IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.8111 of 2016

The Management
Rani Granites
Gugai
Salem-636 006. ...Petitioner

vs.

1. The Presiding Officer,
Labour Court,
Salem.

2.H.Sowkath Ali. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records in I.D.No.181 of 2007 on the file of the Labour Court, Salem the first respondent herein, quash the award dated 11.02.2015 passed therein.

For Petitioner : Mr.M.R.Raghavan

For Respondents : R1-Labour Court
Mr.R.M.D.Nasrullah
for R2.

O R D E R

The award dated 11.02.2015 passed in I.D.No.181 of 2007 is under challenge in the present writ petition.

2. The writ petitioner Management states that the second respondent raised an industrial dispute, stating that he was employed under the writ petitioner/Management since 15.03.1990, as an Accountant. The contention of the workman was that he was orally terminated from service with effect from 21.07.2006, and therefore he prayed for reinstatement with backwages along with all other benefits. The petitioner Management appeared before the Conciliation Officer and filed a reply stating that the second respondent left the services by his own choice and further, he has committed misconducts

of indiscipline, insubordination, misbehaviour and irregular attendance etc. Under these circumstances, the second respondent is not entitled for any relief, based on the report of the Conciliation Officer and therefore, an industrial dispute was raised in I.D.No.181 of 2007.

3. The main contention of the learned counsel appearing on behalf of the writ petitioner/Management is that the second respondent is not a workman within the definition of 2(S) of the Industrial Disputes Act. The second respondent was a Senior Accountant during the relevant point of time and earning a sum of Rs.5,500/-, by way of salary including all allowances. The Salary certificate is enclosed in page No.1 of typed set of papers filed along with the present writ petition. This apart, the second respondent in its capacity as a Senior Accountant, was dealing with the Commercial Tax Department as well as Income Tax Department. Therefore, he cannot be construed as a workman within the definition of 2(S) of the Industrial Disputes Act. This apart, he is working in the nearby company and therefore, he is not entitled for any backwages also.

4. At the outset, it is contended that the second respondent is not a workman and further, he left the services by his own choice. Therefore, the Management is not responsible and liable to pay any backwages along with salary. Though the Management was willing to reinstate the second respondent into service, due to his non-interest for reporting duty, the writ petitioner/Management had discharged the second respondent. Under these circumstances, the second respondent is not entitled for any relief.

5. The learned counsel appearing on behalf of the second respondent states that the oral termination was challenged before the Labour Court. The second respondent/workman was willing to report for duty, however, the writ petitioner/Management prevented the second respondent from reporting for duty. Thus, the Labour Court is right in ordering for reinstatement and backwages.

6. The learned counsel appearing on behalf of the writ petitioner submitted a copy of the letter dated 20.04.2018, wherein the writ petitioner/Management sent a letter to the second respondent stating that they are willing to entertain the second respondent for work without prejudice to the contentions in the writ petition. When the writ petitioner/Management was willing to allow the second respondent to report for duty, the second respondent has not shown any interest for joining the duty. Under these circumstances, the second respondent cannot be granted with any relief.

7. This Court is of the considered opinion that as per the documents marked before the Labour Court, more specifically, the salary certificate dated 21.09.2004 namely Ex.B2, the second respondent/workman was a Senior Accountant and was earning a sum of Rs.5,500/- per month. An another letter dated 03.07.2005 states that the second respondent signed the document, which was communicated to the Commercial Tax Officer, and the letter dated 20.04.2005 was also attested by the second respondent. Thus, the second respondent was dealing with the Commercial Tax matters as well as Income Tax matters of the writ petitioner/Management. He was working as a Senior Accountant, which is monthly cadre. The post of Senior Accountant cannot be construed as a workman within the meaning of 2(S) of the Industrial Disputes Act. Irrespective of the fact whether the second respondent was willing to report for duty or not, primarily, he has not established that he is a workman within the definition of 2(S) of the Industrial Disputes Act.

8. This being the factum, the present writ petition deserves consideration. Accordingly, the award dated 11.02.2015 passed in I.D.No.181 of 2007 is quashed. The learned counsel for the writ petitioner states that the writ petitioner/Management had deposited a sum of Rs.2,00,000/-, out of which, the second respondent/employee had withdrawn 50%, which amounting to Rs.1,00,000/-. The balance amount is directed to be returned to the writ petitioner/Management. The writ petitioner/Management is at liberty to file an appropriate application before the Labour Court and in the event of filing any such application, the deposited amount with accrued interest is directed to be settled within a period of four weeks from the date of filing any such application from the writ petitioner/Management.

9. Accordingly, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//
Sub Assistant Registrar

ssb

To

The Presiding Officer,
Labour Court,
Salem.

+1cc to Mr.M.R.Raghavan, Advocate SR.88062
+1cc to Mr.K.V.Shanmuganathan, Advocate SR.88122

VGII(CO)
CB(30/12/2019)