

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.33387 of 2002
and W.M.P.No.25357 of 2004

The Management of M/s.Srinivasa
Overseas, Ranipet
Vellore District.

... Petitioner

Vs.

1.The Presiding Officer
Labour Court, Vellore.

2.S.Periasamy

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari calling for entire records relating to the award dated 15.02.2002 made in I.D.No.122 of 1996 on the file of the 1st respondent and quash the same.

For Petitioner: Ms.Janani .K
for Mr.N.S.Sivakumar

For R2 : Mr.K.M.Ramesh

O R D E R

Writ Petition is filed for issuance of a Writ of Certiorari calling for entire records relating to the award dated 15.02.2002 made in I.D.No.122 of 1996 on the file of the 1st respondent and quash the same.

2.The 2nd respondent joined the service of the petitioner as a machine operator on 01.01.1990. While he was in the course of his employment on 13.04.1993, he met with an industrial accident and his left hand below wrist was cut off. The 2nd respondent took medical treatment and he was also given ESI compensation for the injury sustained by him. Subsequently, he was taken back in the service of the petitioner by way of re-employment. The petitioner framed charges against the 2nd respondent, conducted

domestic enquiry and dismissed the 2nd respondent from service on 05.07.1994. The 2nd respondent raised industrial dispute in I.D.No.122 of 1996 before the 1st respondent. The 1st respondent allowed the industrial dispute raised by the 2nd respondent and ordered reinstatement, continuity of service, attendant benefits and backwages. Against the said award of the 1st respondent, the petitioner has come out with present writ petition.

3.The learned counsel appearing for the petitioner contended that the 1st respondent erred in holding that the petitioner has failed to serve the charge memo on the 2nd respondent. The 2nd respondent evaded receiving charge memo sent to his residential address. The 1st respondent failed to see that the 2nd respondent admitted that he is residing in the same address. The petitioner has proved that the enquiry report was sent to the 2nd respondent and the 1st respondent erred in holding that enquiry report was not sent to the 2nd respondent. The reason given by the 1st respondent to hold that the petitioner did not conduct fair and proper enquiry violating the principles of natural justice, is contrary to the evidence on record. The 1st respondent failed to see that all the machines in the petitioner management can be operated only by both the hands. The 2nd respondent before the Conciliation Officer agreed to do the same work as he was doing earlier and entered into a settlement under Section 12(3) of the Industrial Disputes Act, dated 17.02.1994. The petitioner has given opportunity to the 2nd respondent to participate in the enquiry. The 2nd respondent failed to utilise the said opportunity. The intention of the 2nd respondent is only to get salary without doing any work. The 2nd respondent is also creating problem with other co-workers. The petitioner dismissed the 2nd respondent from service after following the procedure and prayed for allowing the writ petition.

4.Per contra, the learned counsel appearing for the 2nd respondent contended that while doing the work in the petitioner factory, the accident has occurred and left hand wrist of the 2nd respondent was cut off. Therefore, the 2nd respondent could not operate the machine which could be operated by both the hands. The petitioner tortured the 2nd respondent to operate such a machine. The petitioner did not issue any charge memo and conduct domestic enquiry. Without issuing any notice to the 2nd respondent, the petitioner dismissed the 2nd respondent, which is in violation of principles of nature justice. The management witness examined by the petitioner has admitted that no charge memo was issued to the 2nd respondent. The 1st respondent has given valid reason for holding that the charges levelled against the 2nd respondent are not proved and ordered reinstatement, continuity of service, attendant benefits and backwages. There is no error in the said award of the 1st respondent and prayed for dismissal of the writ petition.

5. Heard the learned counsel appearing for the petitioner as well as the 2nd respondent and perused the materials available on record.

6. From the award of the 1st respondent, it is seen that the petitioner failed to prove that the charge memo and notice with regard to domestic enquiry was issued to the 2nd respondent and also failed to prove that enquiry report was sent to the 2nd respondent along with notice. The witness examined by the petitioner admitted that the 2nd respondent was asked to work in a machine which can be operated only by two hands, as the 2nd respondent agreed before the Conciliation Officer to do the same work while entering settlement under Section 12(3) of the Industrial Disputes Act. This action of the petitioner clearly reveals that the petitioner has asked the 2nd respondent to do the work, which he could not do by one hand. The petitioner did not accept the request of the 2nd respondent to allow him to work in a machine which can be operated by one hand. All the above aspects were considered by the 1st respondent in proper perspective and the 1st respondent has given cogent and valid reason for ordering reinstatement with continuity of service, attendant benefits and backwages. There is no error or perversity in the order of the Labour Court.

7. The learned counsel appearing for the 2nd respondent contended that the 2nd respondent attained superannuation and the petitioner may be directed to pay wages from the date of dismissal till the date of superannuation with all monetary benefits, provident fund, gratuity payable to the 2nd respondent.

8. In view of the dismissal of the writ petition, the petitioner is directed to pay the monetary benefits, which the 2nd respondent is entitled as per the award of the 1st respondent within a period of 12 weeks from the date of receipt of a copy of this order.

9. In the result, the writ petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

kj

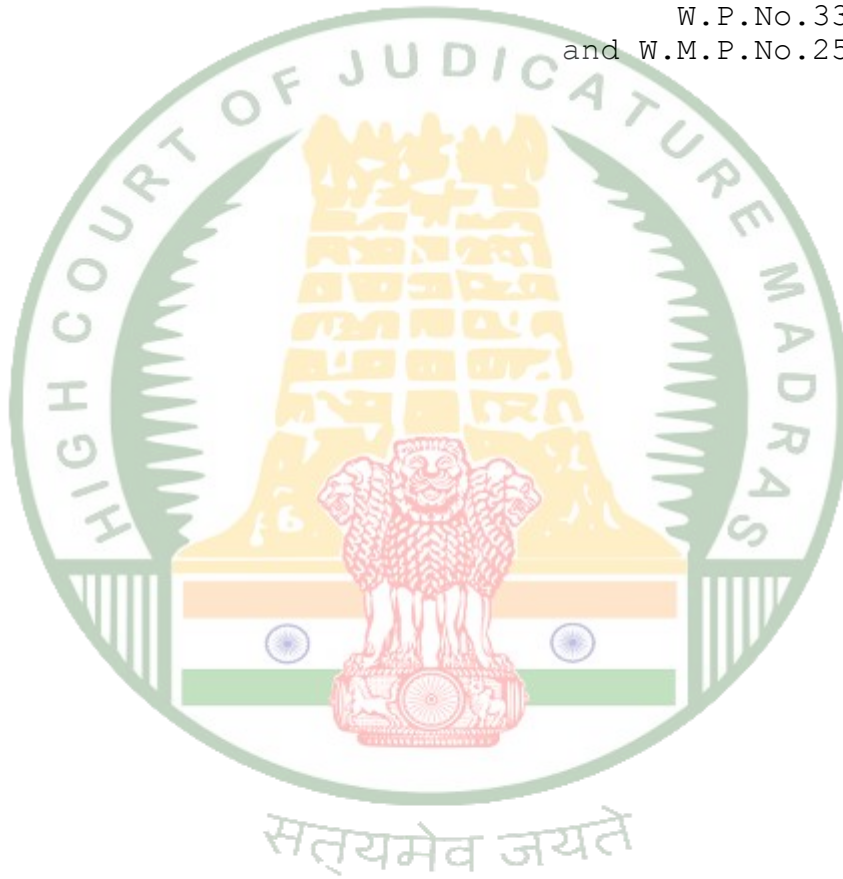
To

The Presiding Officer
Labour Court, Vellore.

+1cc to Mr.N.S.Sivakumar Advocate, S.R.No.65809
+1cc to Mr.K.M.Ramesh Advocate, S.R.No.65369

MR (CO)
CB (27/09/2019)

W.P.No.33387 of 2002
and W.M.P.No.25357 of 2004



WEB COPY