

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.07.2018

CORAM

The Hon'ble Mr.Justice M.DHANDAPANI

W.P.No.43073 of 2006

The Management of Gimpex Ltd.,
Gimpex House, 181, Linghi Chetty Street,
Chennai 600 001.

.... Petitioner

Vs

1. The Presiding Officer,
I Additional Labour Court,
Chennai 600 104.

2.S.Ravi

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking to issue a Writ of Certiorari calling for the records relating to the Award dated 29.06.2006 in I.D.No.674/1998 of the first respondent and to quash the same.

For Petitioner : Mr.K.Rangesh
for M/S.Jayaraman Associates

For Respondent -2 : No Appearance

O R D E R

The petitioner management filed the writ petition challenging the award passed by the first respondent/Labour Court wherein the second respondent's termination order was set aside with a direction to the petitioner management to reinstate the second respondent and to pay backwages with all other attendant benefits as if he continued in employment till the closure of the petitioner company i.e., on 06.06.2002 and also closure compensation as provided under Section 25FFF of the I.D.Act.

2. Initially, the petitioner appointed the second respondent as a trainee from 01.10.1996 and was placed on probation on 25.06.1997. The validity of the probation period is from 01.04.1997 to 30.09.1997 and the second respondent was paid a consolidated salary of Rs.1,500/- per month. The service of the second respondent was extended from time to time however, since the second respondent's performance was not satisfactory, he was terminated from service on 22.01.1998. Aggrieved over the order of termination, the second respondent raised Industrial dispute in I.D.No.674 of 1998 before the 1st Additional Labour Court, Chennai. After adjudication, the Labour Court has set aside the termination order and passed the award with a direction to the petitioner management to pay backwages with all other attendant benefits as if the second respondent continued in employment till the closure of the petitioner company i.e., on 06.06.2002 and also closure compensation as provided under Section 25FFF of the I.D.Act. Aggrieved by the same the petitioner management filed the present writ petition.

3. Learned counsel appearing for the petitioner management would submit that though the second respondent was appointed as trainee initially and subsequently put on probation and the same was extended from time to time, the performance of the second respondent was not satisfactory even after several warnings, hence the petitioner management terminated the second respondent from service. It is further contended that the Labour Court without analysing the fact that whether the second respondent was gainfully employed after his termination, has passed an award which is illegal and arbitrary. Hence, prays for allowing the writ petition.

4. On a perusal of the Labour court award, it is seen that the second respondent joined the services of the petitioner management as trainee and was put on probation on 25.06.1997. Though his probation period had been subsequently extended, he had been terminated from service on 22.01.1998. Admittedly, the second respondent worked with the petitioner management for more than 240 days within the period of twelve months and the Labour Court after analysing the issue in its entirety based on the materials placed before it, had concluded that no notice had been issued to the second respondent before the termination order and the procedure contemplated under Section 25 F of the I.D. Act, has not been followed by the petitioner management.

5. Learned counsel for the petitioner heavily relied upon the judgement in the case of Shaw Wallace and Company Ltd., vs. Presiding Officer, Second Additional Labour Court, Madras and another reported in 2002 (1) L.L.N.317, wherein a Division bench of this Court, after placing reliance on the judgement of the Hon'ble Apex Court (2000(2) L.L.N.930 (Indian Overseas Bank Vs. Indian Overseas Bank Staff Union), has declined to interfere with the findings of the Labour Court holding the 2nd respondent therein as a workman. The relevant portions in the said decision read as follows:-

".....The power of this Court under Article 226 of the Constitution to consider the appreciation of the evidence of the Labour Court and to re-appreciate the same is very limited. When the Labour Court on facts concluded as to the nature of the work of the second respondent as a workman within the meaning of Section 2(2) of the Act, this Court exercising powers of the Judicial review under Article 226 will not interfere with that finding as to whether the nature of duties of the second respondent is supervisory or technical as the same is based on evidence which could be appreciated by the Labour Court as has been done in this case. I do not find any reason to interfere with the said appreciation of evidence by the Labour Court based upon the evidence of M.W.1 as to the nature of duties of the second respondent. In this connection, it would be relevant to point out the judgment of the Supreme Court in India Overseas Bank case [2000(2) L.L.N. 930] (vide supra), wherein the Supreme Court has held, in Para 17, at page 940, that: "the finds of fact recorded by the Tribunal could not be disturbed for the mere reason that the findings were based on material or evidence not sufficient or credible in the opinion of the Writ court to warrant those findings as long as they were based upon some material which were relevant for the purpose or even on the ground that there was another view which could be reasonably and possible taken."

6.In view of the above, as no satisfactory reason had been adduced by the petitioner management for not following the procedure before retrenching the second respondent, I do not find any infirmity in the order of the Labour Court. Hence, this writ petition is dismissed as devoid of merits. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

smi

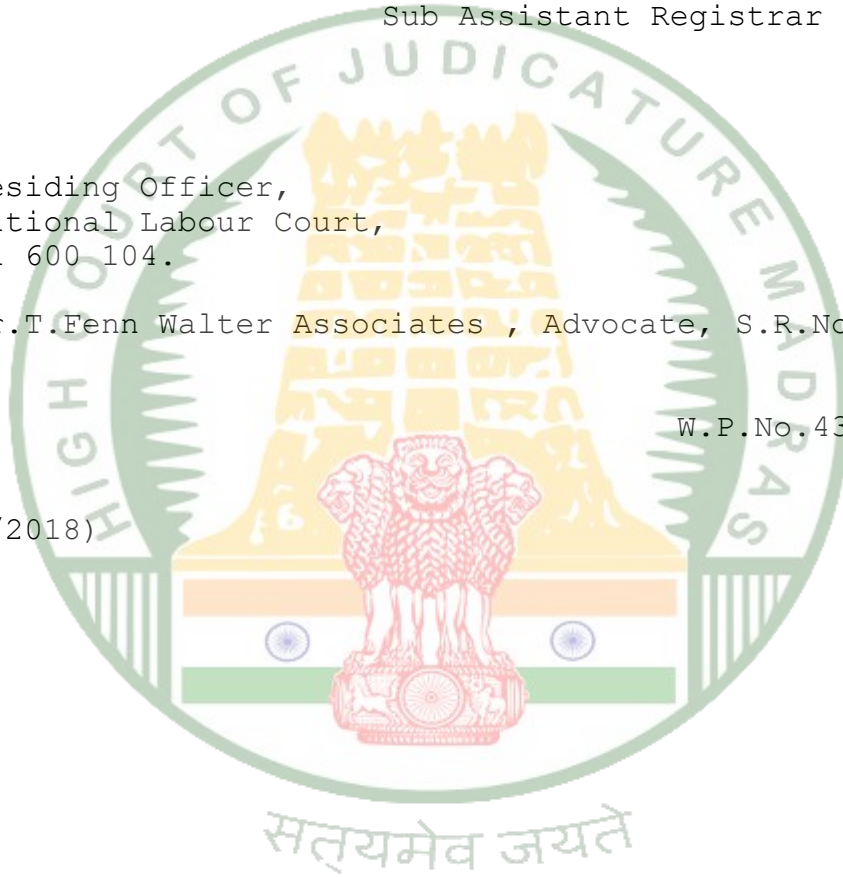
To

1. The Presiding Officer,
I Additional Labour Court,
Chennai 600 104.

+1cc to Mr.T.Fenn Walter Associates , Advocate, S.R.No.42951

W.P.No.43073 of 2006

PA(CO)
GSP(10/10/2018)



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