

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2020

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.28159 of 2017
and
W.M.P.No.30294 of 2017

The Kundah Industrial Cooperative Factory
Limited, IND 259
rep. by its Managing Director,
Yedakad 643 282
The Nilgiris District. ... Petitioner

vs

1. R.Madhavi
2. The Labour Court,
Coimbatore. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari to call for the records relating to the award dated 07.06.2016 in I.D.No.231 of 2010 on the file of the 2nd respondent and quash the same.

For Petitioner : Mr.C.Santhosh Kumar
for Mrs.AL.Ganthimathi

For Respondents: Mr.A.Deivasigamani
for R1

R2 : Court

O R D E R

The petitioner Management is aggrieved against the award of the Labour Court dated 0.06.2016 made in I.D.No.231/2010. The Labour Court awarded employment and continuity of service with 70% backwages to the 1st respondent workman.

2. The case of the petitioner is as follows:

The 1st respondent was working as worker in printing section and she is not a permanent worker. On 21.08.2009, there was some dispute between the workers and the 1st respondent and she was warned for pouring graded tea into ungraded tea which was noticed

by the Assistant Tea maker. The 1st respondent indulged in verbal attack with the co-workers. The co-workers gave a complaint against the 1st respondent and the same was enquired by the Special Officer on 21.08.2009. Thereafter, the 1st respondent left the factory and did not turn up for work. Suppressing those facts, the 1st respondent filed a complaint before the Labour Officer as if she was not given any work. The Labour Officer, after enquiry submitted a failure report. The 1st respondent raised Industrial Dispute before the Labour Court in I.D.No.231/2010 alleging oral termination from 22.08.2009. The Labour Court, passed the impugned award.

3. Learned counsel for the petitioner Mr.Santhosh Kumar, contended that the 1st respondent was not a permanent worker and she was engaged only as a seasonal worker. He further submitted that the 1st respondent indulged in quarrelling with the co-worker which has resulted in conducting enquiry by the Special Officer on 21.08.2009. He also submitted that the 1st respondent left the job and did not turn up for work on her own and therefore, there is no oral termination as alleged by her and consequently, the Management cannot be found fault with in not issuing any notice or for not conducting any enquiry. He further submitted that in any event, as the 1st respondent was reinstated into service on 21.02.2013 during the pendency of the I.D. at the instance of the Labour Officer, award of backwages of 70% cannot be justified.

4. On the other hand, the learned counsel for the 1st respondent submitted that the 1st respondent was a permanent employee of the petitioner Management and to that effect there is an admission by the Management in the counter filed before the Labour Court. Therefore, the Management ought to have issued notice and conducted enquiry. Thus, the learned counsel submitted that the award of the Labour Court need not be interfered with.

5. Heard both sides and perused the materials placed before this Court.

6. It is claimed by the Management that the 1st respondent was a seasonal worker and not a permanent employee. Though it is contended before this Court so, the counter filed by them before the Labour Court speaks otherwise. It is specifically admitted in the counter that the 1st respondent was made permanent by the respondent on 01.04.2009. Therefore, it is an admitted fact that the 1st respondent was made as permanent employee of the petitioner establishment well before the alleged misconduct said to have taken place on 21.08.2009. Admittedly, the petitioner Management has not given any notice or conducted any enquiry on the so called misconduct of the 1st respondent.

7. According to the Management, the 1st respondent herself stopped coming to duty from 21.08.2009. It is to be noted at this juncture, that both sides have not let in any evidence before the Labour Court, both oral and documentary. However, it is an admitted fact that the 1st respondent was made permanent with effect from 01.04.2009 and that she was also reinstated into service during the pendency of I.D. on 21.02.2013. However, the fact remains that the 1st respondent did not work in between those two period. Considering the fact that the Management has not issued any notice nor conducted any enquiry for proving the so called misconduct of the 1st respondent, considering the fact that the 1st respondent was reinstated in service subsequently, on 21.02.2013 and further considering the fact that the 1st respondent was in fact not discharging her duty during the said interregnum period, this Court is of the view that interest of justice will be met if the backwages awarded by the Labour Court is modified to 50% instead of 70%.

8. Accordingly, the Writ Petition is partly allowed and the impugned award is modified only to the extent that the writ petitioner Management shall pay 50% of the backwages to the 1st respondent instead of 70%, as ordered by the Labour Court. The petitioner Management shall comply with this order within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

The Labour Court,
Coimbatore.

+lcc to Mr.B.Rajagopal, Advocate Sr.7599
+lcc to Ms.A.L.Ganthimathi, Advocate Sr.8061

W.P.No.28159 of 2017

mp[co]
srg 28/02/2020