

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 05.09.2019
CORAM:
THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
W.P.Nos.6257 to 6261 of 2016

G.Munishankar	...Petitioner in W.P.No.6257 of 2016
R.Piramburajan	...Petitioner in W.P.No.6258 of 2016
Prabhu	...Petitioner in W.P.No.6259 of 2016
S.Bhaskar	...Petitioner in W.P.No.6260 of 2016
G.Munusamy	...Petitioner in W.P.No.6261 of 2016

vs.

1. The Presiding Officer
Second Additional Labour Court
Chennai-600 104.
2. The Management of
M/s.Southern Auto Castings (P) Ltd
Nos.33 & 34, Sipcot Industrial Estate
Gummidipoondi,
Thiruvallur District. ... Respondents in all W.Ps

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent award in I.D.Nos.786 to 788, 790 & 791 of 2010 dated 20.08.2015 and quash the same and direct the second respondent management to reinstate the petitioner in service with continuity of service, backwages and all attendant benefits.

For Petitioner : M/s.P.Chandrasekar
in all W.Ps
For Respondents : R1-Labour Court
in all W.Ps Mr.M.R.Dharani Chander for R2.

C O M M O N O R D E R

The awards dated 20.08.2015 passed in I.D.Nos. 786 to 788, 790 & 791 of 2010 are under challenge in the present writ petitions.

2. The writ petitioners/workmen claim that they were appointed in the second respondent company as Machine Operator and their employment was later confirmed by the respondent. The writ petitioners state that they were working sincerely, to the satisfaction of the Management. They requested the Management to grant increment as per law. That apart, it is contended that

they have issued a legal notice through their counsel requesting for reinstatement as Operator, with continuity of service and back wages and other attendant benefits. The second respondent/management also issued a notice stating that the petitioners were unauthorizedly absent from attending duty. The Management directed the writ petitioners to attend for domestic enquiry. In this regard, a memo was issued to the petitioners and the petitioners also appeared before the enquiry officer and filed their statement requesting the second respondent/management to provide employment as Operator with all benefits. Accordingly, an opportunity was provided to the writ petitioners. However, the writ petitioners made several requests to engage an Assistant to defend their case in the enquiry proceedings. But the enquiry Officer was permitted to engage a Co-worker and none of the Co-worker defended the case of the writ petitioners. The employees were set ex-parte and the management witnesses were examined. The findings of the enquiry officer were furnished to the writ petitioners on 03.11.2009. On 06.11.2009, the enquiry findings and the decision of management had been sent to the writ petitioners by the Management and that had been received by the petitioners on 11.11.2009. The writ petitioners approached the respondent on 13.11.2009 for reinstatement and the management refused to reinstate the writ petitioners. Under these circumstances, the writ petitioners raised a dispute.

3. The learned counsel appearing on behalf of the respondents disputed the contentions by stating that the performance of the writ petitioners was not satisfactory right from the beginning. The management advised and counselled them to improve their performance. However, the writ petitioners have not improved their performance. They were unauthorizedly absent on several occasions. In respect of the continuous unauthorized absence on many occasions, a charge sheet was issued on 24.06.2009. The writ petitioners did not submit any explanation and domestic enquiry was initiated. The enquiry officer also issued a notice on 06.10.2009. On 14.10.2009, enquiry was held and the petitioners were allowed to have a co-employee to assist them in the domestic enquiry. The petitioners requested for an adjournment on 28.10.2009. Therefore, the enquiry was adjourned to 28.10.2009. However, the writ petitioners did not attend the enquiry and consequently, the enquiry officer set them as ex-parte and submitted his report on 01.11.2009. The enquiry officer found that the charges against the writ petitioners were proved. However, on humanitarian consideration, and to give one more opportunity to change their attitude, the respondent issued a letter dated 06.11.2009 and directed the petitioners to report for duty immediately. However, the petitioners had neither turned up for work nor gave any reply. The respondent once again sent a letter on 26.11.2009 and directed them to report for

duty. Meanwhile, the writ petitioners were served notice dated 14.09.2009 stating that they were terminated from service.

4. The learned counsel for the respondents states that the writ petitioners were neither terminated nor discharged from service. Therefore, there is no dispute at all. The enquiry proceedings were concluded and the findings of the enquiry report was communicated. Thereafter, the management had taken a decision to provide one more opportunity to the writ petitioner. However, the petitioners had neither turned back nor sent any reply to the Management. Under these circumstances, it is contended that the award of the Labour Court is in consonance with the legal principles and there is no infirmity.

5. This Court is of the considered opinion that the writ petitioners marked nine documents Ex.W.1 to Ex.W.9. The documents are in relation to the Pay Slip, Advocate Notice, Copy of the petitioners letter as well as the Failure Report and Identity Card. No documents in relation to the disciplinary proceedings namely charge sheet, enquiry report or the termination order had been marked as documents. However, the Management side marked copy of the enquiry proceedings and the reply notice and subsequent letters sent to the writ petitioners directing them to report for duty. In the absence of any document to establish that the writ petitioners were terminated from service or any correlated evidence to show that oral termination was issued, the findings of the Labour Court in this regard is to be confirmed.

6. The Labour Court has formulated three questions and the first question was whether the respondents denied employment to the writ petitioners. In this regard, the Labour Court categorically found that there was no dismissal or removal from service. The Company sent a notice to the writ petitioners calling them to appear on 14.10.2009 before the enquiry officer in the domestic enquiry. However, the writ petitioners subsequently had not appeared before the enquiry officer and they were set ex-parte. That apart, the writ petitioners have not proved by filing any document that they were the permanent employees of the company. In the absence of any proof to that effect, the Labour Court is right in coming to a conclusion that the writ petitioners are not entitled to get the relief for reinstatement.

7. On perusal of the entire award, this Court is of the considered opinion that the writ petitioners have failed to establish that they were the permanent employees of the respondent/Management and also failed to establish that they were terminated or removed from service. However, considering the services of the writ petitioners, the labour Court awarded a

compensation of Rs.60,000/- in lieu of reinstatement and backwages to the petitioners.

8. This being the factum, this Court is of the considered opinion that there is no perversity or infirmity in respect of the findings of the Labour Court as the writ petitioners have not marked any document to establish that they were terminated from service or they were the permanent employees of the respondent/management.

9. Under these circumstances, the writ petitioners have failed to establish any acceptable legal ground for the purpose of interfering with the findings of the Labour Court. Therefore, the awards dated 20.08.2015 passed in I.D.No. 786 to 788, 790 & 791 of 2010 is confirmed.

10. In the result, the writ petitions stand dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

ssb
To

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Second Additional Labour Court
Chennai-600 104.
2. The Management of
M/s.Southern Auto Castings (P) Ltd
Nos.33 & 34, Sipcot Industrial Estate
Gummidipoondi,
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+5 cc to Mr.Chandrasekar Advocate sr77446,
77447,77448,77449,77450
+5 cc Mr.M.R.Dharani Chander Advocate
sr77073,77077,77075,77076,77074

W.P.Nos.6257 to 6261 of 2016

skv(co)
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