

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2019

CORAM:
THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.No.32987 of 2013

M.S.Sivagnanam

... Petitioner

vs.

1. Chemplast Sanmar Limited,
Plant I & III,
Raman Nagar,
Mettur Dam 636 403,
Salem District.
2. The Presiding Officer,
Labour Court, Salem. ... Respondents

Prayer:Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of Certiorarified mandamus, calling for the records relating to the orders passed by the Labour Court in I.D.No.315 of 1999 dated 30.11.2005 and to quash the same and consequently direct the 1st Respondent to reinstate the Petitioner into service with consequential and other attendant benefits.

For Petitioner : Mr.S.Neduchezhiyan

For 1st Respondent : M/s.Sai Raaj Associates

O R D E R

Aggrieved by the Award dated 30.11.2005 passed by the 2nd Respondent/Labour Court in I.D.No.315 of 1999, the Petitioner has come up with this Writ Petition seeking to quash the same, and for a consequential direction to the 1st Respondent/Management to reinstate him in service with consequential and other attendant benefits.

2. According to the Petitioner, he was appointed as Junior Engineer (Civil) in the 1st Respondent/Management on 29.08.1988 and thereafter, he was re-designated as Engineer (Foreman) in the year 1992. The nature of his work relates to verification and preparation of bills for the Civil works carried on in the factory, based on the estimation of work. He further stated that based on the complaint given against him by one of the Contractors, a Show Cause Notice was issued to him. Though the Petitioner

submitted an explanation to the charges, the 1st Respondent/Management conducted a farce enquiry and passed an order on 29.01.1999 terminating him from service.

3. Challenging the order of his termination, the Petitioner raised conciliation proceedings before the Labour Court, Salem, but the same failed. Thereafter, it was referred to Labour Court, Salem in I.D.No.315 of 1999. The Labour Court held that the Petitioner was employed in a Supervisory capacity, who is empowered not only to supervise the movement of goods from the Factory, but also to sanction leave and have control over the employees. As serious irregularities are said to have been committed by the Petitioner with regard to movement of goods, and that he is declared not to be a workman falling under Section 2 (s) of the Industrial Disputes Act, 1947, the Labour Court, without proceeding to render a finding on merits, dismissed the said Industrial Dispute against the Petitioner.

4. In a similar issue, which arose before the Apex Court long ago in the case of Ananda Bazar Patrika (P) Ltd. vs. The Workmen reported in (1969) II LLJ 670 SC, it was held as under:

"4. The question as to whether a person is employed in a supervisory capacity or on clerical work, depends upon whether the main and principal duties carried out by him are those of a supervisory character, or of a nature carried out by a clerk. If a person is mainly doing supervisory work, incidentally or for a fraction of the time, also does some clerical work, it would have to be held that he is employed in supervisory capacity.

...

This principle finds support from the decisions of this Court in South Indian Bank Ltd. vs. A.R.Chacko, 1964 (I) LLJ 19 and May & Baker (India) Ltd. vs. their Workmen, 1961 (II) LLJ 94."

5. In the case on hand, the Labour Court, finding that the Petitioner was drawing a sum of Rs.11,164/- as monthly salary and that his nature of work was supervisory in nature, dismissed the Industrial Dispute, without rendering any finding as to the charges of misconduct against him. Thus, when the principal work that the Petitioner was rendering was supervisory in nature, which does not fall under the provisions of Section 2(s) of the Industrial Disputes Act, 1947, he is not entitled to invoke the jurisdiction of the Labour Court.

6. That apart, as rightly pointed out by the learned counsel appearing for the 1st Respondent/Management, the Award in question was passed on 30.11.2005 and challenging the same, the Petitioner has come up with the present Writ Petition, after a period of seven years. Thus, on the ground of laches, the Petitioner would not be entitled to any relief and he cannot be made to wake up from the slumber.

7. At the end of arguments, this Court posed a question to the learned counsel appearing for the 1st Respondent/Management as to whether terminal benefits have been paid to the Petitioner, to which, he replied that that the 1st Respondent/Management would have disbursed the same to the Petitioner. This Court makes it clear that if terminal benefits have not been paid to the Petitioner so far, the same shall be disbursed at the earliest, i.e. within a period of three weeks from the date of receipt of a copy of this order.

Accordingly, the Writ Petition fails and stands dismissed. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

The Presiding Officer,
Labour Court,
Salem.

+1cc to M/s.Sai Raj Associates , Advocate SR.No. 71918

+1cc to Mr.G.Sankaran , Advocate SR.No. 72651

W.P.No.32987 of 2013

mr

A.SK(26/09/2019)