



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.03.2020

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P (MD)No.14365 of 2012 and

WMP(MD).No.2435 of 2016

WEB COPY

1.Alpha Minerals and Chemicals
rep. by its Partner, A.M. Ashraf,
S/o. Abdul Rahmumankutty,
T.C.No.15/2004, Dwarka WC Lane,
Vazhuthacaud,
Thiruvananthapuram - 625 914,
Kerala State.

2.The Manager,
Alpha Minerals and Chemicals
433, Sree Ramankulam Road,
Pottal South Kallidaikurichy - 627 416,
Ambasamudram Taluk,
Tirunelveli District.

...Petitioners

vs.

1. The Presiding Officer,
Labour Court, Tirunelveli.

2.I. Muthuraj

...Respondents

PRAYER:- This Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order passed by the 1st respondent I.A.No.71 of 2011 dated 09.07.2012 and quash the same.

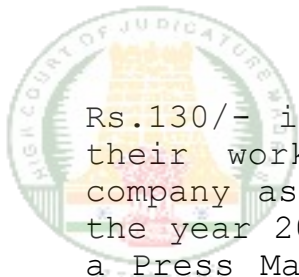
For Petitioners : M/S.C. Kishore

For R2 : Mr. Pon Karthikeyan

ORDER

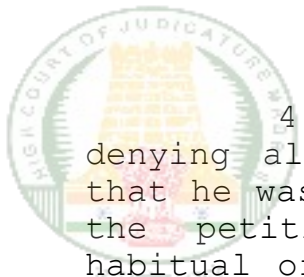
This Writ Petition has been filed to quash the impugned order passed by the 1st respondent I.D.No.71 of 2011 dated 09.07.2012.

2. The petitioners' management states that it is a small scale industry functioning with 6 permanent Labours, 23 Contract Labours and 13 Administrative Employees and the petitioners' company extended employees State Insurance Scheme and Provident Fund coverage to its employees. In addition to the salary, an amount of



Rs.130/- is paid to all workers, who are behaving good manner in their work. The second respondent joined in the petitioners' company as Labourer in the year 2002 and he has been confirmed in the year 2004. The petitioners' appointed the second respondent as a Press Machine Operator with T.No.4 and he is a habitual offender and absentee. The second respondent and two other persons created nuisance within the premises of the said Company. In the year 2008, the second respondent along with two other employees threatened their co-employees and caused grievous injuries. On a complaint, the petitioners' company issued a show cause notice and after an enquiry, severe warning was issued to all the three employees by public notice dated 30.10.2008. Similarly, the second respondent along with some other persons were slept during working hours. Hence, enquiry was conducted and the petitioner has not taken any action on humanitarian ground. Even then, the second respondent along with other employees with an intention of man handling threatened the supervisor on duty, the very next month of this instance and then, the Supervisor of the said Company preferred a complaint against the second respondent and the First Information Report was registered against him and on this issue also an enquiry was conducted and he was warned and given a further chance to improve in future and once again pardoned on humanitarian ground. Thereafter, the second respondent took on leave without getting prior permission from the Company in the month of March 2010 and he worked only on 4th, 6th, 12th of March 2010. Since he did not turn up, notice was sent to him by certificate of posting and no reply was received. Hence, the petitioners' Company sent a termination order from 10.04.2012 to the second respondent by virtue of certificate of posting on 10.04.2012. On receiving the same, the second respondent has made a representation for balance salary for the three days and accordingly, salary of Rs.566/- was paid to him and got signature in the voucher.

3. The second respondent raised an industrial dispute before the Conciliation Officer, which was failed and then, the second respondent raised an Industrial Dispute before the first respondent and the first respondent, after considering the oral and documentary evidence has considered the same and passed an order allowing I.D.No.71 of 2011, accepting the contention of the second respondent that the details of sickness shown in ESI leave chit, which was marked its validation under Section 63 of the State Insurance Act. Hence, the second respondent is entitled to receive the sickness benefits for the leave period, as they have not given him an opportunity for hearing without following the principles of natural justice. Further, the petitioners herein removed the name of the second respondent is illegal and allowed the said petition. According to the same, he has to be reinstated into service with back wages. Challenging the same, the petitioners' management have filed the present Writ Petition stating that the Labour Court has not considered the case of the petitioner in a proper manner.



4. The second respondent filed a detailed counter affidavit denying all the averments made by the petitioners. It is stated that he was working as a Press Machine Operator as a daily wage in the petitioners' company. It is further stated that he was not a habitual offender and denied all the averments. He further stated that he availed leave on 15.03.2010 for illness and subsequently, he obtained leave through ESI dispensary at Ambasamuthiram on 24.03.2010 to 30.03.2010 and the leave chit was sent to petitioners' company on 25.03.2010 itself through the security guard of the petitioners' company. When he approached the petitioners' company on 31.03.2010, they have denied an employment of the second respondent and he was not allowed to join duty and further his name was removed from the muster rolls and the same was intimated to him through post on 10.04.2010. If at all the petitioners' took a stand that he was an un-authorised absence and due to which, the petitioners' sent a show cause notice dated 30.03.2010 by certificate of posting, for which, the petitioner has not made any reply and hence, they removed his name from the muster rolls and terminated him from service and the same was intimated through communication dated 10.04.2010 sent by certificate of posting. He further stated that nothing on record to show that he was served with notice dated 30.03.2010 and the termination order dated 10.04.2010 was sent to him. The Labour Court after considering all the materials on record has rightly come to the conclusion that the petitioners' have not given an opportunity of hearing to the second respondent and enquiry has also not been conducted in proper manner and prayed for dismissal of this writ Petition.

5. Before the Labour Court, on the side of the second respondent Exs.P1 to P34 were marked and on the side of the petitioners Ex.R1 to R31 were marked. On the side of the second respondent PW.1 and PW.2 were examined. On the side of the petitioners one Balasubramanian was examined.

6. I have heard the learned counsel appearing on either side and perused the materials available on record.

7. On going through the entire evidence let in by the parties and the documents available, it is seen that notice dated 30.03.2010 was not served on the second respondent and there is nothing on record to show that he was served with notice dated 30.03.2010. Further, without confirming that the notice dated 30.03.2010 was served upon him, the termination order dated 10.04.2010 was sent to him. In such circumstances, the Labour Court has rightly come to the conclusion that the petitioners' Company has not given an opportunity of hearing to the second respondent and to conduct an enquiry. They have also failed to follow the principles of natural justice, before removing his name from the rolls. Further, the Labour Court ordered reinstatement with backwages with continuity of service.



8. In such circumstances, this Court is of the view that the petitioners Management should give an opportunity of hearing to the 2nd respondent, on issuing notice within a period of three weeks from the date of receipt of a copy of this order and conduct an enquiry and the same should be completed within a period of two months, thereafter. The second respondent is also directed to appear before the Enquiry Officer, who will serve him all the necessary documents, what are relied upon and the petitioner is also entitled to get appropriate legal assistance. The enquiry report should be filed within the stipulated period.

9. With the above direction, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Crl Side)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

trp

To
The Presiding Officer,
Labour Court, Tirunelveli.

+1 CC to M/s.R.PON KARTHIKEYAN, Advocate (SR-10656[F] dated 09/03/2020)

+1 CC to M/s.C.KISHORE, Advocate (SR-10610[F] dated 09/03/2020)

W.P(MD)No.14365 of 2012 and
WMP(MD).No.2435 of 2016
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KK/14.05.2020/ 4P- 4C