



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.01.2021

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THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P. (MD)No.10779 of 2010

S.Thangaraj

: Petitioner

Vs.

1. The Management,
Kaliesvara Mills (B Unit),
Kalayar Kovil, Sivagangai District.

2. The Presiding Officer,
Labour Court, Madurai.

: Respondents

PRAYER:- Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus, to call for the records of the second respondent in I.D.No.78/2001, dated 20.10.2009 and quash the same in so far as it relates to non-mentioning of the petitioner's entitlement towards his terminal benefits is concerned and consequently, to direct the first respondent Management to settle the terminal benefits to the petitioner right from 01.12.1999.

For Petitioner
For R1

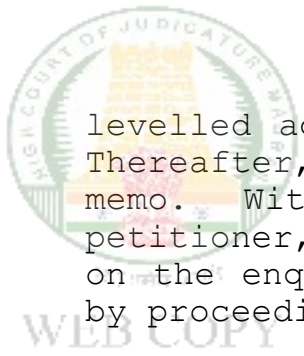
: Mr.S.M.Mohan Gandhi
: Mr.Niranjan S.Kumar
for Mr.V.Balaji

ORDER

The present Writ Petition has been filed challenging the impugned order passed by the second respondent, dated 20.10.2009 and for a direction to the first respondent to settle the terminal benefits to the petitioner right from 01.12.1999.

2.Heard Mr.S.M.Mohan Gandhi, learned Counsel for the petitioner and Mr.Niranjan S.Kumar, learned Counsel for the first respondent.

3.It is the case of the petitioner that he was appointed as Workman under the first respondent Mill from the year 1970 and he was received a sum of Rs.4,320.72/-, as his last drawn wages from the Management. Whiles, the petitioner was issued with a charge memo, dated 09.03.1999 by the first respondent. The charges



levelled against the petitioner is unauthorized absence from duty. Thereafter, the petitioner submitted his explanation to the charge memo. Without considering the explanations offered by the petitioner, the first respondent has conducted an enquiry and based on the enquiry report, the petitioner was terminated from service, by proceedings, dated 01.12.1999.

4. Challenging the order of termination and sought for the relief of continuity of service and back wages, the petitioner has raised an industrial dispute under Section 2(A)(2) of the Industrial Disputes Act, 1947, before the Labour Court, Madurai, in I.D.No.78 of 2001. However, the Labour Court, Madurai, partly allowed the petition filed by the petitioner by award dated 20.10.2009, directing order of termination is excessive and modified the same as casual leave and convert the same into compulsory retirement with continuity of service and other benefits. Challenging the award of Labour Court, Madurai, for denying the benefit of back wages, the present Writ Petition is filed.

5. The learned Counsel for the petitioner would submit that after the petitioner was terminated from service, he was not gainfully employed. He would further submit that without considering the fact regarding the petitioner's non-employment during the termination period, the Labour Court has passed the award without awarding back wages to the petitioner. Hence, he prays for allowing this Writ Petition.

6. The learned Counsel for the first respondent would submit that by considering the all relevant facts, the Labour Court has passed the Award, dated 20.10.2009. Further, he would submit that the claim of petitioner for back wages is unsustainable and he prays for dismissal of this Writ Petition.

7. Considering the facts and circumstances of the case, admittedly the petitioner was entered into service in the year 1970 and he was terminated from service on 01.12.1999 for unauthorized absence. In the petition filed by the petitioner, the Labour Court has modified the termination order into one of compulsory retirement with continuity of service by considering the age of the petitioner. The issue raised by the petitioner before this Court that the petitioner was not gainfully employed during the termination period has not been raised before the Labour Court. Hence, this Court sitting in Article 226 of Constitution of India, cannot adjudicate the issue whether the petitioner is gainfully employed or not during the termination period. Hence, this Court is not inclined to interfere with the award of Labour Court and there is no merit in this Writ Petition.



8. Accordingly, this Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar (Crl.Side)

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Sub Assistant Registrar(CS)

cmr

To

The Presiding Officer,
Labour Court, Madurai.

+1 CC to Mr.V.BALAJI, Advocate (SR-576[F] dated 08/01/2021)

W.P.(MD)No.10779 of 2010
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TP(CO)

CS(25.01.2021) 3P 3C