



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON: 22.03.2018
DELIVERED ON: 04.06.2018
CORAM:

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THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

W.P. (MD) No. 7274 of 2017
and
W.M.P. (MD) No. 5700 of 2017

V. Sankaran : Petitioner
Vs.

1. The Presiding Officer,
Labour Court, Thirunelveli.

2. The Vice President,
The India Cements Limited,
Sankar Nagar, Thirunelveli. : Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records on the file of the First Respondent pertaining to its award in I.D.No.3 of 2015, dated 05.02.2016 and to quash the same and consequently to direct the second respondent to reinstate the petitioner in service with full back wages and continuity of service and all other attendant benefits along with the additional compensation as prayed by the petitioner in the petitioner's claim statement.

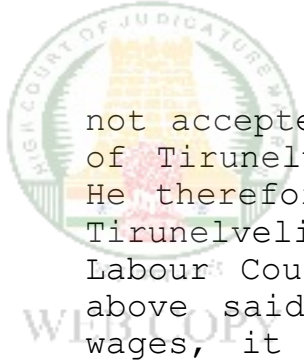
For Petitioner : Mr.L.Krishnamoorthy
For Respondent No.2 : Mr.K.Prabhakar

O R D E R

Heard the learned Counsel on either side.

2. The petitioner was employed in the second respondent cement factory, as Machinery Assistant. He had an impeccable record from December 1982, when he was first appointed till 17.04.2013. The petitioner met with an accident on 15.11.2012. He had to be on medical leave for 5½ months in this regard. After he became fit, he reported for duty on 17.04.2013, with the fitness certificate. But, the petitioner was not allowed to join duty. He was given medical leave from 02.04.2013 till 30.08.2013 and asked to come thereafter. The petitioner also sought alternative work vide his letter dated 18.04.2013, based on the suggestion of his Doctor.

3. According to the petitioner, the management did not favourably respond to his request for allotting alternative work. They also did not make any payment for the period in question. The petitioner continued to meet his superiors. Since his request was



not accepted, he raised an Industrial Dispute before Labour Officer of Tirunelveli, on 10.09.2014. Conciliation talks however failed. He therefore submitted a claim statement before the Labour Court, Tirunelveli, and the same was taken up as I.D.No.3 of 2015. The Labour Court by the impugned award dated 05.02.2016, allowed the above said I.D., but instead of granting reinstatement and back wages, it directed the Management to pay a sum of Rs.5,50,000/- [Rupees Five Lakhs and Fifty Thousand Only] as lump sum compensation. It also directed the Management to pay the petitioner, all his retirement benefits for his thirty years service. Aggrieved by the same, the petitioner has filed this writ petition seeking reinstatement with full back wages and continuity of service and other attendant benefits.

4.The learned Counsel for the petitioner placed considerable reliance on the provisions of Section 47 of Persons with Disability (Equal Opportunities, Protection of Right and Full Participation) Act, 1995" [hereinafter referred to as "the Act"]. The said provision states that no establishment shall dispense with or reduce any rank of an employee who acquires disability during his service. The term 'Establishment' has been defined in Section 2(k) of the Act. It refers a Corporation, established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a local authority or a Government company as defined in Section 617 of the Companies Act, 1956.

5.Obviously, the second respondent herein will not come within the purview of the said definition. Therefore, there is no purpose in invoking the provisions of the said Act in the present case. However, as rightly found by the Labour Court, the petitioner was never terminated from service. It is true that the petitioner kept requesting for alternative work. But then, the fact remains that neither his request was disposed of by the Management in the manner known to law, nor was he formally terminated from service. The petitioner was not given any salary from December 2012. The Labour Court taking into account, the stand of the Management and also the fact that the petitioner was having disability, took the view that the relief of reinstatement will not be proper. It instead chose to award compensation. The Court was of the view that directing the Management to pay thirty months salary would meet the ends of justice. Of course, this was apart from the retirement benefits, to which the petitioner was entitled to.

6.This Court is of the view that instead of thirty months salary, it could be enhanced to thirty six months salary. The compensation payable to the petitioner is therefore enhanced from Rs.5,50,000/- to Rs.6,60,000/- [36 X 18,337/- = Rs.6,60132/- rounded off Rs.6,60,000/-]. The award passed by the Labour Court is confirmed in all other respects. The lump sum compensation directed to be paid to the petitioner is Rs.6,60,000/-.



7. With this modification, the writ petition is partly allowed. No costs. Consequently, the connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (CS-III)

Sub Assistant Registrar

To
The Presiding Officer,
Labour Court,
Tirunelveli.

+1CC to Mr.S.Sivakumar Advocate in SR.No.66754.
+1CC to Mr.K.Prabhakar Advocate in SR.No.66633.

MR/NS

DS/SV-MMS/SAR-1 :20.06.2018: 3P/4C

ORDER MADE IN
W.P. (MD) No.7274 of 2017
04.06.2018