

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 02.03.2018

Delivered on: 10.04.2018

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THE HONOURABLE MR. JUSTICE **V.PARTHIBAN**

W.P.No.9515 of 2010

The Management of SDB CISCO
India Ltd.,
4, 7th Avenue
Harrington Road,
Chetpet,
Chennai-600 031.
Re. by its Joint General Manager – HR & Admin. .. Petitioner

Vs.

1.The Presiding Officer,
I Additional Labour Court,
Chennai.

2.Thiru S.Ganesan
New No.15 (Old No.14) Kennedy Street,
Vinayagapuram, Ambattur,
Chennai-600 053. .. Respondents

Petition filed under Article 226 of The Constitution of India
praying for issuance of a Writ of Certiorari calling for the records of
the 1st resolution in I.D.No.763/2001 and quash its award dated
29.10.2009.

For Petitioner .. Mr.Anand for M/s.T.S.Gopalan & Co.,

For Respondents .. Mr.K.M.Ramesh for R2
R1-Court

ORDER

The petitioner has approached this Court seeking the following relief:

"to issue a Writ of Certiorari calling for the records of the 1st resolution in I.D.No.763/2001 and quash its award dated 29.10.2009."

2. The petitioner is a company engaged in the business of providing security, fire safety services and other allied services to companies and individuals. In respect of factories where the petitioner is given contract of providing security, the company sends required security guards to work under the control and supervision of Unit Incharge.

3. The second respondent joined in the petitioner's company as Security Assistant on 25.01.1988. On 06.07.1994, he was promoted as Unit Incharge. According to the petitioner Management, from 1997 onwards, the second respondent workman was irregular in reporting for work and frequently absenting from work. Between January 1998 and May 1998, the second respondent absented for about 75 days.

4. After a spell of absence, the second respondent wanted to resume work at Parry Confectionery Limited, Manapakkam, near Madras. He could not resume duty as the petitioner had replaced him with another Unit Incharge.

5. Since no vacancies were available in and around Chennai, on 21.09.2000, the second respondent was transferred to Tuticorin Regional Office. However, the second respondent did not report for work at Tuticorin Regional Office and continued to absent himself. While so, the second respondent raised an Industrial Dispute against the petitioner Management alleging that he was denied employment from 25.08.2000 and due to his family circumstances, he could not report for work at Tuticorin Regional Office. The said dispute was adjudicated before the first respondent in I.D.No.763 of 2001.

6. During the course of hearing before the first respondent Labour Court, a memo was filed on behalf of the petitioner Management on 10.11.2008, directing the workman to report for duty at Chennai Office and thereafter, in terms of the memo, the workman was directed to report for work at DRM, Sriperumbudur. For some

reasons, the second respondent once again remained absent in 2009 and the Management offered employment to the second respondent at Orchid Chemicals and Pharmaceuticals Ltd., Thereafter, the second respondent reported for work and worked for a few months and remained absent.

7.The second respondent workman all along insisted that he should be posted as Unit incharge as he was working only as Unit Incharge, he was offered for work in 2000. However, the Management informed him that he could request any other unit incharge and get their consent for posting him to any one of their places. However, even this suggestion was not acceptable to the second respondent workman.

8.In the mean while, the first respondent passed an award on 29.10.2009, holding that the petitioner Management was determined to dispense with the service of the second respondent workman and the management sent the inter office memo dated 21.08.2000 marked as Ex.W1 and in the said circumstances, the first respondent Labour Court ordered reinstatement of the second respondent workman with 25% backwages.

9. According to the Management, the order had been complied with and the second respondent was offered employment but thereafter, he remained absent. In any event, he retired from service on 25.08.2017, during the pendency of the writ petition. The award of the Labour Court is put to challenge in the present writ petition.

10. In view of the facts stated above, what remains to be adjudicated before this Court is, whether the second respondent workman is entitled to all the consequential benefits of reinstatement order passed by the first respondent Labour Court in addition to 25% backwages.

11. From the facts and circumstances narrated above, it appears that the second respondent workman was not inclined to get posted to the place of choice of the Management and he would insist that he must be posted only in and around Chennai as Unit Incharge in the place of his choice.

12. However, the Management was not inclined to grant the request of the second respondent on the basis of its functional

requirements. According to the second respondent workman, the Management for some reason or the other, was trying to shunt the workman from one place to another in order to frustrate him to pursue his claim. The Management was being vindictive because of the fact that the second respondent workman had chosen to raise an Industrial Dispute and obtained an award in his favour. This has been strongly disputed by the Management.

13. Mr.A.Anand, the learned counsel appearing for the petitioner Management and Mr.K.M.Ramesh, the learned counsel appearing for the second respondent workman made their submissions and canvassed several points in support of their respective positions.

14. However, the scope of adjudication in the present case is rather narrow in view of the reinstatement of the second respondent workman and the undisputed fact that his retirement was on 25.08.2017. This Court has to consider various factors both on the side of the Management as well as the second respondent workman. Both appeared to be clinging to their respective position without budging in order to find a amicable settlement of the issue. However, taking into consideration overall circumstances and also taking into

consideration the observation of the first respondent Labour Court that the workman without joining in the transferred place, chosen to raise the dispute and also the other relevant factors, this Court is of the considered view that a compensation of Rs.1,50,000/- is to be awarded to the second respondent workman as full and final settlement in order to give quietus to the entire dispute between the petitioner Management and the second respondent workman.

15. Since there had been retrenchment between the workman and the management, the workman himself remained absent for considerable time on and off, this Court, instead of confirming the award, is inclined to modify the same and grant Rs.1,50,000/- as full and final compensation which includes gratuity payable to the second respondent Workman. What has already been paid to the workman by the Management shall not be taken into consideration by the Management.

16. In the above circumstances, the petitioner Management is directed to make payment of Rs.1,50,000/- which includes gratuity towards full and final settlement to the second respondent workman within a period of four weeks from the date of receipt of a copy of this

order. To this extent, the award passed by the Labour Court dated 29.10.2009 in I.D.No.763 of 2001 is modified.

17.With the above observation, **this writ petition is disposed of.** No costs.

..04.2018

Speaking Order/Non-Speaking Order

Index : Yes/No

Internet : Yes/No

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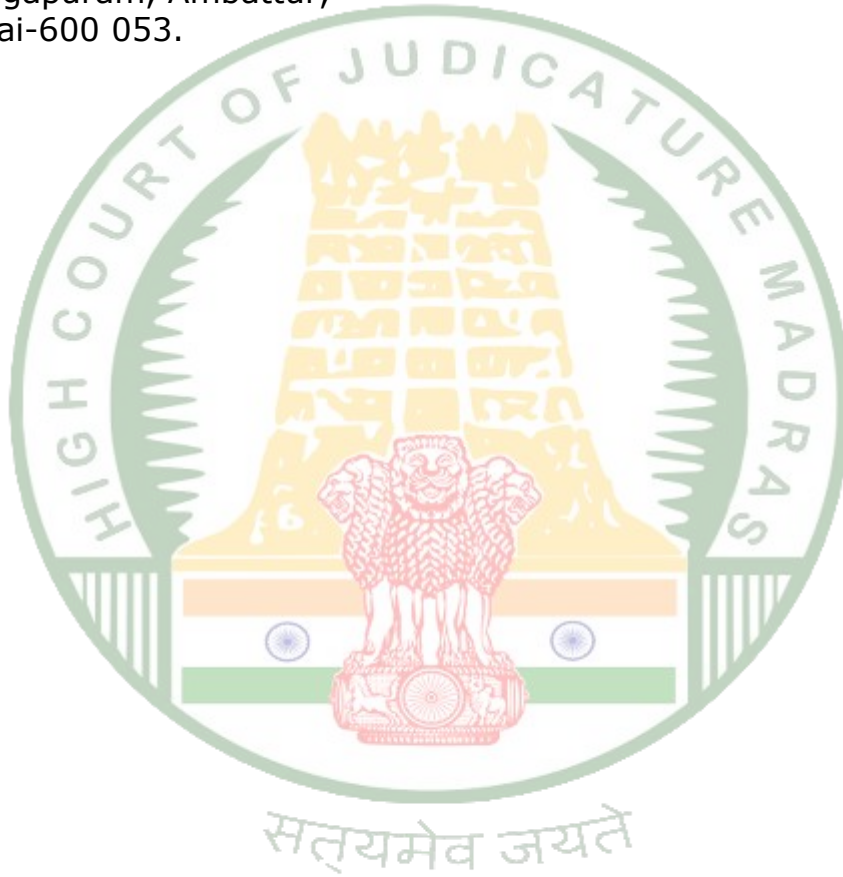


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To

1.The Presiding Officer,
I Additional Labour Court,
Chennai.

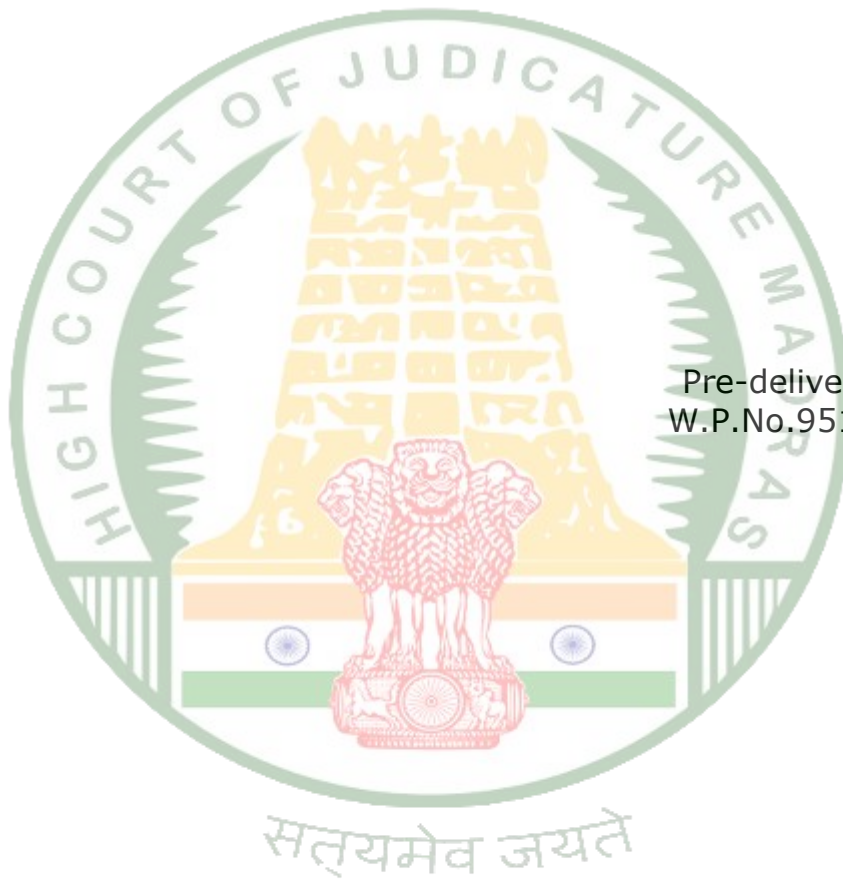
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V.PARTHIBAN, J.

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Pre-delivery order in
W.P.No.9515 of 2010

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