

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2017

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

W.P.Nos.16866 and 3419 of 2003

and

W.P.M.P.No.21077 of 2003

In W.P.No.16866 of 2003:-

The Management of
Rajshree Sugars & Chemicals Limited,
Varadaraj Nagar,
Vaigai Dam Post,
Theni District. ... Petitioner

... Vs ...

1. The Presiding Officer,
Labour Court, Madurai.
2. S.Kandaboopathy (Deceased)
3. Sornaboopathy
4. Selvanayagi (Minor)
5. Keerthi (Minor)
(Minor respondents 4 & 5 rep. by
Mother and natural Guardian the third
respondent)
6. S.K.Shanmugaraj
7. Thayammal ... Respondents
(Respondents 3 to 7 substituted as legal
heirs of deceased R.2 as per order of this
Court dated 03.12.2009 in W.P.M.P.No.81 of
2008 in W.P.No.16866 of 2003).

Prayer:- Writ Petition filed under Article 226 of the
Constitution of India praying for the issuance of a writ of
Certiorari, calling for the records of the first respondent in
I.D.No.80 of 1997 and quash its Award dated 07.02.2001.

For Petitioner : M/s.T.S.Gopalan & Co.
For R-1 : Mr.S.Pattabiraman,
Government Advocate

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In W.P.No.3419 of 2003:-

1. S.Kandaboopathy (Deceased)
2. Sornaboopathy
3. Selvanayagi (Minor)

4. Keerthi (Minor)

(Minor petitioners 3 & 4 rep. by their Mother and natural Guardian the second petitioner)

5. S.K.Shanmugaraj

6. Thayammal

... Petitioners

(Petitioners 2 to 6 substituted in the place of the deceased first petitioner as per order of this Court dated 31.08.2007 in W.P.M.P.No.4149 of 2004 in W.P.No.3419 of 2003).

.. Vs ..

1.The Management of
Rajshree Sugars & Chemicals Limited,
Varadaraj Nagar,
Vaigai Dam Road,
Periyakulam Taluk,
Madurai District.

2.The Presiding Officer,
Labour Court, Madurai.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari, to call for the records made in the impugned award in I.D.No.80 of 1997, dated 07.02.2001 on the file of the Labour, Court Madurai, the second respondent mill herein, and quash the aforesaid impugned award in I.D.No.80 of 1997 dated 07.02.2001.

For Petitioners : Mr.R.Thanjan
For R-1 : M/s.T.S.Gopalan & Co.
For R-2 : Mr.S.Pattabiraman,
Government Advocate

सत्यमेव जयते

COMMON ORDER

S.Kandaboopathy (First petitioner in W.P.No.3419 of 2003) was employed as Cane-Assistant in Rajshree Sugars and Chemicals Limited (Petitioner in W.P.No.16866 of 2003) hereinafter would be referred to as the Management, and was posted at Thevaram. The Management transferred him to Andipatti in February 1995 where he joined duty on 24.02.1995. Kandaboopathy went on leave from 17.03.1995 without any intimation. Thereafter, he sent a telegram on 01.04.1995 seeking medical leave from 01.04.1995 to 09.04.1995. Thereafter, it is Kandaboopathy's case that on 10.04.1995 he reported to duty, but the Vice President of the company (Management) demanded his resignation which he did not give. According to him, he was asked by the Vice President to join duty soon after he receives communication from the Management.

Kandaboopathy received a show cause notice dated 26.05.1995. According to the Management, they received complaints against Kandaboopathy from Cane growers and the Management started conducting enquiry on the complaints. The Management sent a show cause notice dated 26.05.1995 (Ex.W.5) calling upon Kandaboopathy to explain his continued absence from duty. Kandaboopathy did not respond to the said show cause notice. Kandaboopathy sent a lawyer's notice dated 20.02.1996 (Ex.W.9) denying the allegations in the show cause notice. It may be pertinent to state that in the lawyer's notice, Kandaboopathy has not alleged that he reported to duty on 10.04.1995 and that he was forced to give a resignation letter. On the contrary, it is his contention that the Management had not sent him any communication calling upon him to report to duty. Since the Management did not respond to the lawyer's notice, Kandaboopathy raised an industrial dispute and on the failure of the conciliation proceedings, the matter was referred to the Labour Court, Madurai, in I.D.No.80 of 1997.

2. Before the Labour Court, Kandaboopathy was examined as W.W.1 and 13 exhibits were marked. One witness was examined on behalf of the Management and no document was marked.

3. The Labour Court, Madurai, after considering the evidence adduced by both parties, passed the following award in I.D.No.80 of 1997 on 07.02.2001 which reads as under:-

"13. In the result an award is passed to the effect that the respondent shall pay to the petitioner a sum of Rs.19620/- as compensation towards the wrongful non-employment of the petitioner. The respondent shall also pay to the petitioner Rs.300/- towards cost of this petition. This amount shall be paid to the petitioner within two months from this day, failing which the same shall be paid with interest at 9% per annum."

4. It is the grievance of Kandaboopathy that the Labour Court should have awarded him reinstatement with backwages and therefore, he has filed W.P.No.3419 of 2003 challenging the Award. The Management has filed W.P.No.16866 of 2003 against the Award on the ground that the Labour Court ought not to have granted retrenchment compensation to Kandaboopathy.

5. This Court give its anxious consideration to the evidence and perused the evidence adduced by both parties and the Labour Court Award.

6. It is the contention of Kandaboopathy that he reported to duty on 10.04.1995 and that he was denied employment. This contention has been accepted by the Labour Court. However, the Labour Court has held that there has not been any illegal termination of Kandaboopathy. This is apparent from the following finding of the Labour Court given in para No.9 of

the Award.

"While so it cannot be considered that there was a termination of services and it is also admitted by the respondent that there was no termination of service. Then it would be a case of non-employment."

7. Before the Labour Court, Kandaboopathy had taken a stand that he had issued a reply notice dated 07.06.1995 (Ex.W.6) in response to the show cause notice dated 26.05.1995 (Ex.W.5) sent by the Management. The Labour Court has disbelieved this assertion of Kandaboopathy. In fact, it was Kandaboopathy, who has marked the show cause notice dated 26.05.1995 (Ex.W.5) as an exhibit. This shows that Kandaboopathy has received the show cause notice and has chosen to reply to the show cause notice through his Advocate only on 20.02.1996 as stated above. Even in the reply notice sent through his Advocate, Kandaboopathy had not taken the plea that he reported to duty on 10.04.1995 and was denied employment. Strangely, the Labour Court has given a finding that there has been denial of employment which amounts to retrenchment and therefore, he would be entitled to retrenchment compensation under Section 25(F) of the Industrial Disputes Act.

8. In the opinion of this Court, the finding arrived at by the Labour Court is clearly perverse, especially in the light of the evidence adduced by Kandaboopathy himself. In W.P.M.P.No.21077 of 2003 in W.P.No.16866 of 2003, this Court has passed the following order on 01.07.2003.

"There shall be an order of interim stay on condition the petitioner deposits the entire award amount within two weeks from the date of receipt of copy of this order to the credit of I.D.No.80 of 1997 on the file of the first respondent. On such deposit, the second respondent is permitted to withdraw 50% of the amount deposited and the first respondent shall reinvest the balance 50% in a fixed deposit in Indian Bank, High Court Extension Branch for a minimum period of three years, renewable thereafter; and the second respondent is also permitted to withdraw the interest accrued thereon every quarterly.

In default of either of above conditions, the interim stay granted shall stand vacated automatically.

Notice."

9. Pursuant to the aforesaid order, the Management has deposited the Award amount and Kandaboopathy has also withdrawn 50% of it. Though the Award passed by the Labour

Court is set aside, the learned counsel for the Management fairly submits that Kandaboopathy passed away on 12.09.2003 and his legal heirs may collect the deposited amount from the Labour Court on humanitarian grounds.

10. In the result, W.P.No.16866 of 2003 is allowed and the Award passed by the Labour Court is set aside. Consequently, W.P.No.3419 of 2003 is dismissed. However, the legal heirs of S.Kandaboopathy will be entitled to withdraw the amount which has been deposited by the Management before the Labour Court. The connected Miscellaneous Petition is closed. No costs.

Sd/-
Asst.Registrar

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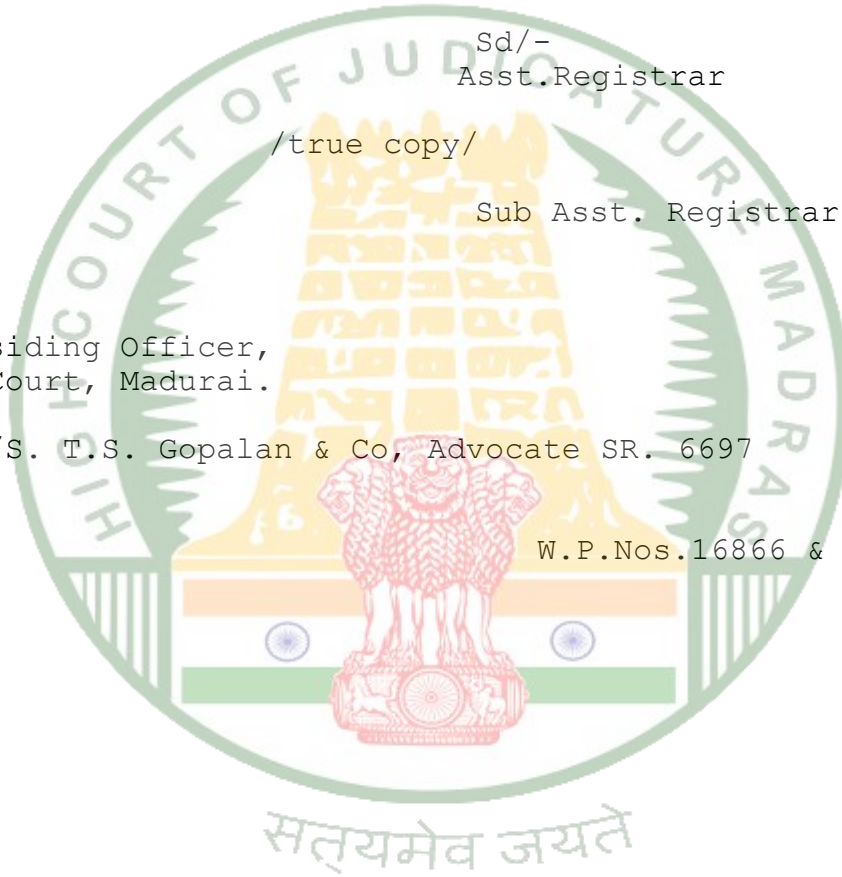
Sub Asst. Registrar

To

1.The Presiding Officer,
Labour Court, Madurai.

+1cc to M/S. T.S. Gopalan & Co, Advocate SR. 6697

W.P.Nos.16866 & 3419/2003



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