

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.10.2019

Coram

The Honourable Mr.Justice D.KRISHNAKUMAR

W.P.No.20095 of 2008  
and M.P.No.1 of 2008

The Management  
M Aslam Aejaaz & Co  
Thuthipattu  
Vellore District.

...Petitioner

Versus

1.The Presiding Officer,  
Labour Court,  
Vellore.

2.M.Adithan

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records of the first respondent in ID No.119/04 and quash its award dated 29.11.2007.

For Petitioner : Mr.T.S.Akash

For Respondent - 1 : Court

Respondent - 2 : Mr.S.T.Varadharajalu

सत्यमेव जयते  
O R D E R

With the consent of both sides, this Writ Petition is taken up for final disposal.

2. The relief sought for in the present writ petition is to call for the records of the first respondent in ID No.119/04 and quash its award dated 29.11.2007.

3. It is the case that the petitioner was running a factory at Ambur, Vellore District, wherein, the second respondent worked as workman from 1984. The said factory was closed by the petitioner in the year 2002. Subsequently, on 24.05.2002, a Settlement was signed under Section 12(3) of the Industrial

Dispute Act between the petitioner-Management and the individual workmen. As per the terms of the Settlement, the individual workmen received a lump sum payment and agreed that the cessation of employment has become final and that the employee would not be entitled to any further relief against the petitioner management. The said Settlement was signed with 45 workmen by signing individual settlement. After the closure of the factory, the second respondent/employee received a sum of Rs.78,012/- apart from Rs.5,000/- by cash.

3.1 Thereafter, the petitioner-Management leased their factory premises to a 3<sup>rd</sup> party company viz., New Line Leathers in April 2002. Since the said 3<sup>rd</sup> party company ceased to operate the said factory the petitioner-Management sold the said factory to another 3<sup>rd</sup> party under a Registered Document, dated 03.03.2007. After the closure of the factory in the year 2002, the petitioner-Management had not carried out any activities in the factory premises.

3.2 While so, the second respondent/employee raised a dispute that subsequent to the Settlement dated 24.05.2002, the petitioner-Management re-employed him on 01.08.2003 and thereafter, unreasonably terminated him from service on 10.02.2004. The second respondent/employee filed a Petition in Industrial Dispute No.119 of 2004 before the first respondent for getting reinstatement, back wages and other benefits. The petitioner-Management filed a written statement contending that the said petition is not maintainable as the claim raised by the second respondent/employee was false and therefore, the same is liable to be dismissed.

3.3 Before the first respondent, the second respondent/employee examined himself as W.W.1 and filed 7 Documents viz., Ex.W1 to W7. On behalf of the second respondent/employee, the partner of the petitioner-Management viz., M.Aejaz Ahmed was examined as M.W.1 and 4 Documents were marked viz., Ex.M1 to Ex.M4. On 29.11.2007, the first respondent passed the award as follows:

"Finally, in the I.D., award is passed that the petitioner is entitled to claim compensation Rs.25,000/- from the respondent company and that the I.D., with regard to the rest of the claim is dismissed. However, in the circumstances, the parties do bear their own costs."

Challenging the aforesaid award, the petitioner-Management filed the present writ petition for the relief stated supra.

4. The learned counsel for the petitioner has submitted that due to recession in business, the petitioner-Management

could not run the factory and that closed the same. Subsequent to the closure of the factory, a Settlement dated 24.05.2002 was signed between the petitioner-Management and the individual workmen of the said factory. He further submitted that after the aforesaid Settlement, the petitioner-Management had not carried out any operation in the factory premises and leased the factory premises to a 3<sup>rd</sup> party company in April 2002 and subsequent to the termination of lease, sold the same in the year 2007.

4.1 The learned counsel would submit that the petitioner-Management filed the written statement wherein, they stated that they did not know that whether the second respondent/employee worked in the lessee/3<sup>rd</sup> party Company, to which, the petitioner-Management leased out their factory. The second respondent/employee did not deny the aforesaid statement of the petitioner-Management before the Labour Court. He therefore submitted that the award passed by the Labour Court is perverse and the same is liable to be set aside.

5. The learned counsel appearing for the second respondent submitted that the second respondent/employee had filed the Petition in Industrial Dispute No.119 of 2004, before the Labour Court under Section 2A(2) of the Industrial Dispute Act, seeking for his reinstatement, back wages and all other benefits. He further submitted that the second respondent/employee worked as workman in the petitioner's factory from 1984 and the said factory was closed in the year 2002. He would contend that subsequent to the closure of the factory, the second respondent/employee was re-employed as retrenched workman by the petitioner-Management on 01.08.2003 and on 10.02.2004, the second respondent/employee was unreasonably terminated by the petitioner-Management.

6. The most important point for consideration in the writ petition is that whether the second respondent/employee had placed any materials before the Labour Court during trial, to deny the averments made by the petitioner-Management in their written statement?

7. It is seen that the dispute raised by the second respondent/employee in the present writ petition and also the dispute raised by him before the Labour Court is exactly one and the same. However, the second respondent/employee has not yet produced any material documents before this Court to prove that after the closure of the petitioner's factory, he was re-employed by the petitioner-Management. Also, the second respondent/employee has not denied the averments made by the petitioner-Management in the reply statement.

8. In view of the facts and circumstances of the case, this Court is of the opinion that in the absence of any proof or material evidence on the part of the second respondent/employee to prove his claim, it cannot be said that subsequent to the Settlement dated 24.05.2002, entered into between the petitioner-Management and the individual workmen, the petitioner-Management had re-engaged the second respondent/employee. Hence, this Court has no hesitation to hold that the award passed by the first respondent/Labour Court is erroneous and the same is liable to be set aside.

9. Accordingly, the Writ Petition is allowed and the award passed by the first respondent in ID No.119/04 dated 29.11.2007 is hereby quashed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-  
Assistant Registrar

// True Copy//

Sub Assistant Registrar

mrr

To

The Presiding Officer,  
Labour Court,  
Vellore.

+1cc to Mr.T.S.Gopalan & Co., Advocate, SR.No.88987.  
+1cc to Mr.S.T.Varadarajulu, Advocate, SR.No.89316.

W.P.No.20095 of 2008

GMR (CO)  
CSR(17/12/2019)

सत्यमेव जयते

WEB COPY