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W.P.No.14058 of 2005

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2024

CORAM:

THE HON'BLE **MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

W.P.No.14058 of 2005
and WPMP.No.15375 of 2005

C.R.Kalimuthu

... Petitioner

vs.

1.The Management of
Manar Estate,
Kolakombai Post,
Kolakombai 643 218,
Nilgiris District,
Tamil Nadu.

2.The Labour Court,
Coimbatore.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to quash the order dated 11.02.2003 read with the award dated 07.08.2003, passed by the second respondent, Labour Court, Coimbatore in I.D.No.205 of 2000, after calling for the concerned records from the second respondent and consequently, direct the first respondent to reinstate the petitioner in service with continuity of service, back wages and all attendant benefits.



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For Petitioner : Ms.V.Porkodi
For Respondents : Mr.P.Ragunathan
for M/s.Gopalan & Co.

ORDER

This Writ Petition is filed for a Writ of Certiorarified Mandamus to quash the preliminary award dated 11.02.2003 and the final award dated 07.08.2003, passed by the Labour Court in I.D.No.205 of 2000.

2. The case of the writ petitioner is that the writ petitioner was a workman under the respondent / Management. He joined services on 02.05.1979. Until the year 1995, there was no blemish, whatsoever, in his services. In or about the year 1995, when the petitioner was actively involved in one Trade Union, which did not accept some of the proposals for the Management, charge memorandums came to be issued against the petitioner. The petitioner was all along involved in different tasks, in which the work will be over by 01.30 p.m. While so, suddenly, from 21.08.1995 onwards, the petitioner was directed to dig a channel in a place called



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Olakaalvai. The petitioner has never done such kind of a job and it was a new thing for him no proper instructions as to how much he has to dig every day and in what manner it has to be dug was also not mentioned. It is common knowledge that in the case of this kind of digging of channels etc., workmen will be involved only as a group. In the case of the petitioner, the petitioner was simply directed to go to a particular spot and dig on his own. On complaints that the petitioner's output is lesser than many of the other employees, earlier the petitioner was suspended for one month. Thereafter, when the petitioner was reinstated, he was again deputed to the same Olakaalvai. If the digging of the channel work is necessary for the Management, they could have, in the meanwhile, completed the work by employing the other workmen. Thus, it can be seen that just to victimize the petitioner, he was deputed to the very same work of digging the Olakaalvai. In respect of the other persons, they were all working as a group. While so, the impugned charge memorandum dated 19.03.1996 was issued against the workman and he has duly submitted his explanation stating that the entire action is nothing but victimization. Earlier, he also requested the supervisors to change his work. Despite the same, he has been asked to do the very same



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work, which has also been done to the best of his ability.

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3. An enquiry officer was appointed, and he conducted a domestic enquiry on 23.09.1996. On behalf of the Management, three witnesses were examined, and they were cross-examined, and the workman had examined himself. Thereafter, the enquiry officer returned his findings, and the charges were proved. In the second show cause notice itself, the Management had formed an opinion that the petitioner has to be terminated from service and issued a show cause notice dated 22.05.1996, straightaway proposing the punishment, and the petitioner submitted his explanation. Thereafter, the impugned order of termination was passed. Aggrieved by the said order, the petitioner raised a dispute in which no conciliation could be arrived at. Thereafter, the preliminary award came to be passed on 11.02.2003.

4. It can be seen that the Labour Court did not consider the fact that the enquiry was completed on the same day and also even while issuing the show cause notice, the employer proposed the punishment. As such, the



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Labour Court ought to have held that the enquiry was not fair and proper.

Even otherwise, the Labour Court is duty-bound to exercise its power under Section 11A of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act" in short) to verify whether there was adequate evidence to prove the charges and whether the removal from service was justified or not and also that the Labour Court did not consider the aspect of victimization. Even, concerning the question of punishment, the Labour Court considered the fact that the punishment should be a deterrent to the other workmen and did not consider the justifiability with proper perspective. Hence, the Writ Petition.

5. The Writ Petition is resisted by the respondent / Management. It is not that the charge memorandum was straightaway issued against the workman. Periodically, now and then, the workman was warned that he was not at all doing the work. As a matter of fact, before the issue of the present charge memorandum, two minor punishments of suspension was imposed on the petitioner for not doing the very same work to the quantity expected of him. Therefore, the present charge memorandum was issued. Even during



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the domestic enquiry, the daily reports of the Management witnesses were duly marked. It can be seen that on several days, the petitioner did not even show any progress and his total output was not even 10% of the other workmen. It is incorrect to state that all the other workmen were deployed as a group. Two other workmen like the petitioner were also employed individually and their output was much greater than that of the petitioner. While the outputs were 1.68 units and 1.80 units etc., with respect to the other employees, the petitioner's output was 0.16 units, which is not even 10% of that of the other employees. Only considering all the above and after giving an opportunity to duly cross-examine the witnesses, the enquiry officer returned his findings and only therefore, the second show cause notice was issued and thereafter, the petitioner was imposed with a punishment.

6. The Labour Court considered the issue in detail and by the preliminary enquiry, found that the process of enquiry is fair and proper. Thereafter, it further took up the issue for the exercise of power under Section 11A of the Act and has duly found in Paragraphs 8 to 10 of the



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award that there is ample evidence for proof of the charge and in Paragraph 11, it has applied its mind that the punishment is not disproportionate to the delinquency complaint and thus, rejected the claim of the petitioner.

7. Heard Ms V.Porkodi learned counsel appearing for the petitioner / Workman and Mr P.Ragunathan, learned counsel appearing on behalf of the first respondent / Management.

8. The learned counsel for the petitioner / Workman would submit that firstly, the Labour Court ought to have considered two aspects concerning the fairness and propriety of the domestic enquiry. In this case, everything was done on the same day in undue haste. Considering the workman was only a manual labour, this enquiry should have been held as a farce of an enquiry. She would further contend that when, in the show cause notice itself they have concluded that they are going to impose the punishment, then the very purpose of the second show cause notice is lost and therefore, the procedure adopted in the domestic enquiry is not fair and proper. Coming to the final award, she would submit that when the



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workman was put into a new kind of employment, without mentioning the output per day, and keeping this very same work pending even during the suspension period of the workman and requiring him to go and perform the same work again and again, despite he complaining that he did not know the particular type of the work and he did not have the experience in doing the work and not even considering his prayer to employ him along with the group of workman, the Labour Court ought to have seen that this was a case of victimization. When the removal or discharge from the service amounts to victimization and the punishment is unduly harsh on the petitioner who had been providing unblemished service from the year 1979, the Labour Court ought to have interfered in this matter, in the exercise of its power under Section 11A of the Act.

8. In support of her submissions, the learned counsel would rely upon the judgement of the Hon'ble Supreme Court of India in ***Colour-Chem Ltd., vs. A.L.Alaspurkar and Others***, reported in [(1998) 3 SCC 192]. More fully, relying upon Paragraph 13, where the Hon'ble Supreme Court of India has delineated the meaning of the term 'victimization' and also considered



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the issue of imposing grossly disproportionate punishment, after victimizing the workman, which paragraph is hereunder extracted:

"13. The term "victimisation" is not defined by the present Act. Sub- 9 section (18) of Section 3 of the Act which is the definition section lays down that:

"Words and expressions used in this Act and not defined therein, but defined in the Bombay Act, shall, in relation to any industry to which the provisions of the Bombay Act apply, have the meanings assigned to them by the Bombay Act; and in any other case, shall have the meanings assigned to them by the Central Act".

Bombay Act is the Bombay Industrial Relations Act, 1946 and the Central Act is the Industrial Disputes Act, 1947 as laid down by definitions Sections 3(1) and 3(2) of the Act. The term "victimisation" is defined neither by the Central Act nor by the Bombay Act. Therefore, the term "victimisation" has to be given general dictionary meaning. In Concise Oxford Dictionary, 7thEdn.. the term "victimisation" is defined at p. 1197 as follows:

"make a victim; cheat; make suffer by dismissal or other exceptional treatments."



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Thus if a person is made to suffer by some exceptional treatment it would amount to victimisation. The term “victimisation” is of comprehensive import. It may be victimization in fact or in law. Factual victimisation may consist of diverse acts of employers who are out to drive out and punish an employee for no real reason and for extraneous reasons. As for example a militant trade union leader who is a thorn in the side of the management may be discharged or dismissed for that very reason camouflaged by another ostensibly different reason. Such instances amount to unfair labour practices on account of factual victimisation. Once that happens clause (a) of Item 1 of Schedule IV of the Act would get attracted, even apart from the very same act being covered by unfair labour practices envisaged by clauses (b), (c) (d) and (e) of the very same Item 1 of Schedule IV. But it cannot be said that clause (a) of Item 1 which deals with victimisation covers only factual victimisation. There can be in addition legal victimisation and it is this type of victimisation which is contemplated by the decision of this Court in Hind Construction. It must, therefore, be held that if the punishment of dismissal or discharge is found shockingly disproportionate by the Court regard being had to the particular major misconduct and



the past service record of the delinquent or is such as no reasonable employer could ever impose in like circumstances, it would be unfair labour practice by itself being an instance of victimisation in law or legal victimisation independent of factual victimisation, if any. Such an unfair labour practice is covered by the present Act by enactment of clause (a) of Item 1 of Schedule IV of the Act as it would be an act of victimisation in law as clearly ruled by this Court in the aforesaid decision. On the same lines is a latter decision of this Court in the case of Bharat Iron Works v. Bhagubhai Balubhai Patel wherein a Bench of three learned Judges speaking through Goswami, J. laid down the parameters of the term “victimisation” as understood in labour laws and as contemplated by industrial jurisprudence. It has been observed that ordinarily a person is victimised if he is made a victim or a scapegoat and is subjected to persecution, prosecution or punishment for no real fault or guilt of his own. If actual fault or guilt meriting punishment is established, such action will be rid of the taint of victimisation. The aforesaid observations obviously refer to factual victimisation. But then follows further elucidation of the term “victimisation” to the following effect: (SCR Headnote)



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“Victimisation may partake of various types, as for example, pressurising an employee to leave the union or union activities, treating an employee in a discriminatory manner or inflicting a grossly monstrous punishment which no rational person would impose upon an employee and the like.”

The aforesaid observations in this decision fall in line with the observations in the earlier decision of this Court in Hind Construction¹. Consequently it must be held that when looking to the nature of the charge of even major misconduct which is found proved if the punishment of dismissal or discharge as imposed is found to be grossly disproportionate in the light of the nature of the misconduct or the past record of the employee concerned involved in the misconduct or is such which no reasonable employer would ever impose in like circumstances, inflicting of such punishment itself could be treated as legal victimisation. On the facts of the present case there is a clear finding reached by the Labour Court and as confirmed by the Industrial Court that the charges levelled against the respondent-delinquents which were held proved even though reflecting major misconducts, were not such in the light of their past service record as would merit imposition of punishment of



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dismissal. This factual finding would obviously attract the conclusion that by imposing such punishment the appellant-management had victimised the respondent-delinquents. Imposition of such a shockingly disproportionate punishment by itself, therefore, has to be treated as legal victimisation apart from not being factual victimisation as on the latter aspect the Labour Court has held against the respondent-workmen and that finding has also remained well sustained on record. Thus it must be held that the management even though not guilty of factual victimisation was guilty of legal victimisation in the light of the proved facts which squarely attracted the ratio of the decisions of this Court in Hind Construction and Bharat Iron Works. It is easy to visualise that no reasonable management could have punished a delinquent workman who in the late hours of the night shift by about 3.30 a.m. had gone to sleep keeping the machine in a working condition especially in the absence of any gross misconduct reflected by the past service record, with the extreme penalty of dismissal. It is also interesting to note that this was a peculiar case in which the Plant-in-Charge found during his surprise visit at 3.30 a.m. in the early hours of the dawn the entire work force of 10 mazdoors and 2 operators like the respondents and the supervisor all asleep. It is also pertinent to note that



so far as the 10 mazdoors were concerned they were let off for this very misconduct by a mere warning while the respondents were dismissed from service. It is, of course, true that the respondents were assigned more responsible duty as compared to the mazdoors, but in the background of the surrounding circumstances and especially in the light of their past service record there is no escape from the conclusion that the punishment of dismissal imposed on them for such misconduct was grossly and shockingly disproportionate, as rightly held by the Labour Court and as confirmed by the revisional court and the High Court. By imposing such grossly disproportionate punishment on the respondents the appellant-management had tried to kill a fly with a sledgehammer. Consequently it must be held that the appellant was guilty of unfair labour practice. Such an act was squarely covered by clause (a) of Item 1 of Schedule IV of the Act being legal victimisation, if not factual victimisation. The ultimate finding of the Labour Court about maintainability of the complaint can be supported on this ground. The second point is answered in the affirmative against the appellant and in favour of the respondent-workmen."



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9. The learned counsel would also rely upon Paragraphs 9 and 12 of the judgement of this Court in ***C.Kumaraswami vs. Third Additional Labour Court, Madras***, reported in [(1993) 1 LLN 785], which is extracted hereunder:

"9.Even if it can be stated that the petitioner has been negligent n not taking the dip reading at two points, that will not amount to gross negligence warranting severe action when it is admitted that it is not possible by suh checking to discover the shortage or the false fittings. Thus, the findings on the question of negligence as well as collusion are unsustainable."

"12.The contention of the petitioner that the past record of service of the petitioner has not been taken into account while awarding punishment and, therefore, the order of termination is vitiated is well founded. In A.R.C. Engineering Works v. Somarajan [1984 - II L.L.N. 607], a Division Bench of this Court held that there the order of dismissal baldly recited that the past record of service of the workman had been looked into and the particulars of the same were not made known, such generalised statement would not come within the ambit of the doctrine of "substantial



compliance" and the management should disclose as to what are the particulars of past record which it had taken into account. The Bench repeated the argument advanced by the management that on the findings that the charges proved were serious and grave in nature and there could be an order of dismissal irrespective of whatever be the past record. The Bench observed that it would be inappropriate to proceed on such a basis."

10. In view of the paragraphs relied upon above, the learned counsel contends that the Labour Court, while considering the justifiability of dismissing the petitioner, ought to have taken the long number of years of service put in by the petitioner from the year 1979 up to 1995. The Labour Court has not exercised its jurisdiction as per Section 11A of the Act, and therefore, this Court should interfere.

11. Per contra, Mr P.Ragunathan, the learned for the first respondent / Management would submit that in this case, there is no question of any victimization. Proven misconduct is antithetical to the very contention of victimization. In support of his contention, he would rely upon Paragraphs



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14 to 18 of the judgement in ***Bharat Forge Co. Ltd., vs. Uttam Manohar,*** ***reported*** in [(2005) 2 SCC 489], in which the judgement cited by the learned counsel for the workman i.e. ***Colour Chem Ltd., (cited supra)*** was also discussed. He would further submit that in this case, if the petitioner/workman was victimized when he was discharged from service, it took 1 year and 7 months even to raise the industrial dispute. During the conciliation, without prejudice to their rights, the Management offered to reinstate him into service, however, without back wages. The petitioner did not avail the said offer and the same is duly recorded in the failure report, which is submitted by the Labour Officer. Even after the failure of the conciliation report, the workman took more than a year to file a petition before the Labour Court under Section 2A of the Act. Even, when the award went against him, he took more than a year to file the writ petition before this Court. Therefore, all along there have been delays and latches on the part of the workman and therefore, he has to be non-suited on that ground also.

12. Further, by taking this Court through the enquiry report, he would



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submit that due opportunity has been granted to the workmen to cross-examine the Management witnesses 1 to 3 and the workman has duly cross-examined during the enquiry. Thereafter, from the enquiry report, it can be seen that the workman did not even perform 10% of the work done by the others and his output was 0.16 units and only in that context, a willful slowing down of the work has been held to be proved by the enquiry officer, which was accepted by the disciplinary authority. Along with the second show cause notice, the enquiry report is duly forwarded and merely because punishment is proposed, that by itself would not vitiate the domestic enquiry. In this case, the labour Court, after due application of mind, has passed the preliminary award holding that domestic enquiry is fair and proper. Once the domestic enquiry is held to be fair and proper, thereafter, if only the punishment is shockingly disproportionate, the Labour Court could have interfered in the matter. In this case, considering the seriousness of the charge, the Labour Court has duly applied its mind and has exercised its discretion by holding that the punishment is appropriate and therefore, this Court under Article 226 of the Constitution of India, cannot interfere with the findings of the Labour Court. Therefore, he would submit that in any



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event, now that the workman has attained the age of superannuation pending the writ petition, he would be entitled to the gratuity considering the number of years he has put in. He would submit that the nature of charges in this case, will not come within the mischief of Section 4(6) of the Payment of Gratuity Act, 1972 and therefore, the management has not forfeited the gratuity partially or wholly. Therefore, the Management is willing to pay the gratuity from 02.05.1979 till date of his dismissal from service that too with his statutory interest, which is permissible.

13. I have considered the rival submissions made on either side and perused the material records of the case.

14. The question which arises for consideration is (i) whether or not the preliminary award passed by the Labour Court is liable to be set aside; (ii) whether the final award passed by the Labour Court has been passed in due exercise of jurisdiction as per Section 11A of the Act.

15. Considering the preliminary award, there are two questions that



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are raised. Firstly, it is said that the enquiry proceedings are over in one single day. In this case, it is not as if the entire domestic enquiry itself is over in a single day. A charge memo has been issued, the due time has been granted for the filing of an explanation and a domestic enquiry officer was appointed, it is only the examination of witnesses which happened in one single day. On a perusal of the proceedings of the domestic enquiry officer, it clearly demonstrates the granting of due opportunity, the workman has duly cross-examined the Management witnesses and has also deposed himself. All the documents were duly marked. Therefore, merely because the examination of the witnesses happened in one single day, this is not the case in which this Court can hold that the enquiry was conducted in undue haste and without granting proper opportunity.

16. As far as the second contention regarding the propriety of enquiry is concerned, it is true that in the second show cause notice, the punishment was also mentioned. However, it is relevant to extract the relevant portion of the second show cause notice, which reads as under:

"மேற்குறிப்பிட்ட குற்றப்பத்திரிகையின் மீது 29.03.96 தேதியன்று



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நடத்தப்பட்ட விசாரணையின் குறிப்புகளும் விசாரணை அதிகாரியின் கண்டபிடிப்பும் இத்துடன் கொடுக்கப்படுகிறது. விசாரணை அதிகாரியின் கண்டுபிடிப்புகளையும் உம்மீது ருசவாகியுள்ள பெரிய ஒழுங்கீன நடத்தைகளுடைய கடுமையையும் மேலும் குற்றத்தின் பொறுப்பை குறைக்கின்ற சந்தர்ப்பங்கள் இல்லாததை மனதில் கொண்டு உமக்கு நிரந்தரமாக பணியிலிருந்து நீக்கும் தண்டனை அளிக்க உத்தேசிக்கப்பட்டுள்ளது."

17. Thus, it can be seen that it is not a final conclusion that the Management had arrived at. Even in the second show cause notice, the proposed punishment should be avoided, and it should be open-ended. However, merely because the punishment has been proposed does not mean that the Management has concluded even before hearing the workman. A reading of the show cause notice in total would not give any such meaning in the present case. Therefore, merely mentioning a proposed punishment will not itself vitiate the enquiry proceedings, and thus the Labour Court has rightly held that there is no other infirmity or violation of principles of natural justice while conducting the domestic enquiry. Once the enquiry is held to be fair and proper, then, as per the judgement of the Hon'ble Supreme Court of India in *Firestone Tyre and Rubber Co. of India (P)*



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Ltd., vs. Workmen, reported in [(1973) 1 SCC 813], the Labour Court has to see whether there is adequate evidence for the charge which is made against the workmen and whether the finding of the domestic enquiry officer is based on proper evidence; it should not be based on improper evidence. Further, the Labour Court ought to have seen whether the punishment is justified and is not, unduly harsh or disproportionate to the charge levelled.

19. Considering the evidence on the file of the domestic enquiry officer, it can be seen that the Management witnesses MW.1 to MW.3 were examined. This Court also perused the original exhibits from Ext.W.9 to Ext.W.18, which were all exhibited in the domestic enquiry. From the same, it can be seen that repeated warnings have been issued to the workman. It has been seen that on particular days the workman showed no progress at all, and he was informed on three such occasions. Therefore, in this case, it can be seen that there is adequate and proper evidence about the charge in question. As far as the contention regarding victimization, it is true that the Management has been involved in the exercise of assigning new work to the workman. It is further proved that even when the workman was suspended



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for two months earlier twice, the said work was not continued through any other employee and it is kept as if it is meant for the petitioner/workman.

However, at the same time, in the reply given by the workman, he has only pleaded that he has not been specifically put on notice as to how much work he has to do every day. In the light of the said explanation, one can understand that if the workman had done part of the work, he is short of the work which is done by the others. In this case, the difference is too large and alarming. The enquiry officer has given a categorical finding that the work performed by the workman is not even 10% of that of the other workmen. The Labour Court has also considered the same in the exercise of its power under Section 11A of the Act. Therefore, though in this case, the certain conduct of the Management in assigning a new work and keeping it for the same workman to perform points towards suspicion of victimization, at the same time, the conduct of the workman is also equally contributing and it cannot be said that, despite the effort made by the workman, he has been victimized. When the workman is also putting his foot down and is adamant that he will not perform the work, the plea of victimization cannot be considered in isolation. The victimization should be considered by taking



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into account the conduct of both sides.

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20. Therefore, in this case, I am unable to come to the rescue of the workman by holding that the action of the Management amounts to victimization. Now, once it is held that it does not amount to victimization, when the charges are made for 38 days when meagre output is given, despite earlier suspensions twice, and when the Labour Court considered the same and held that the punishment is not disproportionate, I am unable to interfere by holding that the punishment is unduly harsh or disproportionate to the misconduct. Therefore, I have no other option than to uphold the award of the Labour Court. However, the nature of the charge is extracted above. It does not amount to any offence involving moral turpitude, riotous or disorderly conduct, or any other act of violence. It cannot also be said that any damage, loss or destruction of property was caused to the employer, since even when the petitioner was suspended for one month, the work was not carried out by engaging any other workmen.

21. Therefore, as rightly pointed out by the learned counsel on either



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side, this case will not fall within the mischief of Section 4(6) of the Payment of Gratuity Act. Therefore, the petitioner will be entitled to gratuity from his date of joining into service i.e. 02.05.1979 till the date of his dismissal from service i.e 08.06.1996, with further statutory interest at a rate of 10% per annum to the maximum extent permissible. The respondent / Management shall calculate the same and pay to the workman within a period of four (4) weeks from the date of receipt of a copy of this order, considering the long pendency of the Writ Petition and the time elapsed. It is made clear that if the Management does not pay the entire amount within four weeks as directed, thereafter the rate of interest shall be 12%.

22. In view of the above directions, this Writ Petition stands disposed of. No Costs. Consequently, the connected miscellaneous petition is closed.

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Neutral Citation: Yes / No
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