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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.Nos.850 and 27496 of 2012
and M.P.Nos.1 and 3 of 2012

W.P.No.850 of 2012

The Manager
Nadumalai Estates
M/s.Periakaramalai Tea and
Produce Co. Ltd.,
Valparai 642 127
Pollachi Taluk, Coimbatore District. .. Petitioner

Vs.

1.The Presiding Officer
Labour Court
Coimbatore.

2.A.Dhanapaul .. Respondents

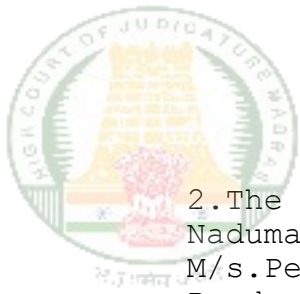
Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari calling for the records from the file of the 1st respondent and to quash the preliminary awards dated 22.02.2010 and 15.10.2010 and the final award dated 30.05.2011 in I.D.No.372 of 2001 passed by the 1st respondent.

For Petitioner : Mr.S.Jayaraman
For R2 : Mr.V.Ajoy Khose

W.P.No.27496 of 2012
A.Dhanapaul .. Petitioner

vs.

1.The Presiding Officer
Labour Court
Coimbatore.



2.The Manager
Nadumalai Estates
M/s.Periakaramalai Tea and
Produce Co. Ltd.,
Valparai 642 127
Pollachi Taluk, Coimbatore District.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus calling for the records pertaining to the award dated 30.05.2011 in I.D.No.372 of 2001, quash the same insofar as depriving the petitioner backwages and other attendant benefits and denying continuity of service for all purposes and consequently, direct the 2nd respondent to pay the petitioner the entire backwages and all other attendant benefits with increments and revisions in salary in addition to the award of reinstatement with continuity of service as awarded by the 1st respondent, after adjusting a sum of Rs.1,50,000/- which has been ordered as lump sum compensation in lieu of backwages and other attendant benefits.

For Petitioner : Mr.V.Ajoy Khose
For R2 : Mr.S.Jayaraman

C O M M O N O R D E R

W.P.No.850 of 2012 is filed by the management for issuance of a writ of Certiorari calling for the records from the file of the 1st respondent and to quash the preliminary awards dated 22.02.2010 and 15.10.2010 and the final award dated 30.05.2011 in I.D.No.372 of 2001 passed by the 1st respondent.

W.P.No.27496 Of 2012 is filed by the workman for issuance of a writ of Certiorarified Mandamus calling for the records pertaining to the award dated 30.05.2011 in I.D.No.372 of 2001, quash the same insofar as depriving the petitioner's backwages, other attendant benefits and denying continuity of service for all purposes and consequently, direct the 2nd respondent to pay the petitioner the entire backwages and all other attendant benefits with increments and revisions in salary in addition to the award of reinstatement with continuity of service as awarded by the 1st respondent, after adjusting a sum of Rs.1,50,000/-, which has been ordered as lump sum compensation in lieu of backwages and other attendant benefits.



2.The parties are referred to as per their respective ranks in the industrial dispute.

3(i). According to the petitioner/workman, he was appointed on 28.07.1993 as an Assistant Field Officer and posted to work in Nadumalai Estate, Valparai. Based on false complaint, dated 17.10.2000 given by his father-in-law's younger brother viz., Thangaraj, a charge memo was issued to the petitioner that the petitioner on 31.01.1998 allowed female guests, who came to attend the marriage of daughter of the said Thangaraj, the complainant, collected Rs.1,000/- from the said Thangaraj without knowledge of the respondent/management and asked for explanation. The petitioner/workman submitted his explanation stating that he got permission from the Field Officer Krishnakumar and Assistant Director Anandakumar, to accommodate female guests for one day on the night of 31.01.1998 in a vacant quarters belonging to the respondent/management situate at Nadumalai, South Division. Only after permission was given by the above two persons viz., Field Officer Krishnakumar and Assistant Director Anandakumar, the watchman/watcher brought the key and permitted the guests to stay for one night in the quarters.

3(ii). According to the respondent/management, the petitioner/workman without knowledge and permission of the respondent/management, let out the quarters to a third party and collected a sum of Rs.1,000/- and misappropriated the same. The respondent/management not being satisfied with the explanation submitted by the petitioner, conducted domestic enquiry.

3(iii). According to the petitioner, on the commencement of enquiry, on 23.11.2000, he went along with one George Pinneiro, the President of Estate Staff Union of South India for Anaimalai Branch, to participate in the enquiry. The Enquiry Officer Mr.S.Govindarajan, a practising Advocate informed the petitioner that the President of the Union can only be an observer and he cannot assist the petitioner in the enquiry, which is contrary to the standing order. The petitioner therefore, did not participate in the enquiry and he along with the said George Pinneiro walked out of the enquiry proceedings.

3(iv). The Enquiry Officer conducted exparte enquiry and held that the charges levelled against the petitioner were proved. Based on the said findings of the enquiry officer, the respondent/management issued 2nd show cause notice dated 09.12.2000 as to why the petitioner should not be dismissed from service. The petitioner submitted his explanation dated



18.12.2000. Not accepting the said explanation submitted by the petitioner, the respondent/management by the order dated 05.02.2001 dismissed the petitioner from service.

3(v). The petitioner raised industrial dispute in I.D.No.372 of 2001 before the Labour Court, Coimbatore. The petitioner in the counter statement took a stand before the Labour Court, Coimbatore that the enquiry was not fair and proper and that the respondent/management failed to consider that the complaint given by the said Thangaraj was a false complaint due to family enmity and subsequently, the said Thangaraj withdrew the complaint by the letter dated 17.10.2000.

3(vi). The respondent/management filed counter statement. Subsequently, the petitioner/workman amended the claim petition as per the order dated 23.02.2007 made in I.A.No.55 of 2007. The respondent filed additional counter statement in March 2007. In the additional counter statement, the respondent took a stand that the petitioner was not a workman as defined under Section 2(s) of the Industrial Disputes Act. In view of such stand, the Labour Court considered the issue whether the petitioner is workman as per Section 2(s) of the Industrial Disputes Act.

3(vii). Before the Labour Court, Coimbatore, the petitioner/workman examined himself as W.W.1 and marked three documents as Exs.W1 to W3. The respondent/management examined one Sanjay Upman, Field Manager of the respondent as M.W.1 and marked thirteen documents as Exs.M1 to M13. The Labour Court considered the oral and documentary evidence let in by the petitioner/workman and respondent/management along with the order of this Court dated 06.03.2009 made in W.P.No.6295 of 2000 and held that the petitioner is only a workman within the meaning of Section 2(s) of the Industrial Disputes Act and passed the preliminary award on 22.02.2010. The petitioner/workman took a stand that the respondent did not conduct domestic enquiry in a fair and proper manner and finding of the enquiry officer is perverse. The Labour Court considering the said documents as well as the judgments relied on by the learned counsel appearing for the petitioner/workman held in the 2nd preliminary award dated 15.10.2010 that the domestic enquiry conducted by the Advocate-cum-Enquiry Officer was not fair and proper and finding of the Enquiry Officer under Ex.M8 is not based on the acceptable legal evidence. The Labour Court posted I.D.No.372 of 2001 to 11.11.2010 for the respondent/management to let in evidence.



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3(viii). Before the Labour Court, Coimbatore, the petitioner/workman examined himself as W.W.1 and marked one document as Ex.W1. The respondent/management examined one K.P.Krishnakumar (Vice President-operation) as M.W.1 and marked nine documents as Exs.M1 to M9. The Labour Court considering the pleadings, oral and documentary evidence, arguments of the learned counsel appearing for the petitioner/workman and respondent/management and the judgment of the Hon'ble Apex Court reported in 2009-II L.L.J. 9 (SC) (Novartis India Ltd., vs. State of West Bengal and others), held that the respondent/management has failed to prove the charges levelled against the petitioner, set aside the order of dismissal dated 05.02.2001 and ordered reinstatement with continuity of service and considering the fact that the petitioner was gainfully employed from 01.09.2003 to 31.12.2006, directed the respondent/management to pay a sum of Rs.1,50,000/- as compensation in lieu of backwages and other attendant benefits excluding gratuity for the non-employment period. Against the same, W.P.No.850 of 2012 is filed by the respondent/management and W.P.No.27496 of 2012 is filed by the petitioner/workman.

4(i).The learned counsel appearing for the respondent/management contended that the Labour Court erred in holding that the petitioner is a workman as defined in the Industrial Disputes Act. The Tribunal failed to note that the petitioner/workman has power to sanction leave to the supervisors and workers working under him. The petitioner/workman has stated that his nature of duties includes submission of report to the concerned Manager for preparing pay bills and there is no skilled or technical work as alleged by the petitioner/workman. The Labour Court erred in holding that the respondent/management has taken a stand belatedly on 05.03.2007 in the additional counter statement that the petitioner is not a workman and they have not taken such a stand at the first instance in the main counter statement filed on 21.03.2002. The respondent/management by letting in acceptable evidence, proved that the petitioner is not a workman as defined in the Industrial Disputes Act, 1947.

4(ii). The learned counsel appearing for the respondent/management further contended that the petitioner/workman was afforded all opportunities and he attended the enquiry on 28.11.2000 along with his Assistant George Pinneiro. But he refused to take part in the enquiry and walked out of the enquiry. The Labour Court failed to appreciate that the standing order contemplates that the Union office bearer can only be an observer and erred in



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holding that non-permitting the said George Pinneiro, an office bearer of the Union as Assistant violates the principles of natural justice. The Labour Court erred in holding that the respondent/Management has failed to prove the charges leveled against the petitioner/workman as they have failed to examine the complainant and failed to consider the evidence let in by the respondent/Management as M.W.1. The witness examined as M.W.1 by the respondent/Management has stated that the Field Officers and Assistant Field Officers are responsible for unoccupied quarters. The Labour Court without properly appreciating the oral and documentary evidence let in by the respondent/Management, erred in ordering reinstatement with continuity of service. The Labour Court having held that the grant of backwages is not automatic, erred in awarding a sum of Rs.1,50,000/- as compensation in lieu of backwages and other attendant benefits and awarding compensation in lieu of reinstatement is permissible and awarding compensation in lieu of backwages and other attendant benefits is not permissible. The Labour Court failed to consider the past misconduct committed by the petitioner/workman and the present misconduct is serious in nature and ought to have dismissed the industrial dispute raised by the petitioner and prayed for setting aside both the preliminary awards and final award.

5(i). Per contra, the learned counsel appearing for the petitioner/workman contended that the petitioner/workman has proved that he is a workman as he is doing only clerical work and he has no supervisory or managerial power. The Field Officer, who is his immediate superior allots the work to the petitioner to be done on that date. The witness examined by the respondent/management has deposed that he does not know the nature of work done by the petitioner/workman and admitted that unoccupied quarters of the respondent/management is under the control of Field Officer and without his permission, watcher/watchman will not open the quarters. The petitioner/workman has stated that he got permission from one Krishnakumar, Field Officer and Anandakumar, Assistant Director.

5(ii). The complainant Thangaraj, who is younger brother of petitioner's father-in-law, has given a false complaint dated 17.10.2000 to the respondent/management and subsequently, by the letter dated 17.12.2000, withdrew the complaint stating that due to family enmity, he has given the said complaint. The said Thangaraj gave a complaint on 17.10.2000 for the alleged incident occurred on 31.01.1998 after two years of the alleged occurrence.

5(iii). The respondent/management has appointed Mr.S.Govindarajan, a practicing Advocate as an Enquiry



Officer. As per the standing order of the respondent/Management, the petitioner is entitled to have assistance of an office bearer of the Union in the enquiry. The Enquiry Officer with an ulterior motive, refused to allow the President of the Union to assist the petitioner. The Enquiry Officer has conducted an exparte enquiry and without any material, has held that the charges leveled against the petitioner are proved. Considering the oral and documentary evidence, the Labour Court in two preliminary awards held that the petitioner is workman and the enquiry conducted by the respondent/management is not fair and proper.

5(iv). The Labour Court having held that the respondent/management has failed to prove the charges levelled against the petitioner/workman, ought to have granted entire backwages and attendant benefits to the petitioner. The petitioner was employed as Block Project Co-ordinator under Arivoli Valar Kalvi Thittam in Thoothukudi District during the year 2003 to 2006 along with a certificate with regard to the payment of consolidated salary and he earned only a sum of Rs.69,000/- for the said period. The petitioner was earning a sum of Rs.60,000/- per year and the backwages would be more than Rs.6,60,000/- and the Labour Court erred in awarding only a sum of Rs.1,50,000/- as compensation in lieu of ordering of backwages and other attendant benefits. The learned counsel appearing for the petitioner/workman prayed to set aside the portion of the award granting only a sum of Rs.1,50,000/- as compensation in lieu of backwages and other attendant benefits and direct the respondent/management to pay entire backwages and other attendant benefits.

6.Heard the learned counsel appearing for the petitioner/workman as well as the respondent/management and perused the materials available on record.

7.The respondent/management is challenging two preliminary awards dated 22.02.2010 and 15.10.2010, whereas the petitioner/workman is challenging only portion of the final award granting a sum of Rs.1,50,000/- as compensation in lieu of backwages and other attendant benefits. The issues to be decided in both the writ petitions are as follows:

"(1) Whether the two preliminary awards dated 22.02.2010 and 15.10.2010 are proper and valid?"

(2) Whether the Labour Court is right in ordering reinstatement of workman into service and granting a sum of Rs.1,50,000/- as compensation in lieu of backwages?"



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Point No.(1):

8. The petitioner has raised industrial dispute in I.D.No.372 of 2001 before the Labour Court challenging the order of respondent/management dismissing him from service. According to the petitioner/workman, he was working as Assistant Field Officer and his nature of work is clerical in nature. On the other hand, the respondent/management has contended that the petitioner is not a workman, he is doing supervisory and managerial work and he has power to grant leave to the supervisors and workers working under him. The respondent/management has filed Ex.M2 dated 26.07.1993, copy of the appointment order issued by the respondent/management, in which, nature of work the petitioner has to perform is not mentioned. One Sanjay Upman, the Field Officer examined by the respondent/management has deposed that he does not know the nature of work done by the petitioner/workman. He also admitted that he has not verified the nature of work assigned to the petitioner by the respondent/management. According to the said witness, only the Field Officer has power to decide number of workers required and supervise the work done in the entire area. The respondent/management has not produced any document to show the work assigned to the petitioner/workman especially, the petitioner was doing supervisory and managerial work. The Labour Court considering the order of this Court dated 06.03.2009 made in W.P.No.6295 of 2000, which also considered the status of the Assistant Field Officer and following the said order, held that the petitioner is a workman. There is no error in the said order.

9. As far as the 2nd preliminary award dated 15.10.2010 is concerned, the Labour Court has held that the respondent/management did not conduct the domestic enquiry in a fair and proper manner. The respondent/management has appointed one Mr.S.Govindarajan, a practicing Advocate as Enquiry Officer. The petitioner/workman sought the assistance of one George Pinneiro, President of the Union to assist him in the domestic enquiry. The Enquiry Officer refused the said request on the ground that said George Pinneiro is an outsider, but had permitted the petitioner to have the said George Pinneiro as an observer. The petitioner/workman on such refusal, did not participate in the enquiry. The Enquiry Officer proceeded the enquiry exparte. The refusal of the Enquiry Officer to permit the petitioner to have the assistance of an office bearer of the Union and permitting to have the said office bearer to be an observer, is contrary to the standing order. Clause 23(viii) of the P.A.T. Joint Standing Orders for Estate Staff reads as follows:

"23(viii). A staff, if he so requests, shall be permitted to bring a co-staff, or if a person trained in law is appointed as the



enquiry officer, an office-bearer of his union to assist him in the enquiry."

10.As per the above standing order, if the respondent/management appoints the person trained in law as an Enquiry Officer, an office bearer of the Union can assist the employee in the enquiry. The Enquiry Officer, an Advocate acted contrary to the said standing order. The Labour Court in view of the above provision as well as the fact that the Enquiry Officer Mr.S.Govindarajan, Advocate appeared for the respondent/management in the present industrial dispute and after his death only, another Advocate appeared for the respondent/management, held that the domestic enquiry conducted by the respondent/management is not fair and proper. After passing the 2nd preliminary award, the Labour Court gave an opportunity to the respondent/management to let in evidence to prove the charges levelled against the petitioner. There is no error in the said reasoning of the Labour Court. Point No.1 is answered accordingly.

Point No.2:

11.The respondent/management examined in the industrial dispute one K.P.Krishnakumar, Vice President-operation as M.W.1 and marked nine documents as Exs.M1 to M9. The respondent/management has not examined the complainant Thangaraj except marking the complaint dated 17.10.2000 given by the said Thangaraj as Ex.M9. The respondent/management has not given any reason for not considering the letter dated 17.12.2000, whereby the said Thangaraj withdrew the complaint given by him earlier on 17.10.2000 stating that he has given the said complaint due to personal enmity. The petitioner/workman has taken a specific stand that he got permission from one K.P.Krishnakumar, Field Officer and Anandakumar, Assistant Director, who were in-charge of quarters to accommodate the persons on 31.01.1998. The respondent/management has not examined the said persons and also the watchman/watcher, who opened the quarters as per the instruction of the said Krishnakumar, Field Officer. Further, the said Thangaraj has given complaint on 17.10.2000 for the alleged misconduct of the petitioner/workman on 31.01.1998 after 2 years and 8 months. The respondent/management has failed to prove that the petitioner was in-charge of unoccupied quarters and key of the said quarters was with the petitioner. The Labour Court appreciating the above facts in proper perspective, held that the respondent/management has failed to prove the charges levelled against the petitioner. Having held so, the Labour Court has set aside the order of dismissal and ordered reinstatement of the petitioner with continuity of service.



12. As far as backwages and other terminal benefits are concerned, the petitioner/workman admitted that he was employed during the period from 2003 to 2006 and earned a sum of Rs.69,000/-. The Labour Court considering the fact that both the respondent/management as well as the petitioner/workman were responsible for the delay in disposal of the industrial dispute and considering the judgment of the Hon'ble Apex Court reported in 2009-II L.L.J. 9 (SC) (Novartis India Ltd., vs. State of West Bengal and others), held that the grant of backwages is not automatic, awarded a sum of Rs.1,50,000/- as compensation in lieu of backwages and other attendant benefits excluding gratuity for non-employment period and the same is in order. Point No.2 is answered accordingly.

13. In the result, the writ petitions stand dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS)

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Sub Assistant Registrar

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To
The Presiding Officer
Labour Court
Coimbatore.

+lcc to Mr.V.Ajoy khose , Advocate SR.No. 59585

+lcc to Mr.S.Jayaraman , Advocate SR.No. 59787

W.P.Nos.850 and 27496 of 2012
and M.P.Nos.1 and 3 of 2012

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