IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2018

CORAM

THE HON'BLE DR.JUSTICE S.VIMALA

W.P.No.11843 of 2010

Hydraulics Private Limited
(Presently known as Tenneco RC India Private Limited)
Represented by its Senior Manager
Mettupalayam, Pondicherry-605 009. ....Petitioner

Vs

1.The Presiding Officer
II Additional District Judge, Labour Court
Pondicherry.

2.P.Chittibabu ....Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records relating to the proceedings of the first respondent relating to the order dated 18.11.2009 in I.D.No.12 of 2005 and quash the same.

For Petitioner : Mr.Karthik, Senior Counsel
for Mr.S.Venkatraman

For Respondents : Mr.C.K.Chandrasekhar for R2

O R D E R

The petitioner is a private limited company registered under the Indian Companies Act. The second respondent was appointed as trainee on 15.11.1997 and his training period was extended by the petitioner on 14.05.1998. On 15.04.2000, the second respondent was appointed as Probationer by the petitioner for a period of 12 months. On 21.11.2001, the workers of the petitioner company indulged in gherao, wrongfully confining the executives of the petitioner company. FIR No.121/2001 was registered against 67 workers of the petitioner company and the second respondent was named as 34th accused in the said case.

In respect to the said incident, a charge sheet-cum-suspension order dated 04.12.2001 was issued to the second respondent. Pursuant to the same, the second respondent was discharged by the petitioner from service on 03.05.2001, along

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with payment of his salary of Rs.4,759/- in lieu of the notice period.

2. Aggrieved by the same, the second respondent filed I.D.No.12 of 2005 before the Labour Court, Pondicherry. The labour court, after hearing both sides and after perusing the materials placed on record, held that in the absence of the enabling provisions in the Service Rules of the management, the petitioner shall be deemed to have completed the period of probation on the date of completion of probation period, without waiting for an order of confirmation in writing.

3. The labour court allowed the industrial dispute and directed the Management to reinstate the workman within three months from the date of the award and with respect to backwages, the second respondent was held entitled to wages only from the date of re-opening of the company. Challenging the said award, the Management has filed the present writ petition.

4. Learned counsel for the Management assails the award passed by the labour court on the ground that the termination of the second respondent was in consonance with the contract entered into between the Management and the workman and that the parties to the contract are bound by the terms of the contract. Learned counsel further submits that even though no notice period is necessary while terminating the probationer, yet, the petitioner has given one month salary in lieu of notice.

5. Learned counsel for the second respondent, though submitted that once a charge memo is issued to an employee irrespective of his status, the employer is required to conduct an enquiry and pass orders and the employee cannot be terminated without following the said process.

6. This Court considered the contentions advanced by the learned counsel on either side and also perused the materials available on record, as also the findings recorded by the court below.

7. In M.C.D. - Vs - Praveen Kumar Jain (AIR 1999 SC 1540), the Hon'ble Supreme Court held that the dismissal of the workman without following the procedure as contemplated u/s 25 (F) of the Industrial Disputes Act is illegal. Though the Court below has held that the workman was deemed to have been confirmed in the absence of any rules, however, this Court is of the view that the termination of the workman without conducting any domestic enquiry is bad even if the probation has not been confirmed.

8. Though it is the contention of the Management that the workman was an unapproved probationer and, therefore, no enquiry

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is necessary, the said contention cannot be accepted. The management ought to have conducted a domestic enquiry, once a charge memo has been issued before passing any order. Non-following of the procedure contemplated under the Act vitiates the order of termination.

9. On a careful analysis of the order passed by the court below, coupled with the ratio laid down in Praveen Kumar Jain's case (supra), this Court finds no reason to differ with the view taken by the court below. Once a charge memo is issued, conduct of enquiry is a sine qua non and failure to adhere to the same renders the termination illegal. Therefore, this Court is of the considered view that no interference is called for with the order passed by the court below. Accordingly, the writ petition is dismissed. No costs.

-s/d-
Assistant Registrar(CS-IV)

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Sub-Assistant Registrar

kst
To
The Presiding Officer,II Additional District Judge, Labour Court,Puducherry.

+1 CC to MR.S.Venkatraman, Advocate sr 61962.
+1 CC to Mr.C.K.Chandrasekhar, Advocate sr 62054

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