

An aerial photograph of a rural landscape. The scene is dominated by rolling green hills. A winding river or stream flows through the center of the image, curving from the upper right towards the lower right. The fields on either side of the river show distinct circular and curved patterns, likely from agricultural machinery. In the upper left, a small cluster of trees stands on a slight rise. The overall lighting is bright, creating a vibrant green color palette.

LABOUR RESEARCH

March-April-2019

Editorial

SUPERANNUATION BENEFITS

It is the responsibility of the state to ensure that the aged in the country are able to lead a comfortable life at the fag end of their lives. The Governments in western countries in particular the democratic countries have given utmost importance to the social security of the aged. They have devised several methods to ensure their comforts at the end of their lives. The old age pension, medical insurance, the accommodation for the aged etc., are the major issues for their Governments. When India became independent, the country had a tremendous responsibility of providing food, clothing, shelter, medical assistance to the millions and millions of people who are living below the poverty line. This population included the working class employed both in the Private Sector as well as Public Sector. The Government was particular about the safety of the workers in the workplace and thereafter a comfortable life for them and the members of their families. Hence, since then a series of measures were introduced to take care of the security of the workers in particular the child and women workers in the factories, provision of the medical facilities, the canteen facilities, etc., As a National Policy the Government also came out with medical facility by establishing ESIC - chain of hospitals and dispensaries, etc., The Government also introduced several measures to provide adequate funds to the workers who retire/resign from the services either in the middle of the service or after superannuation. The Government set up Employees Provident Fund organization to ensure the administration of the Provident Fund subscription collected from the employers and employees in respect of the workers in the various institutions. In order to provide a lump sum amount at the end of the service of the workers, the Government introduced the Payment of Gratuity Act - 1972 which provided the first assured superannuation lump sum payment to the workers apart from the Provident Fund accumulation.

The Government also came out with a scheme by carving out a separate amount from the contribution made towards the Provident Fund subscription to all those who do not have the benefit of Pension Fund in their respective organizations. This was to ensure that the members of the Provident Fund also able to utilize a portion of the accumulation of the Provident Fund towards the monthly pension to them which will come in a long way in providing a sort of social security to them. In the recent past, the Government has taken several initiatives to cover the Pension benefit to the general public as well by introducing a scheme for the common people by collecting subscription from them towards the Public Provident Fund as well as Pension Fund. This will help the common man who has no opportunity

of ensuring pension on their reaching advanced age. This is one of the social security measures conceived by the Government to help all those who are not depending upon the employment provided by the private and public sector units and are self-employed, the farmers, the traders, etc.,

There has been several litigations over a period of time, insisting for a reasonable payment of pension where the employees are covered under the Pension Scheme either through the Provident Fund Scheme or the Pension Fund scheme of which they are members. The Employees Provident Fund Organization is the biggest organization managing a huge resources of the workers in the form of their contribution towards the Provident Fund. The Provident Fund is contributed on the Basic Pay and the Dearness Allowance and certain allowances specifically provided in the bipartite agreements between the employers and the employees. The individual members were raising the issue of improvement in the Pension payable to them. The employees in the Central and State Governments, the various autonomous bodies, owned by the State and Central Government are entitled for the benefit of the Pension. On the similar lines, the Pension Scheme was introduced in the Banking, Insurance industries through a separate agreements between the unions and the Managements.

The Pension Scheme is static in most of the organizations other than the Central, State and Defense industries. The Pension fixed at the time of their superannuation remain as such until the death of the Pensioner/Family Pensioners. Their pension does not protect them against the inflation and as such their living condition becomes worst over a period of time. The Reserve Bank of India has recently introduced the updation for the earlier retirees that benefited all those who have retired since last 30 years and had never seen any improvement in their pension. A number of court cases filed by the Pensioners from the banking industry have also ruled in favor of the Pensioners on several issues raised by them and provided relief to them in certain specific areas.

One of the land mark judgment was in the case of the Employees Provident Fund Organization - where the Supreme Court held that the employers have been denying the legitimate benefit of the Pension to the workers by segregating some of the portion of the revision in the wages in the form of allowances which are not ranked for the purpose of the calculation of the pension. Though these agreements are in the knowledge of the unions, the unions are made to agree by the employer on the plea that the workers will have better take home pay if they are not asked to contribute towards the Provident Fund. The in-house committee set up by the Employees Provident Fund also was of the view that this arrangement is against the interest of the employees and needs to be corrected. The court therefore ruled that the allowances which are common to all the employees and not specifically referred to an additional responsibility should be treated as a part of the basic pay and available for the purpose of the recovery of the Provident Fund contribution.

Yet in another judgment the Supreme Court has also ruled that the Pension introduced under the Employees Provident Fund Scheme should be the same as in the case of the regular pension. The Pension should be fixed on the basis of the 50% of the last drawn pay - on completion of the required services and not in a partial manner. The Court has therefore directed the Employees Provident Fund organization to work out the Pension under the scheme and refix their pension as per the verdict of the Supreme Court.

The Central Government being the model employer takes care of their employees and upgrade the Pension from time to time. The Defense has been provided the benefit of the 'one rank one pension' whereas their counter parts in the Public Sector including the financial sector do not get similar treatment except the Reserve Bank of India who received a favorable judgment from the Supreme Court and got definite relief to all earlier retirees.

These are some of the case laws which have drawn the attention of the Government towards their social responsibility to the people of the country which includes the working class as well. In view of these developments there is a need to revisit the various superannuation benefit schemes viz., the Provident Fund Scheme, Pension Scheme etc., and come out with a comprehensive policy to ensure that the beneficiaries of these schemes on their superannuation do not suffer on account of increasing cost of living, the inflation

etc., at the fag end of their lives. There is a need for the Central Government to issue appropriate directions to all the Public Sector units owned by them to upgrade/update the pension received by the members on a regular basis so that they are not put to hardship due to the increasing cost of living. The court decision in Reserve Bank of India's case is a classical example for the updation/upgradation of Pension in the financial sector which includes the general banking as well as the Insurance. ■

EPFO TO CHALLENGE ORDER ON HIGHER PENSION OUTGO

Contributions to EPS limited and is not adequate to pay a higher pension, says EPFO

The Employees Provident Fund Organisation (EPFO) plans to move the Supreme Court to review a high court order that allowed workers to draw pension on a wage above the current salary ceiling of ₹15,000 per month.



provident fund corpus.

EPFO plans to move the apex court though the top court dismissed a special leave petition (SLP) filed by it last month against a Kerala high court order on higher pension outgo.

The current monthly contribution toward employees pension scheme (EPS) is limited and is not adequate to pay a higher pension, according to the retirement fund body. Any binding order on it will make the organisation financially unviable, two government officials said requesting anonymity.

There are three key factors hindering the EPFO from making a higher pension payout, said the other official mentioned above. First, there is no rule about collecting a higher pension contribution.

"We are readying for a review petition. Pension contribution by EPFO subscribers is based on a ₹15,000 salary ceiling. If pension outgo is calculated on the total salary above the ₹15,000 threshold, it will be tough to maintain. It will be a negative cash flow and we may fall short of several thousand crores every year," said one of the two officials mentioned above.

Second, a lower contribution for decades by an employee makes it untenable to get a higher pension.

At present, every month an organized sector employee pays 12% of his basic salary as mandatory EPF contribution and a matching amount is contributed by the employer.

Third, the differential pension contribution (more by well paid subscribers based on actual salary and less by low income workers based on a ₹15,000 salary threshold) needs a different accounting system that is not in practice at EPFO right now.

Of the employer's contribution, 8.33% goes towards pension contribution and the rest 3.67% to the

"The government needs to subsidise a higher pension. Financially, EPFO is not equipped to pay that," the second official said.

A fund crunch has already prompted the EPFO to shelve a plan to double the minimum pension from ₹1,000 per month to ₹ 2,000 per month, the official said.

NEVER BEND BEFORE THE INSOLENT MIGHT

This was despite an internal panel of the retirement fund manager recommending an increase in the pension for EPFO subscribers. EPFO does not have enough surplus to double the pension on its own and needs financial support to implement the scheme, which will benefit people getting a pension of less than ₹1,000, Mint reported on 28 March. After announcing an 8.65% interest rate for its 60 million subscribers in February for 2018-19, the surplus with the retirement fund body was around ₹150 crore, a three-year low.

The Kerala high court had in October last year

observed that while some workers have made more contribution voluntarily towards EPFO, their pension calculation was on the ₹15,000 salary ceiling, which was not fair on workers post their retirement.

The judgement led to a debate on how a significant number of EPFO subscribers may demand pension on their actual salary and not based on the salary ceiling which is the yardstick for PF contribution. EPFO gets an EPS contribution of around ₹36,000 crore per annum.

By.. Prashant K Nanda, New Delhi

Source: Mint dated 1/5/ 2019

REINVENTING UNIONS

They need to be environmentally responsible

The century-old International Labour Office (ILO) has been engaged in consolidating the rights of trade unions. The ILO is urging the Union Government to ratify two of its fundamental conventions — Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and Right to Organise and Collective Bargaining Convention, 1949 (No. 98). While the ILO's intentions here are commendable, its role in making trade unions (TUs) responsible to wider social issues is less visible.

TUs do not play a proactive role in environmental issues. This is borne out in the case of the recent outburst of local citizens against Sterlite in Thoothukudi, the issue of potable water pollution as a result of chromite mining in Sukinda Valley, Odisha, illegal mining in Goa, and protest of indigenous people against bauxite mining in Kashipur, Odisha.

The TUs' apathy towards the pathetic conditions of growing number of contract workers is only too evident. While submitting their charter of demand to the management, the contract workers' issues do find an obligatory mention in the list. But this is not a priority for the TUs. As soon as the major demands are fulfilled, the agitation is called off.



STEPPING UP INVOLVEMENT

How can TUs step up their involvement in a gamut of areas? We have to examine the legitimacy of the ILO, which is "based on tripartism and the rich and complementary practical experience of its government, employer and worker constituents in addressing economic and social policies affecting the lives of people" (ILO Declaration on Social Justice for a Fair Globalization, June 10, 2008, Geneva).

In other words, the legitimacy of trade unions stands on its utilitarian values — where all stakeholders get justice. For realising the obligations of TUs towards the larger society, a new kind of workers representative has emerged: for example, the environmental representative in the UK.

"Case studies of six companies in the UK found that these trade union representatives had contributed to a fall in carbon emissions per employee by 54.8 per cent; nitrous oxide levels falling by an average of 10 per cent over a four-year period and fall of 80 per cent in sulphur dioxide levels ('Why trade unions are a good thing' by Sterling Smith, November 6, 2015, Ethical Trading Initiative). There is a growing trend of reduction of TU membership in Europe and

DEFEND THE ECONOMIC SOVEREIGNTY OF THE COUNTRY

the US. Thierry Pech, Director General of think tank Terra Nova, pointed out that European Trade Union Confederation (ETUC) deserves criticism for seeking legitimacy "through its capacity to federate very heterogeneous components, even at the price of acrobatic compromises, rather than trying to strengthen its capacity to address major social issues of today ('The End of Trade Unionism?' by Therry Pech, Progressive Politics)."

In India, as per the Statistical Year Book India 2016, the number of TUs in 2008 was 27,137 and total membership was 95,73,000; in 2012 the

corresponding figures are 16,712 and 91,82,000. There was a dip in 2009 when the total membership was 64,81,000. These are based on the returns filed by the trade unions. Anecdotal evidence suggests that trade unions are losing public sympathy in India as well. TUs have a positive economic role to play as well as in achieving social justice goals. But who will take the initiative in enabling them to realise larger responsibilities? Can the ILO be a silent observer?

Prabir Kumar Bandyopadhyay professor, SIBM, Pune

Source: Business Line Date: May 01, 2019

NEEDLESS DEADLOCK OVER LABOUR REFORMS

A social safety net for unorganised and organised workers will create the foundations for a lighter regulatory regime

For over 25 years, India has been in the process of integrating itself into the global economy through liberalisation of trade and investment. But, unfortunately, India, unlike China, has not yet been able to obtain the full benefit of globalisation through more productive and better paying manufacturing jobs for its large young population. This accounts for the stark difference with China which, starting from the same level in 1990, now has five times the per capita income of India and virtually no poverty.

In the global market for goods and services, there has been a market failure in India as far as low wage manufacturing jobs are concerned, while the market has worked efficiently for high wage IT jobs. The major factor contributing to this paradoxical outcome is that the IT sector units are governed by the Shops and Establishment Act and not the Factories Act. There are over 40 labour laws which regulate factories. These impose too onerous a burden. Large firms can easily deploy the manpower and other resources to meet the transaction costs required for record keeping, reporting and managing the regulatory regime.



Small firms and start-ups find this too heavy a burden. They, therefore, have an incentive to remain small rather than grow. The unfortunate result has been that job growth in the organised sector has been extraordinarily disappointing while it has

been taking place in the unorganised sector at a much faster pace. This is the opposite of what happens in any rapidly industrialising economy.

In a market economy, jobs are created primarily by private market participants. If the regulatory regime is coming in the way of job creation by market players, its review and reform should get the highest priority. Long neglected, a beginning was made a few years back with the drafting of four labour codes to consolidate, rationalise and reform the over 40 labour laws. These have been in the public domain and stakeholder consultations have also been undertaken.

Retaining the substance of the present regulatory framework with four simpler codes, which also provide for digital record keeping and reporting, should be easy enough. Introducing credible third party certification should also not be difficult. This easy minimum reform would give great relief. Opposition from the existing labour bureaucracy who would see an erosion of their rent-seeking powers

SUCCESS COMES TO THOSE WHO DARE AND ACT

would be natural, but should certainly not be insurmountable.

VIABLE MIDDLE GROUND

On substantive changes, a viable middle ground between incrementalism and radical overhaul should also not be difficult. One such could be to retain the existing structure and bargaining power of the trade unions but dispense with the need for prior permission for reducing the workforce. But, surprisingly, this key reform of having just four labour codes did not get political priority and no effort was made to enact legislation.

In reform policy discussions, this has not been getting sufficient attention. The underlying premise has been that no government would have the political will to attempt labour reforms as the trade unions would not permit it and they were politically far too powerful. This is an unnecessarily timid view. India has been successfully undertaking major reforms, including the dilution of the fiscal autonomy of the States by amending the Constitution to introduce GST. The organised labour movement has been naturally apprehensive of the import of the American 'hire and fire' culture and the emasculation of the trade unions and their collective bargaining power that 'labour reforms' connote. It would be useful to look at the social market economy conceptual framework of Germany and the Scandinavian economies, their social welfare systems and lower levels of inequality.

Economic realities have also been changing in India where de facto labour market flexibility has become a reality with the widespread use of contract labour, including by government itself. Since the overwhelming majority of workers are in the unorganised sector, democratic forces across parties and regions have been nudging the polity towards putting in place the basic features of the social welfare state; healthcare, unemployment relief and old age pension.

Unemployment relief in rural areas was provided through MNREGA and there is now some talk of putting in place something similar for the urban

areas. Universal healthcare and old age pension schemes have been initiated.

For the organised sector, the paradigm of joint contribution by the employer and the worker has been the universal operating principle from the early days of industrialisation. But in India, this ends up acting as a disincentive for low wage workers and their low profit employers to enter the organised sector.

To encourage employment generation, there have been two strands: one, to increase the threshold of the number of workers over which labour laws would apply, and the other, to give some financial relief to those who generate new jobs.

SOCIAL SECURITY

But the most radical approach would be to have a state funded comprehensive floor level social safety net covering unemployment (minimum income), universal healthcare and old age pension for all workers in the unorganised as well as organised sectors, exempting both employees and employers from contributions for this and to fund it fully with increases in corporate and personal income tax rates, which are presently far lower than in Northern Europe.

A softer version would be for the state to fully fund employee and employer contributions for wages up to a prescribed level and for employer and employee contributions to kick in thereafter to supplement what the state provides. The benefits of higher productivity of the workforce flowing from a comprehensive social safety net are not adequately appreciated.

The real advantage of this would be to do away with the distinction between the worker in the organised and unorganised sector and to create a regulatory regime which provides for a smooth transition from a micro to small, to medium, and finally to a large enterprise. These are complex issues that need serious discussion. Given the severity of the challenge, radical approaches for job creation are now unavoidable.

By. Ajay Shankar, former Secretary, DIPP, and Distinguished Fellow, TERI

Source: Business Line, Date: 23/03/2019

WORK IS WORSHIP, DO YOUR DUTY

WE NEED AN URBAN JOBS GUARANTEE SCHEME

It would address high urban unemployment and lack of public goods, besides being superior to mere income support India is facing a crisis of both quantity and quality of employment. Despite lack of recent official statistics, it seems clear, both from private data sources such as the Centre for Monitoring the Indian Economy (CMIE) as well as the leaked Periodic Labour Force Survey (PLFS) report of the National Sample Survey Organisation (NSSO), that the rate of open unemployment has steadily risen over the past few years.

As per the PLFS 2017-2018, open unemployment stands at a historic high of 6.1 per cent, and unemployment among educated youth has reached 20 per cent.

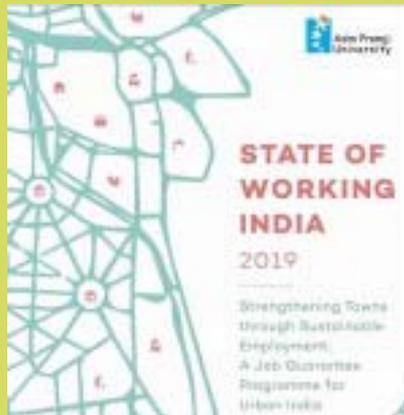
Unemployment in urban areas at 7.8 per cent is higher than the unemployment rate in rural areas (5.3 per cent). In addition, Indian towns and cities continue to be plagued by the prevalence of low-wage, poor quality, informal work.

NEED FOR URBAN RENEWAL

PLFS data show that despite a rise in the prevalence of regular-salaried work, just over 50 per cent of the urban workforce remains either self-employed or in casual wage work. At the same time that our towns and cities are facing a crisis of jobs, there is also a crisis of the quality of life due to ecological stress and lack of adequate public services.

As malls, motorcycles, and mobiles proliferate, our streets are in disrepair, water-bodies are rapidly being degraded, green spaces are disappearing, the quality of air is deteriorating, and common spaces are shrinking.

Thus, we see a dramatic divergence between the quality of private and public goods. Centrally funded programmes like the Smart Cities Mission and



Jawaharlal Nehru National Urban Renewal Mission (JNNURM) have disproportionately focussed on development of bigger towns and cities. Hence, it is important to re-focus our attention to improving the livelihoods and ecology of urban areas beyond India's major cities.

However, Urban Local Bodies (ULBs), which are largely responsible for developing and administering our towns and cities, find themselves unable to carry out their core tasks adequately due to lack of financial as well as human resources.

Most ULBs in India are severely understaffed and are unable to hire more workers since they are financially restrained (ASICS 2017). A centrally funded programme that covers the wages of different kinds of workers will allow the ULBs to fulfil tasks they are mandated to perform but are failing to, because of a shortage of financial and human capacity.

Further, the present staff of most ULBs are not fully suitable for performing the tasks related to the renewal of urban commons and monitoring urban environment. This programme can generate a new set of 'green jobs' that can strengthen the capacity of ULBs as well as promote sustainable urban development.

Creating jobs, improving the capacity of urban local governance, and supplying quality public goods and services require serious public investment. But if made to an adequate extent, such investment has the potential to pay for itself many times over. Not only does it directly improve welfare by raising incomes and creating assets, there are many positive spillover effects too, such as:

It increases demand by raising incomes directly, and indirectly in the informal sector, by improving the fallback position of workers.

It provides a better trained workforce to the private sector by allowing educated young workers to acquire skills and improve their employability. The work undertaken will create assets that improve the town's ecology and quality of public services, which have a direct impact on productivity and quality of life.

It creates a shared sense of public goods in which every resident has a stake. While cities and towns do not yet have an equivalent of MGNREGA, India has a history of urban employment schemes. One of the most prominent Central programmes in this regard was the Swarna Jayanti Shahari Rozgar Yojana (SJSRY) launched in 1997 which provided employment to the unemployed and underemployed urban poor through self-employment and wage employment.

The Urban Wage Employment Programme component of SJSRY covered those living below the poverty line in ULBs with less than five lakh population. The SJSRY was replaced by the National Urban Livelihoods Mission (NULM) in 2013.

This programme, and its subsequent version, laid more emphasis on self-employment and entrepreneurship than on wage employment. However, unlike MGNREGA, India's past urban employment schemes were not demand-driven and only a set of identified beneficiaries could avail their benefits. More recently, the idea of an urban job guarantee has been gaining prominence in political and policy debates in India.

CORE ELEMENT

According to news reports, an employment guarantee programme for urban areas has emerged as a core element of a possible Common Minimum Programme from the opposition parties for the 2019 General Election.

Further, the newly elected government in Madhya Pradesh recently announced a 100-day urban job guarantee scheme, the Yuva Swabhiman Yojana, which provides urban youth with varying educational qualifications with a wide set of jobs.

Since 2010, Kerala has also been running a programme called the Ayyankali Urban Employment Guarantee Scheme (AUEGS) which guarantees 100 days of wage-employment to an urban household for manual work. We are also witnessing a growing popularity of employment guarantee programmes across the world. For example, in the US, employment guarantee is a core component of the 'Green New Deal', a set of policy proposals for addressing climate change and economic inequality, supported by several presidential candidates. It provides for a 'Green Job Guarantee' which enshrines 'a legal right that obligates the federal government to provide a job for anyone who asks for one and to pay them a liveable wage'.

Further, an employment guarantee programme also strengthens the 'Right to Life' enshrined under Article 21 of the Constitution of India. As the Supreme Court of India has held in multiple cases, the 'Right to Life' is not restricted to mere existence but also includes the 'right to livelihood' and the 'right to live with human dignity.'

In the last two decades several rights-based legislation have been introduced to further these constitutional ideals.

In particular, the MGNREGA is a legislative realisation of the 'Right to Life' through a 'Right to Work'. A legally enforceable 'Right to Work' in urban areas appears to be a natural extension.

BETTER THAN UBI

Finally, we note that the idea of a minimum or basic guaranteed income has gained traction in policy circles across developing and developed countries. The specifics differ from proposal to proposal but the key aspect is an unconditional cash transfer to some identified group of beneficiaries.

While the modalities of an income guarantee are worth debating, we believe that an employment guarantee has three key advantages over the former:

Employment guarantee schemes are generally self-targeting and demand-driven. In a country like India

STRONG REASONS MAKE STRONG ACTIONS

with scarce income data, an employment guarantee programme circumvents the complicated process of identifying beneficiaries.

Employment guarantee, such as the one proposed here, enables people to contribute productively to the creation of useful public goods and services.

An employment guarantee has the potential to foster active citizenry. It enhances engagement in

democratic decision-making through public meetings and public hearings. On the one hand, it would increase people's political capacities in community building and on the other it strengthens local accountability.

Extracts from 'State of Working India 2019', with permission from Azim Premji University, Bengaluru. ■

Source: Business Line, Dated.28/4/2019

SOCIETY NEED A GIVER RATHER A TAKER

Man is a social animal, loves to live in a society. He is generally encompassed with a comforting conviction wherever he goes. Some of the virtues in him gives him a comfortable feeling and attitude that enable him to get a good company of friends. He will be able to maintain the friendship with his ability and conviction to move with them. He will have a comfortable sail so long as the atmosphere is good. If he forgets about the shore from where he set his sail and caught in turbulence with unwanted ego it will be difficult for him to come back to the shore. As such one should be very cautious in maintaining friendship. If a person is unable to adopt a give and take policy it may lead to conflict of interest, some times unable to retrieve.

Trust is the foundation of any relationship. If mistrust creeps in a relationship it is bound to crumble sooner or later. Frank Crane the famous speaker and columnist said 'you may be deceived if you trust too much, but you will live in turmoil if you do not trust enough.'

One needs to take all good qualities from his friends while passing on his good qualities in him and vice versa. He can carry the rosy picture from the chapters of his past life that may provide him more comforts and happiness, while maintaining friendship with others. We have seen many inventions in the world, all for the benefit of humanity not for the benefit of the inventor. It will create an emotional link between the inventor and the humanity.

When we are living in a society, we should be able to maintain a good relationship with the all members

there in. Even if our love and affection is not reciprocated it will only purify our heart, getting a good feeling in return may lead to a lasting relationship. A pure heart normally does not create any harm.

Being a rational animal, often a man's thinking or behaviour may go against the interest of others. If we wish to love a good relationship with others we must be able to respect their feelings or interest for which we should possess certain qualities such as modesty, politeness wisdom etc to adjust ourselves. When we think of mankind we should think that we are one of the representatives and hence we have got a responsibility towards the welfare of the society and we need to preserve it.

We should remember that every human being is born with a purpose and that every citizen has a duty to the other citizen and the nation as well. As such we should navigate our way for a better purpose. Our vision in life should not only take care of the family but also should take care of others family as well. It is to be remembered that God has created enough on earth for every one's need not for every one's greed.

As such the available resources should be distributed to all the needy in the society. Any sincere attempt on our part in serving the society will give us a surge of energy, enthusiasm to serve better. A lot of thinking and planning is required to unlock our mind to create a good atmosphere. No man is able to serve better unless his mind acts in harmony with his own belief.

MAN IS THE ARCHITECT OF HIS OWN FUTURE

When we are in a society we should take care of our behaviour, measure our word and control our tongue. When the society looks at us with suspicious eyes we should have an introspection about our behaviour. If we come out unscathed unseated we can walk with confidence. While

acquiring material comfort people are generally involved inward looking and self centered, unconvinced about others. The art of relationship is a skill of understanding people and managing their emotions. Those people who excel in these areas will do well in any area and can shine in a society. ■

Judicial Verdict

**2019-II-LLJ-180(MAD)
LNINDORD 2019 MAD 307
IN THE HIGH COURT OF MADRAS**

Present:

Hon'ble Mr. Justice D. Krishnakumar

WP. No. 25985 of 2011

2nd January, 2019

G. Kuppusamy:

..... Petitioner

Versus

Presiding Officer, Principal Labour Court, Vellore and Another .

...Respondents

Industrial Dispute - Reinstatement - Petitioner-workmen 'was denied service when he resumed work along with medical certificate for absence Dispute raised by Petitioner dismissed by Labour Court, relying on settlement produced by Respondent No. 2 / Management, hence this petition- Whether, Petitioner entitled for reinstatement with full back wages, continuity of service and all other attendant benefits –Held resignation letter, based on settlement entered into parties, not produced and marked before Labour Court-Settlement not witnessed and signed by any witness- Petitioner let in evidence to substantiate claim that no witness to settlement and said settlement not entered into before Labour Court — Even evidence let by Manager of Respondent no. 2 would go to prove claim of Petitioner- Without taking note of evidence of Manager of Respondent no. 2, Labour Court dismissed claim of Petitioner - Though Petitioner entitled for reinstatement, with continuity of service, it just and proper that 50% of back wages could be allowed — Petition partly allowed.

ORDER

The prayer in this Writ Petition is to quash the award, dated 01.11.2010 made in ID. No.171 of 2006, on the file of the 1st Respondent and to direct the 2nd Respondent Management to reinstate the Petitioner in service with continuity of service, full back wages and all other attendant benefits.

2. The case of the Petitioner is that he had joined the 2nd Respondent Management as a permanent employee on 22.10.2002 and he had performed his duties without any blemishes and his last drawn

salary was ₹ 2,900/-. The Petitioner did not report for duty from 5.01.2006 to 19.01.2006 and he went to the factory to resume his work on 20.01.2006 along with the medical certificate for his absence. But, the 2nd Respondent Management did not allow him to resume his work and asked him to come on 27.01.2006 and paid the bonus to him and obtained his signature in eight papers. Since he was not reinstated in service, in spite of his several requests, he had made an application on 11.3.2006 to the 2nd Respondent Management. Thereafter, he had raised an industrial dispute before the 1st Respondent in ID: No.171 of 2006 to direct the 2nd Respondent Management to

WORKERS OF INDIA, UNITE

Labour Research, March-April-2019

reinstate him with full back wages, continuity of service and all other attendant benefits.

3. Before the 1st Respondent / Labour Court, the 2nd Respondent management, by filing a written statement, had contended that the Petitioner had sent a resignation letter and pursuant to the same, 12(3) settlement was signed by the Petitioner before the Labour Officer on 02.02.2006 and pursuant to such settlement, the Petitioner had received a sum of Rs. 16,000/- under the receipt dated 02.02.2006 before the Labour Officer and hence, the Petitioner had forfeited his right to re-employment and other benefits. The Petitioner had also agreed not to raise any dispute before any court as per the said settlement dated 2.2.2006 before the Labour Officer and hence, the claim of the Petitioner is not maintainable.

4. Before the 1st Respondent / Labour Court, the Petitioner was examined as WW.1 and on the side of the 2nd Respondent Management, one A. Suban, who was the Manager of the 2nd Respondent Management at the relevant point of time, was examined as MW. 1 and Ex.M1 and Ex.M2 were marked. Ex.M1 is the original receipt and signatures, dated 2.2.2006 and Ex.M2 is the copy of 12(3) settlement, dated 2.2.2006. The 1st Respondent/ Labour Court, relying on the settlement, dated 2.2.2006, had dismissed the industrial dispute raised by the Petitioner by the impugned award. Hence, this Writ Petition has been filed, seeking the relief as stated above.

5. The learned counsel for the Petitioner has contended that the 1st Respondent had failed to consider the evidence of MW.1, who had deposed that the alleged settlement, under Section 12(3) was not witnessed and signed by any witness and that the 2nd Respondent was ready to give employment to the Petitioner and also failed to consider his evidence that the alleged settlement was not entered before the Labour Officer. He would further contend that the resignation letter, based on which, the alleged settlement was entered into between the Petitioner and the 2nd

Respondent, was not produced and marked by the 2nd Respondent before the 1st Respondent and hence, the impugned award is liable to be quashed and consequently, the Petitioner is entitled for the reliefs as prayed for in this Writ Petition.

6. On the other hand the learned counsel for the 2nd Respondent has contended that the Petitioner had entered into a 12(3) settlement and pursuant to the same, he had received a sum of Rs. 16,000/- from the Management and the receipt for the same was also filed before the 1st Respondent under Ex.M1 and therefore, the Petitioner has no locus –standi to raise any industrial dispute before the 1st Respondent that the said settlement entered into between the parties is not genuine and further contend that the Management had obtained his signature by coercion. Considering the said facts, the 1st Respondent had rightly dismissed - the claim of the Petitioner, which warrants no interference by this Court.

7. This court heard the learned counsel on either side and considered their rival submissions and also perused the materials placed on record.

8. On perusal of the entire materials placed on record, it is seen that the resignation letter, based on which the settlement was entered into between the parties, was not produced and marked before the 1st Respondent/Labor Court. Though the said fact is denied by the learned counsel for the 2nd Respondent, on perusal of EX.M2 settlement dated 2.2.2006, it is seen that it is in printed form, containing one page and at the bottom, the signature of Petitioner was found and it was not witnessed and signed by any witness. Like wise, Ex.M1 receipt is also in printed form and signature of the Petitioner was found in Ex.M1.

9. It is further seen from the evidence let in before the 1st Respondent by MW. 1, who was the Manager of the 2nd Respondent Management that in his cross examination, he had deposed that no witness had signed in the 12(3) settlement, Ex.M.2 and the same was not signed in the presence of the Labor

A GOOD MAN DOES NOT ARGUE, HE WHO ARGUES IS NOT A GOOD MAN

Officer and that the Labour Officer was not available at that time and that it was also agreed that the Management would provide re-employment to the Petitioner. The relevant portion of oral evidence of MW.1 is extracted as under:-

Vernacular Matter (Omitted)"

10. Further, this Court also finds no evidence both oral and documentary let in by the 2nd Respondent to disprove the allegations of the Petitioner. On the other hand, as stated above, the Petitioner had let in evidence to substantiate his claim to the effect that there was no witness to Ex.M2, 12(3) settlement, dated 2.2.2006 and the said settlement was not entered into before the Labour Court. Even the evidence let in by MW.1 on behalf of the 2nd Respondent Management that " Vernacular Matter (Omitted)" would go to prove the claim of the Petitioner. As stated above, it was also admitted in his evidence that a copy of the resignation letter, based on which the alleged settlement was arrived at between the parties, was not produced and marked before the Labour Court.

11. For the reasons stated above, in the absence of any material to disprove the allegations of the Petitioner on the side of the 2nd Respondent Management, this Court is of the considered view

that without taking note of the said evidence of MW.1 let in, during his cross examination and the aforesaid facts, the Labour Court had dismissed the claim of the Petitioner, which is erroneous and without jurisdiction and hence, the impugned award is to be rejected. Consequently, though the Petitioner is entitled for reinstatement, with continuity of service, it is just and proper that 50% of back wages can be allowed.

12. In the result, this Writ Petition is allowed in part, with the following directions:-

- i. The impugned award, dated 01.11.2010 made in ID. No. 171 of 2006, on the file of the 1st Respondent, is quashed.
- ii. The 2nd Respondent is directed to reinstate the Petitioner in service with continuity of service.
- iii. The 2nd Respondent is directed to pay 50% of the back wages to the Petitioner, within a period of eight weeks, from the date of receipt of a copy of this order.
- iv. There shall be no order as to costs. ■

Petition partly allowed.

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