

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2015

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND

THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.A.No.630 of 2015

G.Kalaivani

.. Appellant

Vs.

1. The Management of Thirumagal Mills Ltd.,
Katpadi Road,
Gudiyatham,
Vellore District-632 602.
rep by its Assistant General Manager (Commercial)
2. The Presiding Officer,
Labour Court,
Vellore.

.. Respondents

This writ appeal is preferred under Clause 15 of the Letters Patent against the order of this court dated 01.02.2012 made in W.P.No.9693 of 2011.

presented under Article 226 of the constitution of India to issue a writ of certiaori calling for the records of the first respondent in ID.No.61 of 2008 and quash the award dated 1.11.2010.

For appellant Mr. J. Muthukumaran

For R1

Mr. P. Raghunathan
for M/s. T.S. Gopalan & Co.

JUDGMENT

(Judgment of the Court was made by SATISH K. AGNIHOTRI, J.)

The instant intra-Court appeal is directed against the order dated 01.02.2012 passed in W.P.No.9693 of 2011.

2.1 The brief facts, in nutshell, are that the appellant/workman was a permanent worker drawing a pay of Rs.5,332/-. She was terminated from service on 19.01.2006 on the allegation of absence from duty from 01.05.2004 to 12.05.2004. Being aggrieved, she raised a dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 before the Principal Labour Court, Vellore District,

Vellore (for short "the Labour Court").

2.2 The Labour Court, held that since the appellant/workman refused to accept the Voluntary Retirement Scheme as announced by the first respondent, she was removed from service on the alleged ground of continuous absence from duty from 13.05.2004 to 24.06.2005. The Labour Court also found the enquiry as vitiated. Accordingly, the termination of the appellant/workman was set aside. However, having regard to the fact that the appellant/workman was not given notice and also retrenchment allowance, the Labour Court held that her last drawn salary being Rs.5,332/-, she would earn a sum of Rs.63,984/- per year and Rs.3,81,904/- for the remaining period of six years and as such, is entitled to a monetary compensation of Rs.5 lakhs in lieu of reinstatement. Feeling aggrieved, the Management has come up with the instant writ petition.

2.3 The learned Single Judge confirmed the finding of the Labour Court to the effect that the absence of the appellant/workman from 13.05.2004 to 11.04.2005 was not unauthorised for the fact that she reported for duty, but was not permitted to do so. She was punished for the fact that more than 400 workers had accepted the Voluntary Retirement Scheme, except two, including the petitioner. Thus, the allegation of wilful absence was rightly held by the Labour Court as not proved. The learned Single Judge, making re-calculation on the basis of the fact that the appellant had only 4 years of service, held as under:

"13. Today, there is no dispute about the fact that the second respondent had only 4 more years of service. Therefore, by taking the remaining period of service as 6 years, the Labour Court committed the first mistake. The Labour Court has also not given any reason for awarding an ad hoc compensation of about Rs.1,18,096/-, so as to make the total amount payable as Rs.5 lakhs. This is the second mistake committed by the Labour Court. If these two mistakes are corrected, the second respondent would be eligible to the following amounts:-

1	Gratuity	Rs.68,000.00
2	Salary for remaining service of 4 years	Rs.2,55,936.00
3	Outstanding wages	Rs.1,000.00
4	Lay off wages	Rs.10,000.00
5	Bonus	Rs.1,000.00
6	Unavailed leave wages	Rs.2,000.
		Rs.3,37,936.00

14. Taking into account the fact that reinstatement is not possible, for the reasons stated by the Labour

Court, which remain unchallenged by the second respondent, the Labour Court could have awarded only a sum of Rs.3,37,936/-, even if full salary for the remaining period of service, gratuity, lay off wages, bonus, leave wages etc., had been calculated. In view of the fact that the second respondent would have received only a sum of Rs.1,03,000/-, if she had accepted the voluntary retirement scheme in the year 2004 along with hundreds of workers and also in view of the fact that the petitioner-Mill has been closed, full back wages need not be awarded to the second respondent. An ad hoc amount of Rs.3,00,000/-, in my considered view, would place the case of the second respondent on a better position than the other workmen, but at the same time, would not make her gain an extraordinary advantage. This amount would also put the management in the right place, in the light of the findings recorded above."

3 The appellant/workman has come up with the instant intra-Court appeal basically against the reduction of the monetary compensation from Rs.5 lakhs to Rs.3 lakhs. On other aspects, i.e., regarding the finding of lack of proof of wilful absence, there is no challenge as the Management has not come up with any appeal. The learned Single Judge has rightly reduced the compensation to Rs.3 lakhs, as the total amount as per the calculation comes to around Rs.3,37,936/- on the basis that if she was allowed to work for full period with full salary. The grant of Rs.5 lakhs by the Labour Court was not based on any sound principle and reasons. We do not find any error in the order passed by the learned Single Judge which is sought to be impugned in the instant appeal.

4 Resultantly, the writ appeal stands dismissed. No costs.

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

cad

To

The Presiding Officer
Labour Court, Vellore

1 cc to M/s.T.S. Gopalan and Co, sr. 29036

1 cc to Mr.J. Muthukumaran, Advocate, Sr. 29570

W.A.No.630 of 2015

TEJ (CO)

kk 25/6