

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 08TH DAY OF APRIL, 2024

BEFORE

THE HON'BLE MRS. JUSTICE K.S. HEMALEKHA

WRIT PETITION No.49982/2018 (L-TER)

C/W

WRIT PETITION No.6531/2019 (L-RES)

IN W.P. No.49982/2018

BETWEEN:

SMT. N. BHUVANESHWARI
W/O. KANTHARAJ
AGED ABOUT 49 YEARS,
R/AT NO.210, 15TH CROSS,
6TH MAIN, WILSON GARDEN,
BENGALURU - 560 030
PRESENT ADDRESS:
NO.87, SUNKAL FARM,
BTS MAIN ROAD, 1ST "A" MAIN,
OPP: WILSON VINTAGE APARTMENT,
WILSON GARDEN - 560 027, BENGALURU.

... PETITIONER

(BY SMT. N. BHUVANESHWARI, PARTY-IN-PERSON)

AND:

THE MANAGEMENT OF
M/S. AMBUTHIRTHA POWER PRIVATE LTD.,
(SOHAM GROUP OF COMPANIES)
NO.137, HMG AMBASSADOR BUILDING,
7TH FLOOR, RESIDENCY ROAD,
BANGALURU - 560 025
REP. BY ITS MANAGING DIRECTOR
PRESENT ADDRESS:
M/S. AMBUTHIRTHA POWER PRIVATE LTD.,
NO.37, MANDOTH, RMJ TOWERS,
1ST FLOOR, 7TH CROSS, VASANTHAGAR,
BENGALURU - 560 052.

... RESPONDENT

(BY SRI C.K. SUBRAHMANYA, ADVOCATE FOR
SRI B.C. PRABHAKAR, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE ORDER DATED 08.03.2018 MADE IN REF. NO.8/2015 PASSED BY THE PRESIDING OFFICER, SECOND ADDITIONAL LABOUR COURT, BENGALURU IN SO FAR IT RELATES TO REJECTING THE MAIN PRAYER MADE BY THE PETITIONER IN THE CLAIM STATEMENT FOR GRANT OF REINSTATEMENT, CONTINUITY OF SERVICE WITH FULL BACK WAGES AND CONSEQUENTIAL BENEFITS AT ANNEXURE-D; ALLOW THE CLAIM STATEMENT MADE BY THE PETITIONER IN REF. NO.8/2015 BEFORE THE PRESIDING OFFICER, SECOND ADDL. LABOUR COURT, BENGALURU AND ETC.

IN W.P. No.6531/2019

BETWEEN:

THE MANAGEMENT OF
M/S. AMBUTHIRTHA POWER PVT. LTD.,
(SOHAM GROUP OF COMPANIES)
NO.137, HMG AMBASSADOR BUILDING,
7TH FLOOR, RESIDENCY ROAD,
BANGALURU - 560 025
MOHANKUMAR - MANAGER HR.

... PETITIONER

(BY SRI C.K. SUBRAHMANYA, ADVOCATE FOR
SRI B.C. PRABHAKAR, ADVOCATE)

AND:

SMT. N. BHUVANESHWARI
W/O. KANTHARAJ
R/AT NO.210, 15TH CROSS, 6TH MAIN,
WILSON GARDEN, BENGALURU - 560 030.

... RESPONDENT

(BY SMT. N. BHUVANESHWARI, PARTY-IN-PERSON)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, PRAYING TO CALL FOR RECORDS LEADING TO THE PASSING OF THE AWARD DATED 08.03.2018, PASSED BY THE SECOND ADDITIONAL LABOUR COURT BANGALORE IN REF.NO.8/2015 (ANNEXURE-AE); QUASH THE AWARD DATED 08.03.2018 PASSED BY THE SECOND ADDITIONAL LABOUR COURT, BANGALORE, IN REF NO.8/2015 (ANNEXURE-AE) AND ETC.

THESE WRIT PETITIONS HAVING BEEN HEARD AND RESERVED ON 01/03/2024 FOR ORDERS AND COMING FOR PRONOUNCEMENT OF ORDER THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

The question that falls for consideration before this Court is:

"Whether the applicant-Smt. Bhuvaneshwari employed as an "Executive Secretary" in Ambuthirtha falls within the expression 'Workman' as defined under Section 2(s) of the Industrial Disputes Act, 1947 ('the ID Act' for short)?

2. The applicant raised dispute before the Labour Authority challenging the order of termination, which ultimately resulted in referring the matter to the Labour Court for adjudication on the following points of dispute, which reads as under:

1. *ಅರ್ಜಿದಾರರಾದ ಶ್ರೀಮತಿ ಎನ್. ಭುವನೇಶ್ವರಿ ಕೋಂ ಬಿ ಕಾಂತರಾಜ್, ಎಕ್ಸಿಕ್ಯೂಟಿವ್ ಸೆಕ್ರೆಟರಿ, ವಯಸ್ಸು 45 ವರ್ಷ, ನಂ.210, 15ನೇ ಕ್ರಾಸ್, 06ನೇ ಮೈನ್, ವಿಲ್ಲನ್ ಗಾರ್ಡನ್, ಬೆಂಗಳೂರು-560030, ಇವರು 1947 ರ ಕೈಗಾರಿಕಾ ವಿವಾದಗಳ ಕಾಯ್ದೆಯ ಕಲಂ 2(ಎನ್) ವ್ಯಾಖ್ಯಾನದೊಳಗೆ ಬರುವರೆಂದು ಸಾಬೀತುಪಡಿಸುವರೇ?*
2. *ಸಾಬೀತುಪಡಿಸಿದ್ದಲ್ಲಿ, ಅಡಚಿತವರ್ಗದವರಾದ ಮೆ: ಅಂಬುತೀರ್ಥ ಪವರ್ ಪ್ರೈವೇಟ್ ಲಿಮಿಟೆಡ್ (ನೋಹಂ ಗ್ರೂಪ್ ಆಫ್ ಕಂಪನೀಸ್, ನಂ.137, ಹೆಚ್‌ಎಂಐ ಅಂಬಾಸಿಡರ್ ಬಲ್ಡಿಂಗ್, 7ನೇ ಅಂತಸ್ತು, ರಸಿಡೆನ್ಸಿ ರಸ್ತೆ, ಬೆಂಗಳೂರು-560025, ಇವರು ಅರ್ಜಿದಾರರಾದ ಶ್ರೀಮತಿ ಎನ್. ಭುವನೇಶ್ವರಿ ಕೋಂ ಬಿ ಕಾಂತರಾಜ್, ಎಕ್ಸಿಕ್ಯೂಟಿವ್ ಸೆಕ್ರೆಟರಿ, ವಯಸ್ಸು*

*45 ವರ್ಷ, ನಂ.210, 15ನೇ ಕ್ರಾಸ್, 6ನೇ ಮೈನ್, ಬಿಲ್ಲನ್ ಗಾರ್ಡನ್,
ಬೆಂಗಳೂರು - 560030, ಇವರಿಗೆ ದಿ: 29.06.2013 ರಿಂದ
ಕೆಲಸದಿಂದ ತೆಗೆದುಹಾಕಿರುವುದು ನ್ಯಾಯಸಮ್ಮತವೇ?*

3. *ಹಾಗಲ್ಲದಿದ್ದಲ್ಲಿ, ಸದರಿ ಕಾರ್ಮಿಕರು ಯಾವ ಪರಿಹಾರಕ್ಕೆ ಅರ್ಹರು?*

3. The points of dispute was:

a. Whether the applicant-Smt.Bhuvaneshwari would prove that she is a 'workman' within the meaning of Section 2(s) of the ID Act?

b. In the event of proving so, whether the management of M/s. Ambuthirtha Power Private Limited is justified in terminating her from service w.e.f. 29.06.2013?

c. If not, to what the relief the 'workman' is entitled to?

4. The Labour Court by the impugned order held that the applicant is a 'workman' as defined under Section 2(s) of the ID Act and by the impugned order, allowed the reference in part, directing the management to pay Rs.5,00,000/- to

the applicant as a relief of compensation in lieu of reinstatement, continuity of service, full backwages and all other consequential benefits.

5. W.P. No.49982/2018 is preferred by the applicant-N. Bhuvaneshwari rejecting the prayer of reinstatement, continuity of service with full backwages and other consequential benefits.

6. W.P. No.6531/2019 is preferred by the management against holding the applicant as a 'workman' under Section 2(s) of the ID Act, setting aside the order of termination and directing the management to pay lump sum compensation of Rs.5,00,000/-.

7. Heard Sri C.K. Subrahmanya, learned counsel appearing for the management and Smt. N. Bhuvaneshwari-party-in person and perused the material on record.

8. Learned counsel appearing for the management would urge the following grounds:

i. The applicant was appointed as an Executive Secretary, considering her vast experience of 17 years in various organization, her educational qualifications and her package was more than Rs.30,000/- per month, which clearly indicate that the applicant was not performing any clerical work and the work assigned to the applicant was Supervisory and Managerial duties, which is evident from the appointment order, the Labour Court, without considering and analyzing the nature of work performed by the applicant, has erroneously held that the applicant is a 'workman' as defined under Section 2(s) of the ID Act.

ii. That the applicant was relieved by issuing termination notice as per the terms of the appointment order by giving three months notice, which preceded the process of 'Exit Interview' and the applicant clearly answered the question that she has no intention of rejoining the company.

iii. That the Labour Court fell in error in awarding compensation of Rs.5,00,000/- without considering the factual position supported by the material on record, which

clearly indicates that the applicant was not interested in joining the company and the termination notice was issued in light of the poor quality of the secretarial work and the repeated failure to coordinate the travel plans of the Managing Director, causing inconvenience.

9. *Per contra*, Smt. N.Bhuvaneshwari-party-in-person would urge the following grounds:

- i. That the Labour Court has rightly held that she is a 'workman' as defined under Section 2(s) in light of the nature of duties performed by her.
- ii. That the order of termination passed by the management having been held to be not proper, she was entitled for reinstatement into service with backwages and other consequential benefits.
- iii. That she being able to establish the order of termination to be illegal and there being victimization by the management, the Labour Court was not justified in not rightly exercising

the discretion available to the Labour Court under Section 11A of the ID Act.

10. This Court has carefully considered the rival contentions urged by the party-in-person and learned counsel for the respondent and perused the material on record.

11. Section 2(s) of the ID Act defines the 'workman' as under:

"2. Definitions.—*In this Act, unless there is anything repugnant in the subject or context,—*

(s) "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding ten thousand rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

12. The definition of 'workman' in Section 2(s), in connection with the persons employed in an industry falls in three parts:

- i. Any person (including an apprentice) employed in an 'industry' to do any manual, unskilled, skilled, technical, operational, clerical, or supervisory work for hire or reward;

- ii. It includes something more in what the term primarily denotes and this part, it defines the person who has been dismissed, discharged or retrenched in connection with an industrial dispute;
- iii. This part specifically excludes the categories of person specified in Clause-i to iv of this Sub-Section.

13. The exception to Section 2(s), more particularly Sub-Clauses (iii) and (iv) which are necessary to be considered in this petition, are the persons who are employed mainly in a managerial or administrative capacity or who are employed in a supervisory capacity, draw wages exceeding Rs.10,000/- per month and either by the nature of the duties attached to the office functions mainly of a managerial nature. Taking the provisions of Section 2(s) of the ID Act, whether the duties performed by the applicant as an 'Executive Secretary' falls within the meaning of Section 2(s) of the ID Act needs to be looked into.

14. The applicant was offered employment with the designation "Executive Secretary" and the nature of work of the respondent, as could be gathered from the appointment letter, resume made available by the applicant to the post of "Executive Secretary," is that:

- i. Assisting the Chairman, Managing Director and Director in the day-to-day work;
- ii. Taking care of their travels (Domestic and International), renewal of Passports, processing of VISA / Tickets, accommodation and vehicle arrangements;
- iii. Ensuring that all the bills from the travels are received, checked and forwarded to the Accounts Department for payment;
- iv. To see that all the meetings and appointments of the schedule of Chairman, Vice Chairman and Directors are updated;
- v. As per the appointment letter, the performance of the duties to be carried out by the applicant was to be in compliance with the established policies and procedures,

endeavoring to her best ability to protect and promote the interests of the company;

vi. The salary of the applicant was fixed at Rs.20,000/- per month;

15. The perusal of the records would indicate that before joining the company, the applicant had a total experience of 17 years as a Secretarial Assistant and the post to which the applicant was appointed was based on the qualification and experience she possessed prior to her appointment to the company. The applicant discharged her duties in Supervisory and Managerial Role, the documents produced at Exs.M.1 and M.2 clearly establish the nature of function the applicant was performing as on the date of termination and it is abundantly clear that the applicant was working as an "Executive Secretary" and she had a duty of maintaining the records of the Managing Director and the Chairman, the nature of work performed by the applicant at no stretch of imagination can be said to be as envisaged under Section 2(s) of the ID Act. The main duties performed

by the applicant is in the nature of Manager and thus, the Labour Court was not justified in coming to a conclusion that the applicant was a workman as defined under Section 2(s) of the ID Act, even assuming the applicant is doing clerical work as contended by the party-in-person-N. Bhuvaneshwari, the clerical work, if any, is only incidental to the principal work, which she is undertaking as a Manager to the post of "Executive Secretary". The work assigned to the applicant is of responsibility and she was discharging the managerial and supervisory duties as per the appointment order, these surrounding circumstances clearly indicate that the applicant is not a 'workman' as defined under Section 2(s) of the ID Act.

16. The question of termination whether it is proper or not, is not a question to be adjudicated before the Labour Court, as the applicant has failed to establish that she is a 'workman' as defined under Section 2(s) of the ID Act. In the said circumstances, the Labour Court was not justified in arriving at a conclusion that the applicant is entitled for

Rs.5,00,000/- in lieu of reinstatement, continuity of service, full backwages and all other consequential benefits.

17. For the foregoing reasons, this Court pass the following:

ORDER

- i. Writ petition No.6531/2019 filed by the management is hereby ***allowed***.
- ii. W.P. No.49982/2018 filed by the applicant is hereby ***dismissed***.
- iii. The impugned order passed by the Labour Court is hereby ***set aside***.
- iv. It is needless to observe that, dismissal of the claim petition will not come in the way of the workman claiming any entitlement in accordance with law.

**SD/-
JUDGE**