account will be maintained....., they stated. It may be possible as stated by the petitioner that he has worked 240 days a year between 1999- (10.10.2006).....In our company no written appointment letter issued to the employees. When an employee work for 2 years (480 days and above) with us, we recognize him as permanent employee but not in written document.On 31.07.2007 the petitioner has sent a registered post through Trade Union. The document no.3. (Xerox and copy of letter and receipt). It is mentioned in the letter that on 10.10.2006 without any prior notice, the petitioner has been terminated. We have not responded that letter. On 09.02.2007, the petitioner again sent a registered post through the Trade Union demanding for Job again (refer document 4)... for that too we have not replied. We have not given any written document stating that we have considered the petitioner a permanent employee. The petitioner evidently stated that he was working as a permanent employee in the company. Our document (refer document 8 & 9) were mentioned for objection and stated that

these document since not being produced during the first hearing cannot be considered. It was also stated that, as per the proof we produce (refer document 1) no proper document are given to the employee during recruitment and also when they are considered as permanent employee no proof of document given to the employee. Even though an employee is a permanent worker in the company, every year we the company management close account every year and start new account considering as new employee and it is revealed that this affects the employee. We have mentioned that it may be possible as stated by the petitioner that he has worked 240 days a year between 1999- (10.10.2006). Evidences and enquiries revealed the fact that the company failed to maintain proper record as proof of tenure and other welfare documents of employee. The following court judgments of Chennai High Court & Delhi High Court respectively have been referred for the petitioner in this regard.

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As per the above mentioned judgments it was certain that the company management failed to maintain proper record and documents pertaining to employees tenure and other supporting evidence.

When an employee stopped coming for job, the company management should have responsibly taken necessary steps' action ensuring him to continue his tenure failing which is an offense against Industrial Disputes Act sec 25f. Further the Hon'ble supreme court judgment as follows for reference,

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With reference to the above judgment orders, Courts should make necessary steps to protect social justice, and to consider welfare of under privileged of our society. Even this case revealed that the respondent, the company management found guilty of act against the welfare of employee.

8) Hence is revealed that the petitioner was not properly terminated, even if the employee failed to continue his work, the company failed to make necessary steps to ensure he continue the tenure but failed to do so. Therefore it is ordered that the company should allow the petitioner to continue his tenure with tenure. Further, the petitioner stated that since 10.10.2006, he has been searching for cutting master and could not find one, but in an industrial area such as Tirupur, it seems odd that he could not get a cutting master position and cannot be accepted. Still, considering the seriousness of the case, 25% of salary as compensation along with appointment order for continued job shall be considered.

Hence, this case partially has been accepted, resolved that the company should withdraw the oral termination order, ensure continued job to the petitioner in the company, payment of 25% salary as compensation and other benefits may be drawn by the petitioner.

On 27th September, 2016 Tuesday this final order was orally dictated by me to the typist, proof read by me and finally been printed through computer.