

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 23.03.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.16946 of 2013

R.MUTHURAMALINGAM

... PETITIONER

Vs

1. THE PRESIDING OFFICER
LABOUR COURT,
COIMBATORE-641 018.

2. THE MANAGEMENT
SRI VENKATESA MILLS LTD
PALANI ROAD S.V.MILLS POST
UDUMALPETTAI-642 128
TIRUPPUR DISTRICT.

... RESPONDENTS

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, to call for the concerned records from the first respondent, quash the Award passed by the first respondent Labour Court in I.D.No.354 of 2001 dated 24.12.2012 in so far as awarding compensation of Rs.6 00 000/- in lieu of reinstatement and back wages interest and consequently direct the second respondent to reinstate the petitioner with full back wages continuity of service and all other attendant benefits and award costs.

For Petitioner : Mr.C.K.Chandrasekkar

For Respondents : Court - R1

Mr.S.Jayaraman - R2

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O R D E R

Heard Mr.C.K.Chandrasekkar, learned Counsel appearing for the petitioner and Mr.S.Jayaraman, learned counsel appearing for second respondent and with the consent of the counsel appearing on either side, the Writ Petition is taken up for final disposal.

2.The petitioner/workman has filed this Writ Petition to quash the Award passed by the Labour Court, Coimbatore in

I.D.No.354 of 2001 dated 24.10.2012, in so far as it awards compensation of Rupees Six Lakhs in lieu of reinstatement with backwages, continuity of service and other attendant benefits.

3.The petitioner was a permanent employee of the second respondent Management having been appointed on 23.08.1974. During 1999, the petitioner was issued with show cause notices alleging that he has given less production during the months of January, February and March, 2000. Further allegation was that the petitioner used red colour tip on 10.04.2000, instead of orange colour tip for two cones containing 60 counts. As the petitioner's explanation was found to be not satisfactory by the Management, domestic enquiry was conducted.

4.The petitioner states that the enquiry conducted was not fair and proper. Ultimately, the petitioner was dismissed from service on 25.11.2000. Questioning the same, the petitioner raised a dispute which was taken on file as I.D.No.354 of 2001. The preliminary issue as to whether the domestic enquiry was conducted in a fair and proper manner, was considered by the Labour Court, an order was passed holding that the domestic enquiry was not conducted in fair and proper manner and the respondent Management filed a Writ Petition, challenging the said order in W.P.No.21638 of 2010, which was dismissed, as against which a Writ Appeal was filed in W.A.No.137 of 2014, which was also dismissed and it is only thereafter, the Labour Court took up the matter for adjudication. Ultimately, the Award came to be passed on 24.12.2012, i.e. after nearly 12 years, after the dispute was raised.

5.It is not in dispute by either side that the Labour Court has elaborately considered the oral and documentary evidence and came to the conclusion that the order of dismissal passed against the petitioner is not in accordance with law and liable to be set aside. The Management has not challenged that part of the findings recorded by the Labour Court. Therefore, there is no difficulty in holding that the petitioner has been exonerated of the charges and the order of dismissal stood set aside.

6.While moulding the relief which has been granted to the petitioner, the Labour Court came to the conclusion that the petitioner will attain the age of superannuation on 28.02.2013 i.e. within a short time from the date on which the Award will be pronounced and therefore the question of reinstatement does not arise and awarded a sum of Rs.6,00,000/-, as compensation, in lieu of all claims made by the petitioner.

7.So far as the monthly salary which the petitioner claims to have drawn, the Labour Court found that the petitioner was not gainfully employed and he is supporting his

family, after selling the house property. With regard to the last drawn wages, the Labour Court arrived at Rs.4,688/-, after taking into consideration the Pay Slip marked as Ex.W9. The petitioner is aggrieved by that portion of the Award, by restricting the relief granted at Rs.6,00,000/-, as full settlement towards the claims made by the petitioner.

8. After hearing the learned counsels for the parties and perusing the materials placed on record, this Court is of the firm view that the findings recorded by the Labour Court in paragraph No.22 of the Award, is perverse. The Labour Court lost sight of the important fact that the Industrial Dispute was raised in the year 2001 and for no fault of the petitioner it had been dragged on for nearly 12 years and partly attributable to the Management also, since they contested the correctness of the preliminary Award passed by the Labour Court by filing a Writ Petition and Writ Appeal and only after those cases were dismissed, the Labour Court was able to proceed further. Therefore, the delay in disposal of the matter cannot be a ground to deny the relief to the petitioner/workman. The observation that within a short period of time after the Award is passed, the petitioner will attain the age of superannuation, is no ground to pass an Award of compensation in lieu of other reliefs.

9. On this aspect, it would be beneficial to rely upon the decision of the Hon'ble Supreme Court in the case of DEEPALI GUNDU SURWASE v. KRANTI JUNIOR ADHYAPAK MAHAVIDYALAYA & ORS [(2013) 10 SCC 324]. The Hon'ble Supreme Court after elaborately considering the issue involved in the said case, took note of the various decisions on the point as to what should be the award to be passed by the adjudicating authority in cases where wrongful termination of service is set aside. The Hon'ble Supreme Court held that in cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule and while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

10. In the instant case, the Labour Court recorded a clear finding that the order of dismissal is illegal. Therefore, the natural consequence or the normal rule would be an award of reinstatement with continuity of service and back wages. So far as, petitioner's attaining the age of superannuation is concerned, it is of little consequence for passing such an Award and in any event that cannot be a ground to pass an award of compensation only.

11.As already pointed out, the reasons assigned by the Labour Court is perverse. One more important aspect that has to be noted is that the petitioner joined the service of the respondent Management as a permanent employee in 1974 and continued as such till 2000, when he was dismissed from service. Even as per the Management, the charge against the workman is that he has not shown effective production for three months during the year 2000, which has resulted in the three show cause notices being issued and ultimately being dismissed from service. Therefore, even assuming that the charges are found to be proved, punishment of dismissal was grossly disproportionate. However, in the instant case, the charges are held to be not proved and the dismissal order has been set aside.

12.In the light of the above, the Writ Petition is to be allowed, the impugned Award is to be quashed in so far as it restricts the relief to compensation of Rs.6,00,000/-. It is submitted by the learned counsel for the respondent/Management that the amount of Rs.6,00,000/- has already been paid, which has been accepted by the petitioner, under protest and without prejudice to his rights.

13.Accordingly, the impugned award passed by the Labour Court is modified to the following effect:

(i)The Management is directed to notionally reinstate the petitioner/workman with continuity of service and all attendant benefits which would accrue there from.

(ii)So far as back wages for the period of non-employment i.e. from 2000 to 2013 is concerned, the amount of Rs.6,00,000/-paid to the petitioner shall stand adjusted towards the full and final settlement of the claim for back wages and the petitioner cannot claim any further amount towards backwages.

(iii)Since this Court has modified the Award to one of reinstatement with continuity of service, obviously, the petitioner is entitled for retirement benefits, which shall be computed based on the length of service from 1974 till 2013 i.e. till the date of superannuation and if any contribution has to be deducted from the petitioner, the same shall be deducted after calculating the total dues payable. The petitioner also is agreeable for such course being adopted.

(iv)It is made clear that the contribution which could be deducted from the payment to be made to the petitioner shall be only the actual contribution, but not towards any interest or damages, and if payable, the Management shall be liable to pay those amounts.

The Writ Petition is partly allowed on the above terms.
No costs.

Sd/-
Assistant Registrar(CS VII)

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Sub Assistant Registrar

rpa

To

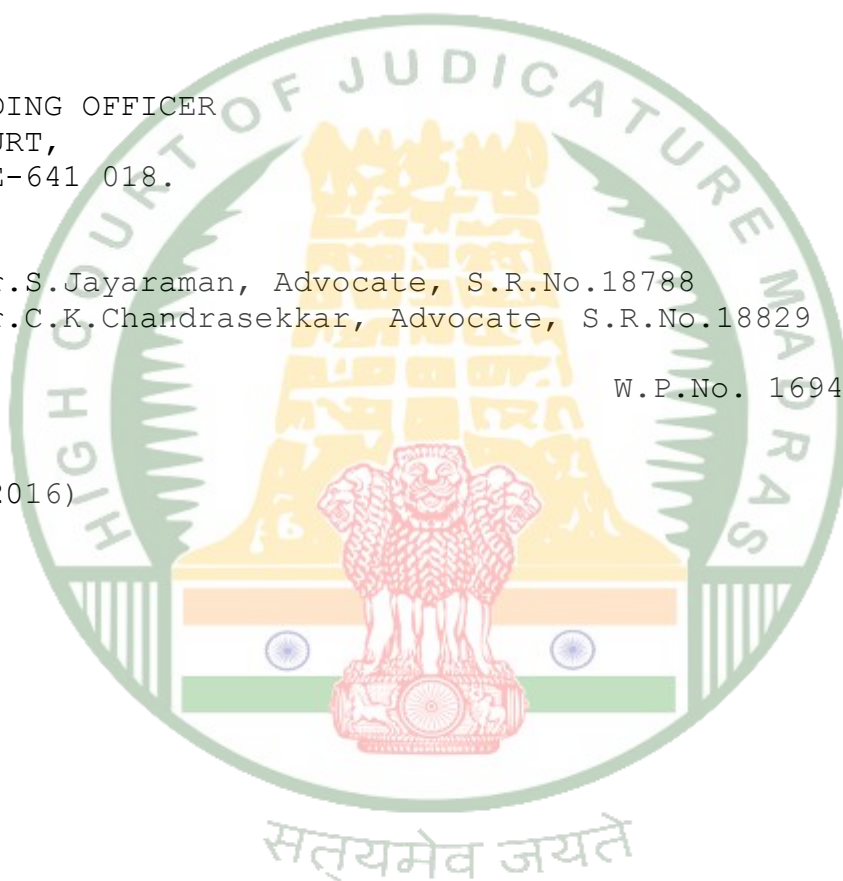
THE PRESIDING OFFICER
LABOUR COURT,
COIMBATORE-641 018.

+1cc to Mr.S.Jayaraman, Advocate, S.R.No.18788

+1cc to Mr.C.K.Chandrasekhar, Advocate, S.R.No.18829

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AK(CO)
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